

**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 Mpati Qofa-Lebakeng (for Shaun Kevin Abrahams)
Mr Mongezi Ntanga (for Shaun Kevin Abrahams)
Ms Tess Madisha (for Shaun Kevin Abrahams)
Adv Gwala- NPA representative
Adv Vivian Rikhotso (for Adv Menzi Simelane)
Adv Bridgette Nthambeleni (for Adv Jiba)
Adv Irene de Vos for President Cyril Ramaphosa
Adv Tlotlego Tsagae (DoJ representative)
Adv Ebenezer Propy (for SAPS)
Adv Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Ms Vuya Nako– The Calata Group
Ms Lize-Mari Doubell – The Calata Group

14 MAY 2026

DAY 44

PAGES 1 – 119



MzansiSA Business Solutions
Arbour Square
Cnr Melle & Juta Street
Ground Floor, Office 3
Braamfontein, 2001
TEL: 011 339 1289 Cell: 0794374335
E-mail: transcription@mzansisa.com

PROCEEDINGS ON 14 MAY 2026

CHAIRPERSON: Good morning. Ja, Adv Semenya?

ADV SEMENYA: Good morning Chair and Commissioners. We have Adv Abrahams for his evidence today.

CHAIRPERSON: Yes and who is going to be leading Adv Abrahams?

ADV QOFA-LEBAKENG: Chairperson, that would be Mpati Qofa-Lebakeng.

CHAIRPERSON: Oh, Mpati Lebakeng?

10 ADV QOFA-LEBAKENG: Indeed, Chairperson.

CHAIRPERSON: Is it Lebakeng or Qofa-Lebakeng.

ADV QOFA-LEBAKENG: Qofa-Lebakeng.

CHAIRPERSON: Yes, Ms Lebakeng.

ADV QOFA-LEBAKENG: Than you very much Chairperson and Commissioners.

CHAIRPERSON: Yes.

20 ADV QOFA-LEBAKENG: We have prepared a bundle of documents Chairperson, and we apologise once again, we just had to prepare and hand up some two affidavits that are already in the documents already before the Commission, but we felt it was necessary just to make copies available and hand them up and seek the indulgence to do so rather belatedly.

CHAIRPERSON: Yes, madam.

ADV QOFA-LEBAKENG: I have spoken to the evidence leaders and requested their indulgence to do so and they have expressed no

dissatisfaction and therefore I now request the indulgence of the Chair and Commissioners to hand same up.

CHAIRPERSON: Thank you.

COMMISSIONER GABRIEL: Thank you very much.

CHAIRPERSON: Mr Abrahams?

ADV ABRAHAMS: Good morning, Chairperson.

CHAIRPERSON: Yes, are you going to take an oath or affirmation?

ADV ABRAHAMS: I am going to take the oath, Chairperson.

CHAIRPERSON: Yes.

10 ADV ABRAHAMS: And I also take the opportunity to say good morning to your two Commissioners. Good morning, Commissioner Kgomo, good morning, Commissioner Gabriel.

COMMISSIONER KGOMO: Good morning, good morning, Adv Abrahams.

CHAIRPERSON: Yes.

COMMISSIONER GABRIEL: Good morning.

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

20 ADV ABRAHAMS: So help me God.

SHAUN KEVIN ABRAHAMS: duly sworn states

CHAIRPERSON: Thank you. Ms Qofa-Lebakeng.

ADV QOFA-LEBAKENG: Thank you very much, Chairperson. Chairperson, indeed yes, we do are here on behalf of Adv Abrahams. He was issued the notice in terms of Rule 3.3 on the 9 October 2025.

Chairpersons will note that we did submit our statement which we will make reference to and once again, Adv Abrahams has been very clear that we must truly pass to this Commission his appreciation to be given the opportunity to provide the timelines within which he was in office and the events that took place at the time.

Chairpersons, I am first probably just going to deal with a number of things with Adv Abrahams. Chairpersons would have noted that the affidavit filed for Adv Abrahams addressed a number of themes, as a result of which we are not going to go through the affidavit line by line, from paragraph to paragraph, we will instead
10 lead Adv Abrahams based on the themes that we want the Commission to take note of and therefore we will isolate the necessary paragraphs that should give Chairperson and Commissioners the comfort, all those themes and where necessary and if there are any questions, we will be able to address them and go as we would be required to.

CHAIRPERSON: Yes.

ADV QOFA-LEBAKENG: Having said so Chairperson, it is also important for us Chairperson, to highlight that it is probably important
20 to start with the issue of the, of clearing the air regarding the issue of the Constitutional Court Judgment which our Chairperson was part of the majority judgments that were held in favour at least to a good extent, to indicate as far as the findings of the Constitutional Court in relation to the removal of Mr Abrahams, specifically indicating that even though Mr Abrahams was removed from office, it was not

because of any issues of incompetence on his part or anything done wrongly by him in the office, but instead purely because of the issues that happened at the time under the so-called golden handshake with the President and Mr Nxasana.

Chairperson, we place this on record because we will deal with it rather briefly as it would become necessary for Adv Abrahams at this forum to highlight that and clear the public perception that may be lingering to the extent that it creates a negative perception that might have to be cleared.

10 Chairperson, and Chair we do that not to minimise the significance of the Constitutional Court Judgment, but particularly to just highlight the impact it has on Mr Abrahams. Chairperson, having said so, I would like to indicate that we have divided our evidence with Mr Abrahams into a few themes. The first one, we would be dealing with his role as Acting Special Director of Public Prosecutions, PCLU from 1 March 2013 to 31 July 2014. That would be our first theme.

20 And Chairperson will note that there is a period within which he managed a Specialised Unit with a very broad mandate, extending far beyond the issues of the TRC cases, and during which period he actively engaged TRC related matters within of course the constraints of available resources at the time.

The second theme Chairperson and Commissioners, will be his tenure as NDPP. This period will be between the period of 18 June 2015 to 13 August 2018 and this is the time within which he

was, he authorised the prosecution of former Security Branch officers, the abduction, torture and murder of Nokuthula Simelane. Chairpersons, you will see we deal with these issues and I will refer where necessary, to the paragraphs and this will be supported by the reopening of the Timol and Aggett inquests and the engagement of the families.

The third theme Chairpersons, will be to deal with his direct and detailed response to the allegations that appear as far as the notice in terms of Rule 3.3 deals with the issues in the Calata
10 affidavits that specifically directly implicate him. That would be the third theme.

The fourth theme Chairperson and Commissioners, will of course be his direct cooperation with this Commission but highlighting as well Chairpersons, that despite the numerous requests that Mr Abrahams has made to the NPA to be assisted with information to be able to provide clarity and context to this Commission and the various letters that has been sent thereto, there has been no response, there has been no assistance and therefore we will ask this Commission to understand that where we are unable to provide
20 information, it is purely because having requested it numerous, we have not been able to get any assistance from the NPA.

Now Chairpersons, briefly when we deal with the issues in context of the Calata allegations, you will note Chairpersons that we will put that a little bit into context and I will allow Mr Abrahams to put the context as we lead him through his evidence, but you will note

Chairpersons, that with respect when the Commission looks, has heard the evidence fully and looked at the statement we have submitted, it will be clear that SKA1 which we have submitted before this Commission in the index bundle, the narrative that is placed by the Calata Family as far as the work of Mr Abrahams is in fact, will not withstand scrutiny and I will put it as high as that.

What the evidence will show Chairpersons, as far as the Calata allegations are concerned, is that at no point did Mr Abrahams suppress, obstruct or delay any TRC prosecutions. The evidence will also show that the allegations that little or no progress was made during the PCLU tenure are refuted entirely by documentary evidence.

Further Chairpersons, it will be seen by the evidence that we will lead, that the transfer of the Cradock Four docket from PCLU, was directed by the Acting NDPP's Office and definitely not by Adv Abrahams as alleged in the Calata papers. Chairpersons, it will also be seen as we lead Adv Abrahams through his testimony, that the settlement discussions in the Nkadimeng II matter, were a legitimate and constitutionally proper exercise of litigation management, definitely not a device to avoid prosecution. We say this Chairpersons, in our statement and will take Chairpersons and Commissioners through this area of our statement.

That as well Chairpersons, the decisions not to prosecute certain TRC matters during the NDPP's tenure, were taken on a proper legal and evidentiary grounds, consistent with the Prosecution

Policy and the applicable law and various advice that was obtained at the time to give comfort to the NDPP to decide not to prosecute certain matters.

I will then finalise Chairpersons, before leading Mr Abrahams, probably to give a bit of context into finally the two affidavits filed by Adv Macadams which Chairpersons would have noted would appear as annexures FA1 and I think FA46 in the main bundle of the Calata application before the High Court, the 2025 case.

10 Chairpersons, it is important to state when we deal with these two affidavits ...[intervenes]

COMMISSIONER KGOMO: I thought that you are not leaving Mr Abrahams anything, maybe after you are through with your preamble, he may as well walk out of the ward.

ADV QOFA-LEBAKENG: I apologise Chairpersons, I just thought I should just give Chairpersons and Commissioners the picture of how I am going to lead him so that... I am in the Chairperson and Commissioners' hands, but I would have wanted the Chairperson and Commissioners the ability to understand how we are going to lead
20 him, why we are taking him to certain affidavits ...[intervenes]

COMMISSIONER KGOMO: We have the papers before us, we have looked at them, yes.

ADV QOFA-LEBAKENG: Thank you, thank you Chairperson and Commissioners, thank you.

CHAIRPERSON: Thank you, Ms Qofa.

ADV QOFA-LEBAKENG: I am happy Commissioner, I take direction. In fact, I must state that I would be happier to be done in the next 20 minutes may God willing. I think now Chairpersons, I will then go straight to our meet. And if I may be allowed, then I will absolutely go ahead with Mr Abrahams.

CHAIRPERSON: Yes, you may.

EXAMINATION BY ADV QOFA-LEBAKENG: Thank you, thank you, Chairperson. Mr Abrahams, please, you have, can you go ahead again and state your full names for the record?

10 ADV ABRAHAMS: Shaun Kevin Abrahams.

ADV QOFA-LEBAKENG: Thank you very much. Mr Abrahams, can you kindly set out your legal qualifications and career history? Most importantly give us particular reference to your experience in criminal law and prosecutions.

ADV ABRAHAMS: Chairperson, I am an advocate, a practicing advocate by profession. I read degrees B.Juris, B.Proc and LLB from the University of Natal, Pietermaritzburg as it was known then. I received my first delegation to prosecute in 1997. I later prosecuted in the Pietermaritzburg Magistrate's Court, I was appointed as a state
20 advocate at the Director of Public Prosecutions office in Pretoria.

I was later seconded to the Priority Crimes Litigation Unit where I was appointed as a senior state advocate. Later I was appointed as the Acting Head of the Priority Crimes Litigation Unit and then for a brief period of a few months, I had to revert back to my substantive position of a senior state advocate after which I was then

appointed as the National Director of Public Prosecutions.

Perhaps let me start off with my, let me start off with a bit of background when I joined the office of the Director of Public Prosecutions in Pretoria. I joined the office, I was admitted as an advocate in the High Court in Pietermaritzburg. If memory serves me correct, it was before Justices Maggot and Kondile in March 2022.

I joined the office of the Director of Public Prosecutions Pretoria in May or June 2022. I prosecuted a number of high profile cases whilst in High Court, in the Regional Courts, in the District
10 Courts. In 2003 I was requested to by Adv Anton Ackermann SC, to assist him and prosecute what I know believe was actually the first post-TRC prosecution in the matter of *S v Eugene Terre'Blanche*.

It was, it turned out to be a section 105, a guilty plea in which Mr Terre'Blanche had pleaded guilty on five counts of sabotage or something relating thereto in relation to bombings committed in the North-West province during apartheid.

In 2004 I had just concluded a serial murder trial in the High Court, I think it was commonly referred to as the "Highwayman" serial killer, when I was approached by Adv Ackermann SC. I am going to
20 refer to him as Anton and I will refer to many other people by name, not on ...[intervenues]

CHAIRPERSON: Please refer to him as Adv Ackermann.

ADV ABRAHAMS: I am happy to do so.

CHAIRPERSON: Yes.

ADV ABRAHAMS: It certainly was not out of disrespect.

CHAIRPERSON: Yes.

ADV ABRAHAMS: It was out of congeniality, ja, thank you.

CHAIRPERSON: Yes, we would prefer that you do so.

ADV ABRAHAMS: I am happy to do so, thank you, thank you, Chairperson. Adv Ackermann SC approached me and requested if I would be interested in joining the Priority Crimes Litigation Unit, he headhunted me and in particular to assist Adv Chris Macadam in a matter that related to contraventions of South Africa's nuclear energy laws, non-proliferation of weapons of mass destruction laws and of course our money laundering laws and some of the legislations.

And the matter was particularly related to the Libyan Nuclear Weapons Programme. I am not going to go into details or history of the matter, but it was really a massive international matter that lasted many, many years. It required a lot of domestic investigation, interviewing of witnesses, a transnational travelling to various countries, the USA, Switzerland, Malasia. It spread to Germany and a few other countries. Of course the crimes were committed internationally and in South Africa.

That was my specific, the specific reason why I initially joined the Priority Crimes Litigation Unit. In between of course there were other matters and my focus was in the main on matters that impacted on the security of this country, that included issues around a contravention of our intelligence legislation, issues around espionage, issues around terrorism, contraventions of our conventional arms control legislation and of course [indistinct] activity

and some other laws.

In specific relation to TRC matters and I will get to the other matters, specific in relation to TRC matters, of course I prosecuted the Eugene Terre'Blanche matter, I assisted Adv Chris Macadam and Adv Anton Ackermann in the Philip Powell matter, I interviewed a number of witnesses across the country in relation to the Philip Powell matter. There was the Tyre and Chadwick matter in which I also assisted Adv Macadam.

I was appointed to lead the prosecution in respect of the
10 Saint James massacre and Heidelberg Tavern in the event that the NPA does indeed decide to prosecute the matter. I was going to be duly assisted by Adv Mthunzi Mhaga. Adv Mhaga did a lot of work on the matter and I would of course joined in later in the event that there was a decision to prosecute in respect of the matter.

There were a few other matters, the Japie Maponya matter. I remember in respect of the Japie Maponya matter I had arranged for Eugene de Kock who was still serving his sentence then, to be brought to my office at the VGN Building where I interviewed him in respect of the Japie Maponya matter and a few other matters. I
20 would say in the bigger scheme of things as a prosecutor before my appointment as the Acting Special Director of the Unit, that would have to a large degree limited my role.

Of course there was the Missing Persons, the work of the Missing Persons Task Team and maybe I must just talk a little bit about the Unit itself before I get into other prosecutions that, that I did

by virtue of the wide mandate of the Priority Crimes Litigation Unit.

When I joined the Unit ...[intervenes]

COMMISSIONER KGOMO: Just remind us, the Japie Maponya matter, was Japie Maponya ever found? We know where he ended up.

ADV ABRAHAMS: I cannot recall while I was still within the NPA whether his mortal remains were ever recovered. We believed at the time that his remains had been buried a metre or two on the Swaziland side of the border near Piet Retief. We tried to get Eugene
10 de Kock and we tried to get other evidence to be able to specifically establish where the remains were buried. During my time we were unable to come to such a determination.

I do know that Ms Madeleine Fullard who heads the Missing Persons Task Team in the NPA, she did a lot of work to try and establish that and later on when Eugene de Kock was released from prison, he assisted the Missing Persons Task Team in respect of a lot of the work of the Missing Persons Task Team and matters relating to the TRC with potential prosecutions envisaged.

That is the best response I can proffer, Commissioner.

20 COMMISSIONER KGOMO: Yes, thank you.

ADV ABRAHAMS: I joined, when I joined the Priority Crimes Litigation Unit in 2004, it was a very small Unit. The Unit was led by Adv Anton Ackermann SC, Dr Tori Pretorius was one of the senior Deputy Directors and Adv Chris Macadam was the other senior Deputy Director. I was the only other professional member of the

staff and we had a secretary, a PA, Helena Swart, Ms Helena Swart who since passed.

Ms Swart later on became my PA when I assumed office as National Director. So we were four or five people at the time and the mandate of the Unit, the Unit was established in March 2003. It was mandated to manage investigations and prosecutions of crimes that impact on security of the country nationally and internationally.

The specific proclamation made reference to contraventions of the then Internal Security Act, there was of course repealed acts of terrorism, sabotage, high treason. Later on when – I may be speaking under correction, Adv Bulelani Ngcuka, it could have been him or it could be Adv Mokotedi Mpshe when he came in the mandate of the Unit was expanded and it included a number of pieces of legislation.

I am happy to go into it should the Commission require me to do so, these included your Protection of Constitutional Democracy Against Terrorist Related Activities Act, your POCDATARA. The initial mandate did provide for terrorism, but the Act of course, came into operation shortly thereafter.

COMMISSIONER KGOMO: Yes. Sorry, about the expansion, you probably are referring to paragraph 30. Just look at it, of your statement and see whether what you are saying is in reference to that, paragraph 30 at page 12.

ADV ABRAHAMS: Is that your paginated number?

COMMISSIONER KGOMO: Yes.

ADV ABRAHAMS: Yes, so perhaps and thank you for that, so perhaps just go to paragraph 27 first where we speak of national and international crimes that impact on the security of the country and I did say terrorism, sabotage, treason, foreign military crimes and such other priority crimes as determined by the National Director.

It was later on 7 January 2008, Adv Mpshe SC referred to the PCLU contraventions of a wide range of statutes which included the Non-Proliferation of Weapons of Mass Destruction Act, the National Conventional Arms Control Act, the Nuclear Energy Act, the
10 POCDATARA as I referred to earlier, the National – the Regulation of Foreign Military Assistance Act, the Protection of Information Act, the Intelligence Services.

And of course some other pieces of legislation and of course subsequent, National Directors came along and added other contraventions to the Priority Crimes Litigation Unit. Now aside from the TRC matters, I was seized with the prosecution of a number of terrorism related matters. And perhaps the first of these related to a matter of *S v Henry Okah*, a Nigerian terrorist and it is a matter that ultimately ended up in the Constitutional Court.

20 It was a test case in history of our country on the principle of *aut dedere aut judicari*, that is “extradite to prosecute” and of course Mr Okah was subsequently convicted in the High Court in Johannesburg before Justice Neels Claassen and the matter went to the Supreme Court of Appeal in determination of the law and ultimately it went to the Constitutional Court who confirmed the

sentence of 24 years' imprisonment and/or the sentence or the convictions, he was convicted of all the charges, I think it was 12 counts of terrorism.

There was also the matter, the right to activity relating to the former, relating to the former Secretary-General of the AWB, Mr André Visagie who had form his own so-called right-wing party, the Geloftevolk Republikeine and he was convicted in arms-related issues.

10 There was also the matter that related to the Phalaborwa terrorism matter which I prosecuted before the newly minted announced Judge President of Gauteng, Judge President Ledwaba. I think this was back between 2010 and 2013, and of course the accused were then convicted as well and the applications for leave to appeal to the SCA, to the ConCourt were all dismissed.

20 There was the important matter relating to the conspiracy and attempt to murder the former Rwanda general, Kayumba Nyamwasa that sought refuge in South Africa. That is a matter that we, that I prosecuted and we convicted some of the accused in the matter and ultimately the court referenced that the persons behind the murder or the attempted murder of Mr Nyamwasa originated from Rwanda, because it was a very politically hostile matter that impacted on the relations between South Africa and that country. I was ...[intervenes]

COMMISSIONER GABRIEL: And Mr Abrahams, with that much on your plate, where did you find time for the TRC matters?

ADV ABRAHAMS: Well that is precisely, that is precisely it.

COMMISSIONER GABRIEL: Maybe you could focus in on, because you know the Terms of Reference at this Commission.

ADV ABRAHAMS: Absolutely, absolutely.

COMMISSIONER GABRIEL: Thank you.

ADV ABRAHAMS: Thank you Commissioner, for getting us to home back into where we need to be. That is precisely, that is precisely it. The work of the Unit had been split. Chris Macadam, Adv Chris Macadam and Adv Anton Ackermann in the main dealt with the TRC matters. We were fairly – of course we took direction from our superiors at the time, so if matters are allocated to you, you deal with the matters and the matters which I have referenced, these were matters that were allocated to me at the time.

10

Of course when the issues arose around Adv Anton Ackermann being removed from TRC matters and Adv Chris Macadam taking over, you know we continued to assist, we were requested to assist and that was it. And then of course when Mr Ackermann stepped down, when he retired early in February 2013, he recommended to Dr Silas Ramaite and the then Minister of Justice, I think it was Minister Jeff Radebe, that I be appointed to head the Unit.

20

Of course it was a tremendous honour and I took on these responsibilities and during that time Adv Chris Macadam continued to manage and take responsibilities for the TRC matters. So I was in the main dependant on what Adv Macadam, a memoranda, *et cetera*,

whatever Adv Macadam would prepare for my consideration, and of course I, I mean I had no reason to doubt any of the submissions that Adv Macadam made to me at the time.

Adv Macadam was somebody that I knew as far back as 1995, 1996 from the office of the then Attorney-General in Pietermaritzburg, so I had known him for a very long time and of course we worked together very, very well over a period of time.

COMMISSIONER GABRIEL: Could I direct your attention to paragraph 32 of your affidavit?

10 ADV ABRAHAMS: Thank you.

COMMISSIONER GABRIEL: To deal with the issue of investigative powers. Let me tell you why I am asking this, because you go on in paragraph 39.1 and paragraph 44, and you use this phrase that there were, that the Unit had been grappling for a decade with systemic obstacles to TRC investigations and prosecutions. Could you explain what those were?

ADV ABRAHAMS: Thank you so much for raising that, Commissioner. Commissioner, from the proclamation of the Priority Crimes Litigation Unit, the Unit did not have any investigative powers
20 and was in the main at its inception, dependent on the DSO, the then Directorate of Special Operations and they had their own mandate and matters that impacted on the country that they had to investigate, and of course they assisted with some of the investigations at the time.

And then of course there was the police and the units in the

police if I remember correctly, was referred to as the Crimes Against the State Unit. They were mandated to investigate TRC related matters and of course matters that the PCLU in the main were seized with, in other words the mandate of the PCLU was being investigated, crimes that emanated from the mandate of the PCLU was being investigated by members of the Crimes Against the State Unit, commonly referred to as CATS.

And by virtue of its inability, of the Unit's inability to investigate and being and that level of dependency made it extremely
10 difficult having regard to the autonomy of each you know, of each structure and each unit and each department. And literally our hands were tied behind our backs.

COMMISSIONER GABRIEL: So what did you understand then to be the systemic obstacles to the prosecution, to the investigation and prosecution of TRC cases?

ADV ABRAHAMS: Well I can speak to it in multiple phases.

COMMISSIONER GABRIEL: And I must mention that is a phrase from paragraph 39.1 and 44 of your own affidavit.

ADV ABRAHAMS: Yes, so the systemic challenges that were faced
20 at the time, there were of course a number of them, the first being the inability to investigate, the issue of witnesses having died, evidence having to be – evidence, I mean witnesses that needed to be interviewed, evidence that had gone missing. There were many different issues. I was not at the level of where and let us take the periods, if you take the period between 2002 or 2004 when I joined

the Priority Crimes Litigation Unit up until I became the Acting Head of the Unit and then I will deal with that period and I will deal with the people, the period when I was National Director.

So the first period from 2002 until 2013 when I was appointed to head the Unit, I was not involved in the level of – I suppose it was beyond my paygrade at the time, of any perceived political interference. I mean those are issues that Adv Ackermann, Dr Ramaite, Adv Chris Macadam and possibly Dr Tori Pretorius, they would be able to talk to that during that period. It was a bit above my
10 paygrade at the time.

When I was appointed to head the Unit, there were a limited number of cases. I do not have the figures off the cuff of my head, but I do, I am sure I refer to them somewhere, but there were a number of, a limited amount of cases that the NP... that the PCLU had honed in and when I say honed in, this was a culmination of the initial 400 plus cases being worked down, many cases charges being withdrawn, the decisions made to decline to prosecute, ultimately culminating in matters where it was envisaged that there is a – there are reasonable prospects of possible potential prosecutions going
20 forward, depending on the evidence that is gathered during, going forward.

COMMISSIONER KGOMO: Cases withdrawn, you say many cases, is it [indistinct] block or on merit?

ADV ABRAHAMS: Commissioner, I cannot recall personally withdrawing or declining to prosecute any TRC related matter when I

was a state advocate, a senior state advocate in the Priority Crimes Litigation Unit. The Chadwick matter I probably would have recommended that we decline to prosecute and the Philip Powell matter we probably would have declined to prosecute but I think that came later on. Those were the only two matters that can stand out and say to my recollection that I was personally involved in where decisions were made to decline to prosecute. I am unable to speak about the others.

COMMISSIONER KGOMO: Yes, thank you.

10 ADV ABRAHAMS: And I am unable to assist this Commission in respect of the others.

COMMISSIONER KGOMO: Yes.

ADV ABRAHAMS: Of course ideally I would understand that in the back of the Commissioner's mind is, did anybody go back and have a look at these cases to see if legitimate decisions were made to decline to prosecute these matters? In my time I cannot recall that having taken place, simply by virtue of the cases, the number of cases that I had been advised of were cases that the Unit was seized with at the time, so I regrettably cannot assist the Commission any
20 further in that regard. I would like to but I am unable to.

CHAIRPERSON: Yes.

COMMISSIONER KGOMO: Ja.

CHAIRPERSON: Adv Abrahams, getting back to what you are saying in paragraph 39.1, you say when you assumed the acting position of heading the PCLU, that Unit had already been grappling

with systematic obstacles to TRC prosecutions, you must have been aware of those systematic obstacles ...[intervenes]

ADV ABRAHAMS: Well ...[intervenes]

CHAIRPERSON: That the TRC was faced with. What are those obstacles?

ADV ABRAHAMS: Well I think perhaps prime in respect of these to my recollection and I have got to be very careful how I phrase this, prime in relation to this was when Adv Ackermann was taken off TRC cases and I believed at the time rightly or wrongly and I may be
10 speaking erroneously, that we could not proceed with TRC prosecutions at the time.

CHAIRPERSON: Because of his removal?

ADV ABRAHAMS: Well not necessarily because of his removal.

CHAIRPERSON: Yes?

ADV ABRAHAMS: I, you know to my recollection there were engagements between the NPA, the police, there were engagements within structures, with the Department of Justice, there were various committees that were set up. I was not part of those committees and that is why I said whatever happened at the time was above my
20 paygrade. And where I speak about systemic obstacles, I am referring to those obstacles that took place during a period prior to my ...[intervenes]

CHAIRPERSON: Yes, but I want you to aver to those systemic obstacles that you were aware of when you assumed the position of heading the PCLU.

ADV ABRAHAMS: When I assumed the position of PCLU, I genuinely believed that there were no obstacles and this takes us to when I actually became National Director. Now Commissioner, you would see from the documentation that I have referenced and perhaps let me talk a bit about my time as the Head of the PCLU. When I was the Head of the PCLU, there were regular reports that were submitted to the Acting National Director specifically in relation to the progress of these cases. We have asked the NPA for these, none of these had been provided to me, so I am unable to speak to
10 these, number one.

Adv Chris Macadam continued to manage cases, the cases that were identified that he was working on, he was working closely with members of the CATS Unit, directing the investigations, what were outstanding, what was required and of course that takes us to the, it ultimately took us to the Simelane matter, the Nokuthula Simelane matter and when I became National Director, Commissioner I always had this innate responsibility and vision to ensure a just, to ensure a victim centric service to victims of crime.

20 So when you look at the Nokuthula Simelane matter, roles, I think it is called Nkadimeng II, when Nkadimeng II was filed, of course the docket was referred, I think I was still at the PCLU when the docket was referred to it, Chris Macadam was dealing with the matter, to my recollection at some point Chris Macadam was, Adv Chris Macadam was removed from TRC matters, but you must look at the time, the timespan.

My appointment as Acting Head ran from the 1 March 2013 until the end of July the following year, 2014. Of course in that time I was prosecuting matters personally in all our courts, also in the Supreme Court of Appeal, arguing appeals. But back to TRC matters, Adv Macadam was dealing with TRC matters.

At some point and it was a matter of weeks that he was removed from TRC matters by Mr Mxolisi Nxasana who was the National Director at the time, and he was appointed to deal with foreign bribery matters. And then, I must try and remember,
10 Adv Nomvula Mokhatla who was the Special Director of Public Prosecutions responsible for the Priority Crimes Litigation Unit, she took over the PCLU, then I was assigned to deal with TRC matters for a very brief period.

And Adv Macadam would have done some sort of a memorandum to me with a handover. That was not given to me, so I am unable to refer to that. It was a very short space of time but in that time and I am sure Adv Macadam would have confirmed this when he testified before this Commission, that he was still very much hands on, he was still dealing with TRC matters during that period.

20 But I want to, I want us to go to the Nokuthula Simelane matter, to Nkadimeng II.

COMMISSIONER GABRIEL: But before you move on, the Chair directed your attention to 39.1 of your affidavit where you speak of systemic obstacles.

ADV ABRAHAMS: Yes.

COMMISSIONER GABRIEL: You use very similar words in paragraph 44. Towards the middle you say:

“Having regard to the long history of systemic obstacles to TRC investigations and prosecutions, Macadam’s longstanding involvement and responsibility of TRC matters prior to me and that of Ackermann SC prior to him, it could hardly have been expected of me to have made any substantial progress on TRC matters.”

Now why did you say that?

10 ADV ABRAHAMS: I would probably attribute that to the issue around investigations in the main and the lack of support from the investigating authorities in the matter. That is what I would in the main attribute it to and of course the other issues that I raised around the tracing of witnesses, the unavailability of witnesses, witnesses that may have since passed on, evidence that has been destroyed. But in the main I would have to settle on the issue of challenges around the investigations.

CHAIRPERSON: Yes.

COMMISSIONER GABRIEL: Okay.

20 ADV ABRAHAMS: Ja, I am sorry, I cannot take it further.

CHAIRPERSON: Thank you. Ms Qofa-Lebakeng, when you commenced, you started by giving us a roadmap of where you wanted the witness to go. I think he has already dealt with the role as Acting SDPP and also with his role as NDPP. If there is anything that you want him to give evidence to with regard to his role, you may

proceed as NDPP.

ADV QOFA-LEBAKENG: No, Chairperson and Commissioners.

CHAIRPERSON: Yes.

ADV QOFA-LEBAKENG: What I would have wanted to do and I think Commissioners would have seen that because I could see that the movement of questions was almost dipping on various themes ...[intervenes]

CHAIRPERSON: Yes.

ADV QOFA-LEBAKENG: Which we, which I had hoped would have
10 clubbed into one and then we would be able to refer Adv Abrahams to the relevant sections, including the memoranda he attaches to his affidavit ...[intervenes]

CHAIRPERSON: Do not give evidence ...[intervenes]

ADV QOFA-LEBAKENG: No, no, no, I ...[intervenes]

CHAIRPERSON: Which Ms Qofa-Lebakeng, just direct your client to the relevant portions of what you want him to testify to.

ADV QOFA-LEBAKENG: Indeed Chairpersons. All I was trying to do now is to say I want to probably go back to the sections that Chairperson and Commissioners, were addressing as far as the
20 paragraph 39.1, paragraph 44 and of course paragraph 32.

CHAIRPERSON: Yes.

ADV QOFA-LEBAKENG: And if Commissioners will allow me, I would not be willing to repeat, but I think it will be important to allow the witness to ...[intervenes]

CHAIRPERSON: Yes, you may do so.

ADV QOFA-LEBAKENG: Thank you, thank you, thank you Chairperson and Commissioners. And Chairperson, please forgive me, I am now going to jump a bit, to jump to the fourth theme in my area, just at least to close this loop and then I will go back just a bit, because I do believe Chairperson and Commissioners, that maybe if we would have centred in the beginning his role in terms of the notice that was given, then that would have given us an easier way to where we are now.

But Chairpersons, I go to the fourth theme which particularly
10 addresses this issue at paragraph 39.1. And Chairpersons, this theme was about specifically dealing with the appointment of Mr Abrahams as the NDPP and his engagement with TRC cases. Now Mr Abrahams, we accept that you were appointed on or around 18 June 2015. Can you just briefly before we deal with the TRC cases, talk about the context of your appointment insofar as it will now take us to your involvement with TRC cases?

ADV ABRAHAMS: So shortly, shortly after, well ...[intervenes]

ADV QOFA-LEBAKENG: And Chairpersons if I may, if I may I would like to refer Mr Abrahams to paragraph 37 of his statement, because
20 that is where he starts dealing with this issue, on paragraph 37 to paragraph 39 and then we will deal with the rest as we go along.

ADV ABRAHAMS: I just want to seek clarity, would you like me to deal with the issues specifically relating to the allegations?

ADV QOFA-LEBAKENG: You, what I would want us to focus on, you will note, I would like us to deal with the systemic concern, the

systemic issues that the Chairperson and Commissioners have raised and particularly you would note that we have attached an annexure to your statement, annexure SKA1. No, no, no, forgive me, not SKA1, SKA3.

CHAIRPERSON: Give us the relevant page.

ADV QOFA-LEBAKENG: Chairperson and Commissioners, I am using ...[intervenes]

ADV ABRAHAMS: It is paginated page 84.

ADV QOFA-LEBAKENG: 84, thank you. Yes, paginated page 84.

10 ADV ABRAHAMS: Yes.

ADV QOFA-LEBAKENG: Yes, thank you.

ADV ABRAHAMS: Thank you, thank you, thank you, counsel. Chairperson, shortly after my appointment as a National Director of Public Prosecutions, I would have had an in-person meeting with the then Minister of Justice and Constitutional Development, Minister Michael Masutha, and I would have briefed Minister Masutha on an array of different matters relating to the work of the NPA.

20 This memorandum as dated 15 July 2015, it is marked SKA3, is a memorandum that I requested the Priority Crimes Litigation Unit to draft on my behalf in relation to TRC matters, to apprise the Minister on the progress and challenges associated with TRC related matters.

Now Chairperson, you would observe that in paragraph 2 we detail the entire background of the Priority Crimes Litigation Unit's involvement in TRC matters and the history of TRC matters. I am not

going to repeat it, the contents of what is written in there for the interest of brevity.

I then proceed at paragraph 3 where I discuss the management of TRC cases by the Priority Crimes Litigation Unit right up until me assuming office of National Director of Public Prosecutions. And of course perhaps maybe I should be indebted to my counsel for directing me there, and of course the PCLU had at the time identified a number of outstanding cases and in doing so, firstly what the PCLU did, they requested, well the Divisional Head of the
10 Detective Service of SAPS was requested to issue an order to all Provincial Commissioners to report all outstanding TRC cases to the PCLU.

A similar request was directed to the Director of Public Prosecutions, to former members of the D'Oliveira Unit and the Human Rights' Component. I am sure Adv Ackermann and Adv Macadam would have spoken about those units because they worked with them. And then of course where we make reference to former TRC researchers being employed, I would – to my recollection that would be Ms Madeleine Fullard and somebody else whose name
20 I cannot recall, that would have assisted with that.

We continue and then we speak at 3.6 about the major challenges and we say the following:

“A major challenge was locating the material necessary to make decisions:

3.6.1 The Director General: Justice had after the

closure of the TRC issued a directive that all inquests older than 10 years may be destroyed.

3.6.2 Polic dockets could not be located either because they had not been returned to the TRC or had been lost during the investigation or integration process of the former police forces and of course also due to the closure of police units.

3.6.3 And there were difficulties in encountering and locating court records.”

10 And here is where I make reference to an audit that was conducted where 400 cases were disposed of and we break down how they were disposed, firstly in respect of some of them amnesty had been granted, in others crimes had prescribed. There were instances where persons had refused amnesty or they had not applied and they had not been granted indemnity, or had been granted indemnity in terms of section 204 of the CPA.

 And then there were matters that had been finalised with the DPPs or the Attorney Generals and we also referenced that there was no satisfactory evidence upon which a successful prosecution
20 could be instituted in some of the cases and there was insufficient evidence available upon which prosecutions could be instituted.

 And we give examples, again the previous court records and police dockets that were not available, witnesses and suspects that were deceased, there were matters that fell outside the jurisdiction of our courts and I mean we referenced the Dulcie September matter.

Dulcie was murdered in Paris. And then of course persons that were granted indemnity under the Indemnity Acts.

Then we list the cases at the time, the prosecution and the Terre'Blanche matter which is a matter that I prosecuted under the guidance of Adv Anton Ackermann SC, then there was the Blani matter, the Nieuwoudt matter, and within the NPA we had identified and established that of those 400, about 350 of those 400 cases, were finalised on the basis that I had made reference to, to earlier on which left us with the remaining 50 cases which were necessary for
10 further investigations.

COMMISSIONER KGOMO: Yes, just a moment. I see you are almost at 3.9 but you have skipped 3, the Nieuwoudt matter.

ADV ABRAHAMS: Yes.

COMMISSIONER KGOMO: But you have ...[intervenies]

ADV ABRAHAMS: Ja, so it was a ...[intervenies]

COMMISSIONER KGOMO: You have dealt with Terre'Blanche and Blani.

ADV ABRAHAMS: Yes, it was the Terre'Blanche matter, the Blani matter and the Nieuwoudt and two others. So Adv Ackermann would
20 have dealt with the Blani and the Nieuwoudt matters to my recollection. He probably would have been assisted, he would have been assisted by somebody else, by somebody within the Unit to my recollection. I cannot recall who it was.

COMMISSIONER KGOMO: Yes and the Nieuwoudt refers to the PEBCO 3, yes, the ...[intervenies]

ADV ABRAHAMS: Yes, the Nieuwoudt. Perhaps let me...

COMMISSIONER KGOMO: Yes.

ADV ABRAHAMS: Like I can see here the Commissioner wants me to perhaps reference that. And of course we early on said what the Terre'Blanche matter was about, he was the leader of the AWB.

COMMISSIONER KGOMO: Yes.

ADV ABRAHAMS: He entered into a plea and sentence agreement and of course it was a wholly suspended sentence. The Blani matter, the accused was a member of the UDF and he also entered into a
10 plea and sentence agreement, resulting in a partially suspended prison sentence for an attack of an elderly couple living on a farm in the Eastern Cape.

The Nieuwoudt matter, there were three former Security Branch members, they were charged with the murder, kidnapping and assault of the PEBCO 3 which were the three Port Elizabeth activists and of course although the accused were indicted in the Port Elizabeth High Court, the case was on an ongoing basis postponed and ultimately withdrawn due to a lack of evidence after a period of five years.

20 I cannot comment on the merits or demerits of what transpired around the issues of the lack of evidence and the postponements, I was not involved in the matter.

COMMISSIONER KGOMO: Yes, thank you.

ADV QOFA-LEBAKENG: Thank you very much Chairperson and Commissioners. That I believe would have pretty much centred the

evidence on Mr Abrahams' involvement with the PCLU.

CHAIRPERSON: Yes.

ADV QOFA-LEBAKENG: But for better reference Chairperson and Commissioners, we will also see this involvement, this evidence is also contained at SK1 and SK3 as referenced, those two annexures ...[intervenes]

CHAIRPERSON: Page?

ADV QOFA-LEBAKENG: Chairpersons, under SKA1, Chairpersons will see this... Chairpersons, I apologise, I am working off of two
10 documents, I think once counsel works on a document, you get married to that document and it is difficult to let go. Chairpersons, at SKA1 you will see that at paragraph 31 of the index bundle and the heading starts, "My involvement" ...[intervenes]

ADV ABRAHAMS: Where are we ...[intervenes]

ADV QOFA-LEBAKENG: Page 31.

ADV ABRAHAMS: Of the paginated bundle?

ADV QOFA-LEBAKENG: Of the paginated, yes. And then Chairpersons, as far as SKA2, you will see that under section 3 of SKA2 ...[intervenes]

20 ADV ABRAHAMS: SKA2 is on page 68 of the paginated bundle, Commissioner.

CHAIRPERSON: Yes.

ADV ABRAHAMS: And Chairperson.

CHAIRPERSON: Yes.

ADV QOFA-LEBAKENG: Forgive me, forgive me, Chairpersons. I

am referring to SKA3, SKA3 section 3 which starts at page 88.

Those are pretty much the areas of evidence that particularly deal with Adv Abrahams' work within the PCLU.

CHAIRPERSON: Ja.

ADV QOFA-LEBAKENG: And then I am just placing that for purpose of the record Chairpersons, so that it is easy to refer to.

CHAIRPERSON: Ja. At a convenient time please indicate so that we can adjourn for tea.

ADV QOFA-LEBAKENG: Indeed, that is what I wanted to find out
10 Chairperson, Commissioners, if it would be an appropriate time.

CHAIRPERSON: Yes, I think we will adjourn for tea until 11:20.

ADV QOFA-LEBAKENG: Thank you, Chairpersons.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Ms Qofa-Lebakeng.

ADV QOFA-LEBAKENG: Thank you very much Chairperson and
Commissioners. Chairperson, if you will allow me, I think I am now
going to turn to one area of evidence that Chairperson sent up from
Paragraph 15 of Mr Abrahams' statement. It is page eight of the
20 paginated budget. Chairperson, the context really I will ask Mr
Abrahams to read that paragraph into the record. And then for ease
of reference, I will then refer Chairperson and Commissioners, as I
have indicated, to the very first annexure, SKA 3, particularly at page
102.

CHAIRPERSON: Give us the relevant page, just on the bundle.

ADV QOFA-LEBAKENG: 102.

CHAIRPERSON: One?

ADV QOFA-LEBAKENG: 102. Chairperson, if you will see, we will start by addressing the work, the particular work that Advocate Abrahams himself worked on, pursued, as far as the TRC cases are concerned. He deals with that under the subject "Cases on Hand" in page 94 and then he proceeds so until the comment section in page 102.

Chairperson, if that is in order, I will deal with that part and
10 then I will then get to the second last part, after which I will take
guidance from Chairperson and Commissioners whether I should
continue whatever the Chairperson has said as well. I will then deal
with section E.

CHAIRPERSON: Well we do not want to give you direction on how
you want to lead your evidence.

ADV QOFA-LEBAKENG: Thank you.

CHAIRPERSON: Ja.

ADV QOFA-LEBAKENG: Thank you.

COMMISSIONER GABRIEL: Can I just ask, how do you go to SKA 1
20 at page 30?

ADV QOFA-LEBAKENG: I felt Chairperson that I will go back to SKA
1 because it leads directly to SKA 3.

COMMISSIONER GABRIEL: I understand.

ADV QOFA-LEBAKENG: Yes. In fact you will see Chairperson and
Commissioners that they almost refer to the same subject case.

COMMISSIONER GABRIEL: It would help to hear from the witnesses.

ADV QOFA-LEBAKENG: Thank you Chairperson.

ADV ABRAHAMS: I would like to tell the Commission, of course.

COMMISSIONER KGOMO: Yes, you said you wanted to read paragraph 15.

ADV QOFA-LEBAKENG: Indeed, Chairperson, after which he will then talk to the Commission about the work under his own hands.

COMMISSIONER KGOMO: Yes, take them one by one.

10 ADV QOFA-LEBAKENG: Thank you, Mr Abrahams Let us go to page eight.

ADV ABRAHAMS: Thank you. Thank you, Counsel. Chairperson, paragraph 15. I simply say that... (intervenes)

CHAIRPERSON: No, they say you must read it into the record, Mr Abrahams

ADV ABRAHAMS: I was about to do so.

CHAIRPERSON: All right.

ADV ABRAHAMS:

20 "In this context, the allegations levelled by the Calata applicants against me, and in particular that I made little or no progress in the TRC cases as reflected in the Commission's Rule 3.8 notice, must be assessed against the proper constitutional and statutory framework governing the NPA as well as the factual record of what was and what was not done during my

tenure."

ADV QOFA-LEBAKENG: Thank you very much, Chairperson. Mr Abrahams, if you can now take the Chairperson and Commissioners to page 94 and kindly talk through the work that you specifically did from this page 94. I will not interrupt. I will only ask you to deal with the comment section afterwards. Thank you.

ADV ABRAHAMS: Thank you so much, Counsel. Chairperson, this amendment was not submitted to the Minister.

CHAIRPERSON: Are you on page 94?

10 ADV ABRAHAMS: No, I am getting there. It is part of the memorandum. Page 94 is part of the memorandum, and I deem it prudent to inform this Commission the basis of this report that was submitted to the Minister.

CHAIRPERSON: Yes.

ADV ABRAHAMS: Before I delve into the contents of page 94. The purpose of this memo was not initiated by the Minister. This memorandum was submitted to the Minister, at my instance as the National Director of Public Prosecution, to specifically inform the Minister of what the status of TRC cases are. And, of course, it was
20 subsequent to my in-person meeting with the Minister where I made it pretty clear to the Minister that there may be potential TRC prosecutions going forward depending on the outcome of these investigations, but I felt it prudent to advise the Minister as to the history of TRC matters and the cases that are left within the NPA that the NPA was seized with and under consideration in which the NPA

was guiding investigations, which takes us forward into the duration of my term as NDPP.

Now, at the time, and as referenced from page 94, the heading says, "Cases on Hand". Now, the first case that we referenced was the Cradock 4 matter. And the matter relates to:

10 "The kidnapping and murder of Mr Goniwe and three other Eastern Cape activists in Port Elizabeth in 1985. The DPCI had investigated two former members of the Port Elizabeth security branch as well as a General in crime intelligence in relation to their alleged involvement in the crimes. The first suspect died before the investigation against him could be concluded. In respect of the remaining two suspects, both the PCLU and the Director of Public Prosecutions of the Eastern Cape were of the view that there was no basis upon which a prosecution could be instituted against either of them. The NDPP must not ever confirm the decision not to prosecute."

20 And during my tenure as National Director, that was never placed before me for consideration. And later on we will talk about a docket that got lost and the complaint that the Calata Group had in respect of the matter. And I will talk about that at the time when my counsel leads me to address the issue concerned. The next case is the PEBCO 3 incident.

"This matter relates to the kidnapping, torture and

murder of Mr Hashe and two other members of the PEBCO civic organisation in 1985 in the Eastern Cape. Although the charges had been withdrawn, the matter required further investigation because numerous issues had been canvassed when the initial decision to institute a prosecution had been taken. The DPCI at the time had still not finalised all outstanding investigation. And although it was unlikely that a prosecution would be instituted, an inquest would be held."

10

The third matter relates to the disappearance of Nokuthula Simelane. As this Commission knows:

"This matter relates to the disappearance of an MK operative in 1983 from the Carlton Centre in Johannesburg. A group of security branch members were granted amnesty for her kidnapping, but no evidence was forthcoming relating to her ultimate fate. On the version of certain other amnesty applicants, the suggestion was that she was in all probability murdered. Although it says here other applicants, and of course those applicants denied the allegations and suggested that she agreed to be an informer and was re-infiltrated into MK structures in Swaziland. The suggestion arose that she was murdered by the ANC. Her remains have never been recovered. Of course an application was

20

brought by the victim's family to compel a decision."

If my memory serves me correct, I think that was in Cunningham 1. The NPA had at that stage not decided to institute a prosecution in respect of the matter. And then of course there was in Cunningham 2 that had been followed, and which I as National Director had been seized with, and which I will talk to as one of the allegations that were against me when my counsel leads me in respect of the full allegations that have been made against me. The fourth case that we have... (intervenes)

10 COMMISSIONER KGOMO: Before you go there, Advocate Dramat spoke relating to the matter of Nokuthula Simelane about a black police officer investigating. He did not know the name and to me, Mr Leask did not particularly look black. I do not know; and we know that he was the main investigator. But do you know who Mr Dramat may have been speaking about?

ADV ABRAHAMS: The name is on the tip of my tongue. Commissioner, I am... (intervenes)

COMMISSIONER KGOMO: Okay, maybe you will remember. Let us continue.

20 ADV ABRAHAMS: I am sure I will remember before I conclude my evidence.

COMMISSIONER KGOMO: Yes.

ADV ABRAHAMS: The name is, you know, it is literally on my tongue, it just cannot come out. It is been a long time.

COMMISSIONER KGOMO: Yes.

ADV ABRAHAMS: That I have been out of the system.

COMMISSIONER KGOMO: I follow you.

ADV ABRAHAMS: Thank you.

COMMISSIONER KGOMO: Thank you.

ADV ABRAHAMS: Captain Ali Masigela. Ali Masigela {spelled}. If my memory serves me correct.

COMMISSIONER KGOMO: To the best of your knowledge, is he still alive?

10 ADV ABRAHAMS: To my knowledge, Captain Ali Masigela is still alive, and I do believe that he is retired. He has since retired. But his name is referenced in the correspondence from Mr Macadam. That Advocate Macadam addresses in respect of Nokuthula Simelane. And I think we may even make some of it to our papers. So, Captain Ali Masigela, Masigela's name is referenced somewhere along the way.

COMMISSIONER KGOMO: Thank you.

ADV ABRAHAMS: The next matter I would like to speak of is number four, the Highgate Hotel Incident.

20 "This matter related to an attack on a hotel in East London in 1993, where a number of people were killed and seriously injured. No persons were ever prosecuted or applied for amnesty in relation thereto. Years after the closure of the TRC, the former investigator and current leader of the PAC alleged that the attack was carried out by unidentified members of

the security forces. The allegations were still under investigation at the time, and although it appeared unlikely that the perpetrators would be identified, an inquest would have had to be held, and that the DPCI was required to finalise all its outstanding investigations."

The fifth matter is the murder of Viyane which relates to a fatal shooting of a civilian by the police in Northern Kwa-Zulu Natal 1993.

10 "Although the case was not dealt with by the TRC, the family requested an investigation due to allegations that the deceased was killed because of his allegiance to the ANC. The allegations were investigated, it was established that the case was not politically motivated, and the case was subsequently referred to the Office of the Director of Public Prosecutions in Kwa-Zulu Natal to consider reopening the inquest in light of additional statements that had been obtained. Particularly one statement from a police officer involved in the shooting.

20 The Director of Public Prosecutions subsequently declined to prosecute in relation to the matter."

Perhaps for the sake of argument, she directed that the inquest be reopened on the basis of a new statement. The sixth matter is the attempted murder of Frank Chikane. Now:

"During the course of the pre-sentence agreement,

which Advocate Ackerman probably would have testified to because he was the prosecutor in the matter, the accused implicated former Security Branch General Basi Smit. The DPCI was requested to investigate his involvement. The DPCI conducted a very weak and unsatisfactory investigation, claiming that Reverend Chikane could not be traced. Before the matter could be taken further, the crime prescribed, thereby preventing any further probe into the alleged involvement of General Basi Smit.

10

The seventh matter is the Heidelberg Tavern Massacre: "Where a number of APLA operatives were convicted of having carried out the attack, which resulted in a number of people being murdered and seriously injured. The operatives only seek amnesty. However, after the closure of the TRC, the former head of the PAC made a number of radio interviews in which he publicly claimed responsibility for the attack. The father of one of the deceased requested the matter be investigated, and investigations were still in progress at the time."

20

I think this is the one matter, along with the next matter, the eighth matter, the St. James Massacre, in which I was to lead the prosecution, in respect of which Advocate Mthunzi Mhaga was engaging with the police on further investigations in the matter. The St. James Church Massacre, in respect of that matter:

"A number of APLA operatives were also convicted of having carried out the attack, where a number of people were murdered and were seriously injured. The operatives only seek amnesty, and again, after the closure of the TRC, the former head of the PAC publicly took responsibility for the crimes through numerous media interviews, radio interviews, and there the parliamentarian was approached by a number of survivors of the attack, and the parliamentarian requested the matter be investigated. And at the time, investigations were still in progress."

10

4.9, it is the ninth matter. Arms Cache related to Philip Powell, the matter that I was involved with when I was still a Senior State Advocate at the Priority Crime Litigation Unit.

"And in April 1994, Philip Powell, who was an IFP Senator, was linked to arms found in a Kwa-Zulu police camp in northern Kwa-Zulu Natal."

If my memory serves me correct, I think it was in Lava Camp. The then Attorney General of Natal, Tim McNally, declined to prosecute him.

20

"Mr Powell was thereafter implicated as having received a huge consignment of arms in October 1993. A prosecution could not be executed on that charge because a presidential proclamation of 1996 had given blanket amnesty for all firearms offences committed on

or before December 1993. And in 1998, Mr Powell pointed out a bunker containing arms at Nqutu. The DPP president declined to prosecute. The NDPP, however, requested that the matter be fully investigated. This investigation established that not all the arms had been recovered and that Mr Powell's version regarding the April 1994 cache was untrue. The official who made the decision not to prosecute indicated that in light of the new evidence, he would have favoured a prosecution. The NDPP therefore gave Mr Powell notice of his intention to set aside his decision not to prosecute relating to the April 1994 case. Mr Powell subsequently immigrated to the United Kingdom and a warrant for his arrest was issued. The issue of extradition was taken up by the UK authorities but it emerged that the offence would be classified as political by the UK and therefore extradition was not applied for. Representations were received from Mr Powell seeking the cancellation of the warrant. The matter was investigated further in order to establish whether the evidence of which the warrant was obtained was still available. The DPCI indicated that it was difficult to confirm the availability of the evidence and the offence prescribed in April 2014."

The tenth matter relates to the murder of Sono and

Shabalala and:

"This relates to the activities of the Mandela United Football Club. Two persons had disappeared having last been seen in the company of members of this football club. Investigations by SAPS and the TRC failed to locate either the remains of the two persons or any evidence relating to their deaths. In 2013, the Missing Persons Task Team located two mortuary records containing photographs which were positively identified by the families as being the two persons. Medical evidence suggested that they had been brutally murdered. The remains had been exhumed and were undergoing DNA forensic testing at the time of the drafting of this memorandum. The TRC and SAPS investigators were advised to establish whether the perpetrators of the two murders could be identified to determine whether a successful prosecution could be executed. And of course, in the event of no such evidence being forthcoming, the Magistrate of Johannesburg would have been requested to reopen the original inquest in order to receive the new evidence relating to the identities of the deceased and their causes of death. The head of the PCLU had earlier declined to prosecute because of unsatisfactory evidence."

I cannot recall whether it was me as head of the PCLU. I have no recollection of that. But I am sure it was Advocate Anton Ackerman that would have declined to prosecute in the matter. The eleventh matter that we make reference to relates to the Guguletu Seven:

"Which relates to the fatal shooting of seven MK operatives by the Police in Cape Town in March 1986. A member of the public had requested the Minister to confirm whether the case was still under investigation.

10 The matter was not one of those cases identified for investigation because an inquest found that no one was responsible for the deaths of the deceased and amnesty was granted to two members of the security branch involved in the incident. The TRC material had however been re-evaluated and the conclusion reached that an initiation of an investigation would not lead to a successful prosecution. The TRC granted amnesty to the senior member of the security branch on the premise that the deceased had initiated the shooting by

20 throwing a hand grenade and that the member had attempted to arrest him. The TRC further found that neither the murder and robbery nor the riot unit senior officials had given any instructions that the deceased should be killed. Although a junior member of the security branch had testified that a sergeant in the riot

unit had shot one of the deceased after he had surrendered, he was adamant that he was not able to identify this person. In addition, he admitted that he had not mentioned this incident in previous statements. An askari would originally allege that the deceased had been murdered and that false evidence had been placed before the inquest was found to be an unsatisfactory witness by the amnesty committee."

The twelfth matter is the matter relating to Dr Neil Aggett in
10 respect of which I later directed that the inquest must be reopened
but of course for specific purposes of speaking to the memo as it was
at the time I will read the contents into the record.

"Neil Aggett was an activist who was alleged to have committed suicide in detention in 1982. An inquest found that the police were not responsible for his death. No one applied for the amnesty of his death. The TRC's human rights committee however found that the police were responsible for his death on the basis of the circumstances under which he had been detained. In
20 2012 the Main Guardian alleged that one of the persons responsible for Dr Aggett's interrogation held a number of contracts with government. This led to the matter being raised by the Justice Portfolio Committee. Any charge of assault or culpable homicide had been prescribed in 2002. The matter was being investigated

at the time solely on the basis of whether the persons involved in his detention foresaw that he would commit suicide and persisted with their actions reckless as to whether the suicide had resulted. And of course that could have been the basis of a murder charge. There was no evidence at the time to suggest that his interrogators had killed him."

The 13th matter was the Japie Maponya matter. Which matter related.

10 "This was one of the matters in which Mr Eugene de Kock had been granted amnesty or was refused amnesty, convicted and the remains of the deceased were never recovered. As a result of the Missing Persons Task Team, in 2014 it was established that one of the persons involved in the officer had not applied for amnesty and consequently the possibility of being able to prosecute him for his involvement in the case was being considered."

20 Perhaps that may detract somewhat. I interviewed Eugene de Kock on the matter and questioned him on the matter and sought his assistance on the location of the body. So too did the missing persons subsequent to this. So that did transpire. And as I said earlier on, Chairperson I am unable to recall what the outcome of that was and perhaps Ms Madeleine Fullard would be best placed to give some clarity as to what the outcome of those engagements with

Eugene de Kock was in so far as tracing the remains of Japie Maponya.

Now, I continue in the memorandum and I think it is very important that I just go through this very, very quickly. I alert the Minister that there were very few cases that arose from the TRC process which warranted investigation and decisions to prosecute. This is information that was in the Priority Crime Litigation Unit at the time and this information was provided to me by the unit whom I requested to draw this memorandum for me to dispatch to the

10 Minister. And of course I proceed to say:

"As appears from the breakdown of the cases it would appear unlikely that successful prosecutions could be instituted in many of the cases. And unfortunately a perception had been created with the media and the public by former members of the TRC that the TRC supplied the NPA numerous volumes of evidence justifying numerous prosecutions and that was unfortunately not the position at the time and as of date the record had not been publicly set straight."

20 Then I proceed to set up the correct position as it was at the time:

"That the TRC did not supply the NPA with volumes of evidence. It had been established that all that transpired was the TRC supplied lists of amnesty applicants' names to the competent in the NDPP's office

which the memo refers to and the competent had to in turn request the DPP Cape Town to retrieve the amnesty judgements from the TRC.

Secondly, that prior to the TRC a number of prosecutions were in fact instituted. These included the prosecutions of Eugene de Kock who was the Vlakplaas Commander, the military doctor Dr Wouter Basson, the CCP operatives Ferdie Barnard, Magnus Malan who was a former Minister of Defence and was prosecuted by Advocate Tim McNally SC."

10

I think Chris de Klerk, if memory serves me correctly:

"And a large number of defence generals as well as a number of key prosecutions linked to the political violence in Kwa-Zulu Natal. Where convictions were obtained, it would be irrelevant that subsequent amnesty was refused as was the case with de Kock and Barnard. Where acquittals resulted, as in the case of Basson and Malan, there would be no incentive to apply for amnesty and no opportunity for further persons to be implicated. And it is a matter of fact that many of the amnesty applications related to persons were already being convicted."

20

The third point we raised was:

"That the granting of amnesty in a number of significant cases commanded high public interest. And these

matters included the murder of Griffiths Mxenge, the poison and murder of Simphiwe Mtimkulu, the kidnapping and murder of the Mamelodi 10, the majority of killings committed by Vlakplaas and other security branch structures."

Fourthly:

10 "The granting of amnesty to certain perpetrators making the prosecutions of other persons difficult. These included the Guguletu Seven matter which I referred to earlier on, and the granting of amnesty to the Eastern Cape Security Branch who ordered the murders in relation to the PEBCO three matter."

The fifth point:

"Is the impact of prescription."

And of course, as I was advised then:

"The death and detention of Steve Biko, and all other cases relating to the torture and culpable homicide."

The sixth point:

20 "The absence of credible investigations at the time when the trials were committed, and the destruction and the loss of documentation."

I mean, this has all come on subsequently with increased proceedings in respect to these matters. The eight of the cases at number seven:

"Many of the witnesses and suspects were deceased

before decisions could be taken to prosecutions."

The eighth point:

"Many of the cases were dependent on perpetrators being prepared to testify against the co perpetrators. And unfortunately, a number of the accomplices have been discredited in previous proceedings to such an extent that no reliance could be placed on the accountability."

And then the last point we made in advising the Minister as
10 to the challenges where the acquittals in the high-profile matters of Magnus Malan down in Kwa-Zulu Natal and Wouter Basson in the Pretoria High Court. And in respect to the Bissau massacre, did not serve as an incentive for perpetrators to come forward. And within item number six, we advised the Minister of current concerns as they were, as at July 2015, some six weeks after I took office as National Director. We say:

"There are currently only eight cases in respect of which five decisions, whether to prosecute or not, must be taken. And then in brackets, in respect of the Nokuthula
20 Simelane matter, the decision not to prosecute will be considered after the holding of an inquest."

I must pause, I must pause to say, and I am sure my counsel will lead me to that, but perhaps it is apt I deal with it right away and say, later on a memorandum was submitted to me in respect of Nokuthula Simelane for an inquest to be held. I initially signed the

memorandum, and then I wanted the docket, and I requested the docket. It was not untoward for a National Director to ask for a docket. I may have been six weeks into my term, or some six weeks or more into my term, but I was a career prosecutor. I read dockets, and it was prudent for me to read the docket myself, and study the docket, and decide whether there was indeed, whether I should rely on this memorandum, and/or whether there were reasonable prospects of a successful prosecution.

I later appointed another team to look at the matter, and to
10 advise me on the matter. I had already formed a view after reading the matter, and was leaning very strongly in favour of a prosecution. But I had been advised by the then acting head of the PCLU, or coordinator of the PCLU, who I recall to be Advocate Andrew Johnson, who had been advised by Advocate Chris Macadam, in respect of the matter. I differed from that, and I assigned another team to look into it.

And ultimately, I was advised, it was recommended that we should institute a prosecution, and I was satisfied with that recommendation. And later, in February, I think it was February
20 2016, where a decision was in fact made to prosecute. I will talk more about that later on, when we deal with allegations against me, and we deal with a meeting that I had with the then Minister Simelane. Well, I do not think she was a Minister then, I think she was the Mayor of Polokwane at the time.

COMMISSIONER GABRIEL: So Mr Abrahams, can you come back

to the last sentence in Paragraph 6.1, and what you were dealing with as at July 2015?

ADV ABRAHAMS: Thank you.

COMMISSIONER GABRIEL: Matters of current concern. You got as far as just before the last sentence.

ADV ABRAHAMS: Thank you for getting me back on track, Commissioner. And in the last sentence:

10 "Although the finalisation of these cases is a priority for the NPA, it is dependent on the DPCI to conclude the investigation."

At Paragraph 6.2:

"Unfortunately the quality of the investigation is very poor, and is having a negative impact on being able to finalise the cases quickly."

CHAIRPERSON: Mr Abrahams, what do you mean by saying the quality of the investigation was very poor?

20 ADV ABRAHAMS: Chairperson, we will take it from a point of, this is a memorandum that was compiled by Advocate Chris Macadam who was dealing with TRC matters. He was seized with the Nokuthula Simelane matter and the TRC matters. At that time, I had not viewed the docket. And I was not in a position to say, our quality of investigation is not. But I am giving the Minister background as to the matters that the PCLU was seized with at the time. And these are the challenges that the PCLU is experiencing. And according to the PCLU the investigation, the quality of that investigation was very poor

and had a negative impact.

Chairperson, there are memorandums, perhaps the Chairperson will bear with me, that we make reference to.

COMMISSIONER GABRIEL: Before you go, if you could just complete matters of current concern.

ADV ABRAHAMS: Thank you. But we do refer to memorandum correspondence that occurred at the time in relation to this issue, in which Advocate Macadam and myself, as head of the PCLU, where we advised the then-Acting National Director, it was first Dr Silas
10 Ramaite, then it was Advocate Nomgcobo Jiba who were advised on the matter and the status of the investigation.

COMMISSIONER GABRIEL: And did that deal with poor investigation?

ADV ABRAHAMS: It deals with investigative challenges. It does deal with investigative challenges.

COMMISSIONER GABRIEL: Your counsel will direct you there.

ADV ABRAHAMS: There is a paragraph, if memory serves me correct, there is a paragraph in there that does indeed deal with some investigative challenges. But I want to emphasise at that point, I have
20 not read the document.

COMMISSIONER GABRIEL: But you are representing this in your capacity as NDPP... (intervenes)

ADV ABRAHAMS: Absolutely... (intervenes)

COMMISSIONER GABRIEL: To the Minister of Justice.

ADV ABRAHAMS: Absolutely.

COMMISSIONER GABRIEL: Did you have any reason to suggest that what was in there was wrong?

ADV ABRAHAMS: I have no reason to disbelieve that this was incorrect.

CHAIRPERSON: Yes.

ADV ABRAHAMS: And as I sit here today, I still do not have any reason to disbelieve. When I read the docket, and when the recommendation was later made to me, it was not made, I did not do so, I did not read in the spirit of a poor investigation, or history of a
10 poor investigation. I read the matter, it was a live issue before me. Live consideration to the facts that are before me, and additional information that we obtained from Mr Varney and his team, that we had considered at the time, that rendered a prima facie case, and reasonable prospects of a successful prosecution. So I did not read in the spirit of a poor investigation.

COMMISSIONER GABRIEL: So is 6.2.1, can you continue from there?

ADV ABRAHAMS: Thank you.

20 "In the Reverend Chikane matter, no investigations were conducted, despite a lengthy directive being issued by the prosecutor. And in fact, it was even suggested that Reverend Chikane could not be traced."

6.2.2:

"In the Heidelberg Tavern and St James Church cases, the DPCI claim of police dockets and court records

could not be located, although it had now been established that for many years the relevant material was in fact in the possession of the DPCI."

6.3:

"The failure for the matters to be investigated from 2003 until 2011 has prevented prosecutions being instituted in cases that could possibly have resulted in convictions. This is because by the time the cases were eventually investigated, the suspects and the witnesses were already deceased. (Cradock four and PEBCO Three cases are examples)"

At 6.4:

"The consequences of the failure to investigate will be placed in the public domain once inquests are held in certain matters, or when the decisions not to prosecute are announced, that each of the parties requests access to the material in terms of payment."

At 6.5:

"A particular case in point is the Nokuthula Simelane matter, where a formal inquest before a Judge will be held. It is a fact that evidence will be led of key witnesses being dead and key evidence being unable to be located. It is only to be expected that the Judge would require an explanation as to why this matter was not investigated prior to 2011. In this regard, I attach as

annexure C a copy of the affidavit of former NDPP Advocate Vusi Pikoli and as annexure D a copy of the affidavit of then head of the PCLU, Advocate Anton Ackermann SC. Both advocates allege high-level political interference aimed at preventing the investigation of TRC cases in their affidavits. These affidavits were filed as part of the application to compel a decision, and it is not inconceivable that the victims may call these advocates as witnesses if the issue is in fact raised."

10

6.6.:

"It is only to be expected that once the decisions are publicly announced and the failure to investigate exposed, that allegations will be made that the government deliberately waited for all the witnesses and accused to die before giving attention to these cases."

Conclusion at item seven:

"It is recommended that the honourable Minister note the contents of this memo and inform the Minister of the outcome of the individual cases once the investigations have been concluded and decisions made on them."

20

And that concludes the memo that was submitted to the Minister, identifying what the status quo of TRC cases were within the NPA and the challenges the PCLU faced and the inability of the PCLU to prosecute these cases at the time.

Of course it is extremely difficult, prosecutors cannot prosecute matters if there is insufficient evidence, or investigations have not been finalised, or there is poor investigation. Perhaps I should turn to my counsel to direct me further.

CHAIRPERSON: Yes.

ADV QOFA-LEBAKENG: Thank you very much Chairperson. That should now at least give cover to the work that was particularly done by Advocate Abrahams under TRC. Strictly the TRC cases. Chairpersons... (intervenes)

10 COMMISSIONER KGOMO: As at 15 July 2015.

ADV QOFA-LEBAKENG: Indeed. Now if I can be permitted to turn to section E at page 18 of the paginated index. Chairperson and Commissioners, you will see that this particularly relates, as the subject reads, "The allegations that there was no progress done". Of course we also referenced paragraph 15 which makes the same allegation.

20 Now from this section, paragraph 38, we are going to deal with each individual allegation and Chairperson, for ease of progress, I will simply refer specific paragraphs so that we do not take too much time and delay.

CHAIRPERSON: Yes.

ADV QOFA-LEBAKENG: Thank you. Mr Abrahams, paragraph 38, we now deal with the contention that there was little or no progress and I think you have dealt with that. The answer therefore, as far as the fact that there was little or no progress, can you please put your

actual answer to the question to that.

ADV ABRAHAMS: Thank you, thank you so much Advocate Lebakeng.

ADV QOFA-LEBAKENG: And of course, referring you particularly to paragraph 39.

ADV ABRAHAMS: Yes.

ADV QOFA-LEBAKENG: Of your statement which seems to cut through the issues.

ADV ABRAHAMS: Yes, thank you, thank you so much, thank you so
10 much. Perhaps on one thing, I would like to say that I deny and
dispute that little or no progress had been made in respect of TRC
matters when I took over TRC matters from Advocate Chris
Macadam. When we have regard to proximity of time and place,
when I assumed the position of Acting Special Director of Public
Prosecutions on the 1 March 2013, Advocate Macadam was seized
with the management of investigations and the prosecution of TRC
matters as he had previously taken over the TRC matters when
Advocate Anton Ackermann had been directed to stop his role and be
replaced by Advocate Chris Macadam to deal with TRC matters.

20 And of course, I do mention, as earlier pointed out by the
Honourable Chairperson and the Honourable Commissioners, I do
make reference to the PCLU that we grappled with for a decade with
systemic obstacles in TRC prosecutions, which I have now identified,
which were in the memoranda that I have made reference to.

And of course, this also included the earlier refusal by the

Director of Special Operations to investigate certain matters and the South African Police Services to investigate certain matters. The role of the PCLU was strictly prosecutorial, giving guidance and direction in respect of investigations and advice through a PGI methodology, which is a prosecutor-guided investigative methodology.

What that simply means is that the prosecutor plays a significant role from the inception of the investigation in guiding every step of the investigation, telling the investigator or requesting the investigating officer to obtain specific evidence and how to obtain the specific evidence, ultimately to a point where the prosecutor is in a position to either make a determination whether a prosecution should be conducted or whether a request should be made to the Judge President of a specific jurisdiction to appoint a Judge to preside over the inquest in respect of the matter.

Now Advocate Macadam as I say, have been seized with the responsibility of TRC matters prior to me assuming the position. They reported to me on the matter during my tenure, and I, in turn, reported to the Deputy National Director responsible for prosecutions. And was responsible for the Priority Crime Litigation Unit, and sometimes directly to the National Director or Acting National Director, whoever it may have been at the time. The PCLU, members of the PCLU, continued to guide and assist the SAPS in the investigation.

We must also accept that we were seized with resource challenges. The unit was a small unit at the time. One of the persons that joined later on, Ntunzi Mhaga joined, Advocate Susanna Becaw

joined. So we were a very small unit, along with the Missing Persons Task Team, to do all this work, being mindful of the greater mandate of the unit and the other individual prosecutions that members of the unit were seized with.

I mean, for example, in the open trial, when I started the trial, I think in October 2012, and I ran for about two, three, four months with the trial, continuously, which means all the other cases stalled during that time. This is just an example of one case, you know, where other matters had to stand until those prosecutions had been
10 concluded or and when you find time in between, you attend to these matters.

And then of course, I do make reference to that any meaningful assessment of progress must be rooted in the particularities of each case. The investigative steps that have been taken, the witnesses interviewed, and each case must be treated on its own merits. There should not be a generic catch-all approach, or analysis, or label attached to the inability, or the general inability to investigate.

And I continue in my statement to say that:

20 "In the absence of evidence showing that I refused to authorise a prosecution, whether evidentially questionable had been made, or that I issued an instruction to withhold delayed decisions for improper reasons, the allegation collapses entirely into impermissible opinion on matters which fall squarely in

the domain of this Commission, and the mandate of this Commission to determine on the basis of the evidence that is placed before this Commission, and not sheer conjecture."

And then of course I conclude on that point by saying:

"I deny that the PCLU, or as I as head of the PCLU, or as NDPP, failed in my legal duty to pursue TRC matters."

And of course I make it perfectly clear, to the contrary:

10 "That within the constraints and complexities that I have outlined in my statement and that I have outlined before this Commission, I did what I could, Chairperson, and what the law required of me to do in the given circumstances, and under the constraints and complexities that I was faced with, to advance the TRC cases that were before me and that was brought to my attention at the time."

ADV QOFA-LEBAKENG: thank you, thank you very much.

20 Chairperson, I think that now deals with the first allegation in its entirety. Now I will move on to the second question of the appointment. In fact, maybe, let me probably round this up to say this now takes us into theme number three, which deals with these allegations broadly. But specifically I would like to take Mr Abrahams to the central allegations that appear in the affidavits.

Chairperson, I do apologise because the affidavits were quite

voluminous, but I would be happy to refer to the page numbers of the affidavits as they are found in the record of the Commission, if that is in order.

CHAIRPERSON: That is in order.

ADV QOFA-LEBAKENG: Thank you very much. Chairperson will note that the Calata founding affidavit, particularly paragraph 327, makes allegations specifically relating to Mr Abrahams Chairperson will note, to start with, that the list of persons implicated as a result of the Calata affidavit are attached there to Mr Abrahams This is number
10 one.

CHAIRPERSON: Yes.

ADV QOFA-LEBAKENG: Chairperson will note that the paragraphs that are referenced there is paragraph 327.2, 327.3, 328, 340 and 343. Now for ease of reference, Chairperson, I have printed this Chairperson together with a copy I provided to Mr Abrahams and I would like to therefore refer you specifically to these paragraphs.

COMMISSIONER KGOMO: Yes refer to them. You must go boom, boom, boom.

ADV QOFA-LEBAKENG: Quickly. Indeed, indeed, Commissioner. I
20 will do so. Paragraph 327.2, Mr Abrahams, is at page one of the bundle. It is an extract from that affidavit, it says the following. It says:

"Advocate Abrahams, then a senior state advocate was appointed to take the TRC matters over from Macadam.

It is evident that Abrahams made little or no progress in

the TRC cases while he was leading the TRC."

This particular section, Chairperson, we do not want to deal with because it has been answered, but I am simply referring to this so that we can close it off as the allegation made and addressed. The second allegation... (intervenes)

COMMISSIONER GABRIEL: Directly addressed in paragraph 44 of the statement.

ADV QOFA-LEBAKENG: Indeed, Chairperson, paragraph 44 of the statement and the earlier paragraphs that leads to the context that
10 attaches to it. Chairperson, then paragraph 2.2, 2327.3 state:

"After a protracted inquiry into the statements of this person has stepped down as NDPP on 1 June and thereafter Abrahams was appointed NDPP."

This, Chairperson, is common cause and therefore I will not invite Mr Abrahams to deal with that. Then we continue to the missing Cradock Four docket at paragraph 328 and it says the following:

20 "Macadam filed an affidavit dated 24 May 2021 as part of the NPA's rule 53 record in the matter of Calata and others versus NDPP and Others. A copy of which is annexed hereto marked at A47. In this affidavit it is indicated that during April 2013, while he was Deputy Director of the PCLU and Abrahams was the acting head, they received a request for information about the Cradock Four case from a Ms Lepinka who was the

personal assistant of acting NDPP Advocate Nomgcobo Jiba. Abrahams responded to the request shortly thereafter Macadam was asked to take over the investigation docket."

Chairperson, you will note that we will refer to this particular section as far as it relates to the fact that Advocate Abrahams is not the one who moved the docket but instead he was requested by the NDPP. You will note, Chairperson, that we will take Mr Abrahams to this section as far and as crisply as possible.

10 Bur Mr Abrahams, can you please talk to us about paragraph 328 because I think it is important that you place your context on this paragraph as far as the handling of the docket is concerned.

COMMISSIONER GABRIEL: I believe that was done in section F of your affidavit.

ADV QOFA-LEBAKENG: Indeed.

ADV ABRAHAMS: Under paragraph 47. Thank you, Commissioner. Chairperson, had this question not been asked, I would have no personal recollection of the matter. And even in consideration of the matter, I honestly have no personal recollection of the events that
20 Advocate Macadam describes in relation to the docket.

But notwithstanding, I revisited Advocate Macadam's' statement and I have observed that he does not allege that I instructed him to hand over the docket. Neither does he say I removed it from his control, nor that I caused it to disappear. And that being the case, you know, Advocate Macadam specifically said, "I got

instructions from Advocate Sean Abrahams to do so". It does not say that. However, it is not uncommon for a Deputy National Director or a National Director or an Acting National Director to request a docket.

And had such a communication come to me as an acting member of the PCLU, I received this e-mail communication from the PA of the Acting National Director. I would have simply referred the matter to Mr Macadam and say, "Mr Macadam, could you please assist". And I would have left it there. But as National Directors, I personally requested dockets when I needed to read dockets. If a
10 docket was not included, whatever memorandum was provided to me, I would ask for a docket to read the docket. I would refer it back. We would not keep dockets. I would certainly fill the docket back. But I am unable to take this any further, say to say that I have no recollection of it. It is not uncommon of a National Director to ask for a docket to consider the merits of the matter, aside from a memorandum that had been submitted to a National Director. So it would not have been uncommon for Advocate Nomgcobo Jiba to have asked for it. And I do not know whether she did or not.

COMMISSIONER KGOMO: Yes, just there. How do you request for
20 the docket? Orally or you send a note and the person in possession of the docket, that person records it somewhere or the person who brings it to the NDPP, that person signs for the docket. How did you do it?

ADV ABRAHAMS: Commissioner, each office has a register. A register of documentation that is dispatched to another branch or

another department within the NPA. Now, ordinarily, the secretary or the PA or the messenger, that could be filled in and completed and somebody would sign for it if the documents are dispatched. It would be completed and somebody at the receiving department will of course sign acknowledgement and will go to the assistant. It would never be a situation where a National Director would sign for a docket and say I acknowledge receipt of this docket. I am Chief of Staff. I have a secretary, I have a personal assistant, there were people within the office that would sign for these things, there were registers
10 that would record everything that comes in and goes out of the office.

And whatever I receive, I would dispatch the same way it would come to me. So for example, if I needed a docket, I would either engage the Deputy National Director responsible and say I need this docket, could you please facilitate that I get this docket. Or I would ask that the Deputy National Director concerned arranges with the Director or the Special Director and the prosecution team to provide with the further memorandum and the docket, which I will then peruse and interrogate them on, specifically because I am now making a decision from a meaningful perspective. And that is what I
20 did throughout my tenure.

So there are processes in place, but one cannot exclude a scenario where a prosecutor takes a docket and goes and gives it to somebody in an office in good faith. Because your superior has asked for it in good faith, knowing it is going to come back whatever the case may be. That scenario cannot be excluded.

COMMISSIONER KGOMO: Yes thank you.

ADV QOFA-LEBAKENG: Thank you very much, Commissioner. This now takes us to Paragraph 342. That falls under the heading, "NPA under pressure". It says:

10 "Macadam states in his affidavit that from the appointment in June 2015 of Abrahams as NDPP, he met with Abrahams and indicated his willingness to return to the TRC cases. If he was relieved of his responsibilities with the foreign bribery cases, Abrahams advised that he was thinking of taking all TRC cases away from the PCLU, but did not terminate Macadam's appointment as the foreign bribery prosecutor."

Would you like to comment on this?

20 ADV ABRAHAMS: Yes, thank you. There were severe resources constraints. Not only within the Priority Crime Litigation Unit, there were severe financial resources constraints within the National Prosecuting Authority. So much so that I had requested Minister Masuda to facilitate a meeting with the Minister of Finance. The budget was being cut. The NPA had to terminate its aspirant prosecutor's program. So there was no new resources coming into the NPA. We could not advertise for new positions. The work was increasing. I had to travel across the country and meet with prosecutors and implore on prosecutors who understood. Please do more with less. We are not going to get more money. We are not

going to advertise it. We commended those prosecutors for the sacrifices they made and the hard work that they delivered.

I then subsequently engaged with the Deputy National Director responsible for prosecution at the time. I think it was Advocate Nomgcobo Jiba. I requested her to meet with the Directors of Public Prosecutions and with the head of the Priority Crime Litigation Unit. At the time, the acting head was Dr Tonie Pretorius, SC. I proposed that in one of the meetings with the DPPs and the Special Director, that they develop a process where the matters that
10 emanate, specifically TRC matters, the TRC matters are then distributed to the various Directors of Public Prosecutions Office and some of the other matters that fall within the mandate of the unit. So that the matters are dealt with in the region, whereas the National Office and the Priority Crime Litigation Unit would have oversight over these matters and would ultimately be prosecuted in the regions by the Directors of Public Prosecutions.

That is the directive that I gave to be implemented. And it is on that basis that I had this discussion with Advocate Chris Macadam around the matter, because I knew the extant challenges that
20 resorted not only within the PCLU, but within the broader criminal justice system, and addressing some of these challenges.

COMMISSIONER KGOMO: At that time, make us to understand where there were some austerity measures implemented because the Minister was to be approached and advised that they were cut. What was the position?

ADV ABRAHAMS: There were certainly numerous austerity measures that were implemented at the time. Of course, one of them was the cutting of the, you know, not renewing the, or not continuing with the Aspera Prosecutors Programme. There were other initiatives. I cannot recall what they were. But there were numerous austerity measures implemented at the place, at the time.

And I personally met with the Minister and the Director-General of Treasury at the time and implored on them the challenges we were facing. We did not receive any plea. Chairperson,
10 Commissioners, I got to a stage as National Director where I felt there was a deliberate attempt to strangle the NPA financially, not to fulfil its mandate. That is how I got to that point and I applauded the Minister of Finance at the time. I said we are facing a crisis. And we had this meeting. We did not receive any more money. Our budget got cut again. And these are the frustrations that we sat with.

And when I left office as NDPP, suddenly there was money. Lots of money.

COMMISSIONER KGOMO: Yes, Shaun Abrahams factors.

ADV ABRAHAMS: Most probably. But we are not going to
20 ...[intervenes]

COMMISSIONER KGOMO: Thank you, Chair. Carry on, answer.

COMMISSIONER GABRIEL: Can I ask a question, please, just to understand? With all of these resource constraints, you said you gave a directive that these TRC matters would be dealt with by the provinces.

ADV ABRAHAMS: Absolutely.

COMMISSIONER GABRIEL: How would that have helped? Because presumably they were also under resource constraints, the provinces.

ADV ABRAHAMS: Commissioner, it would in the main assist with transport, accommodation, travelling. It would assist with saving money because now you have prosecutors that have to travel there, stay in hotels. These are expenses that must come out of the budget. And we felt that it may be better that the resources are used by the region. I understand. We understood there were difficulties because
10 prosecutors were already stretched. But these matters had to be prioritised.

Especially the commitment, which we will talk to in a few minutes, that I have made to Mr Varney and his team in respect of TRC matters. And the resources I made available to Mr Varney and the families and the teams in my commitment to bring justice to the victims of TRC matters and the related process.

COMMISSIONER GABRIEL: Thank you.

ADV QOFA-LEBAKENG: Thank you very much. Chairperson I truly am indebted because it almost covers an area I would have wanted to
20 deal with. But Chairperson, it would be unfair to not take Advocate Abrahams to the affidavit of Mr Macadam, which is annexure FA47. It is at page 710 of the main affidavit in the record for the main Calata affidavit. It is a two-page affidavit, Chairpersons.

ADV ABRAHAMS: Do I have it? What is the paginated number in my bundle?

ADV QOFA-LEBAKENG: Chairpersons, may I just say... (intervenes)

COMMISSIONER GABRIEL: Look at 710.

ADV QOFA-LEBAKENG: 710.

COMMISSIONER GABRIEL: Yes.

ADV QOFA-LEBAKENG: On the top?

COMMISSIONER GABRIEL: FA47 page 710.

ADV ABRAHAMS: I doubt I have it.

ADV QOFA-LEBAKENG: Thank you, Chairpersons. Mr Abrahams, I think it would be important that you probably read this affidavit from
10 Paragraph three. Because I think it almost centres what you have been responding to now with the Commissioners. That is FA47, page 710, the original affidavit, the index bundles.

ADV ABRAHAMS: Paragraph 3:

"In 2013 I was a Deputy Director in the PCLU. Advocate Abrahams was then acting as the Head of the Unit. Advocate Jiba was acting as the NDPP. Ms J Lepinka was acting as the NDPP's manager."

Paragraph 4:

"On 26 April 2013.

20 Or is it 26, am I correct? Chair if my eyes is deceiving me.

ADV QOFA-LEBAKENG: It is 28.

ADV ABRAHAMS: 28, I possibly need new specs.

"On 28 April 2013 Ms Lepinka wrote to Advocate Abrahams asking for information relating to the case.

On 22 May 2013 Advocate Abrahams replied to her."

Paragraph 5:

"There was no reply from ANDDP response Advocate Abrahams at a certain stage, however, I was requested to hand over the docket, as it had been called for by the Office of the ANDDP. I complied with the request. At this moment in time, I cannot recall who made the request."

ADV QOFA-LEBAKENG: Chairpersons, if I may pause there, I would
10 refer to this particular paragraph to highlight clearly, contrary to the
accusation, that the Advocate Macadam's, does not say the docket
was requested by Mr Abrahams Please continue.

ADV ABRAHAMS: Paragraph 6:

"I reported that a response from the ANDPP was awaited. In October 2013 Mr Skosana was appointed as the NDPP and Advocate Jiba moved from being the ANDPP to firstly the Head NDS National Prosecuting Service and thereafter Head LAD Leader Administration Department."

20 Seven:

"Mr Skosana removed me from my normal duties so as to focus on foreign bribery cases with which I continued until December 2015."

Eight:

"On my return to my normal duties I was allocated a

number of TRC matters and did not deal further with TRC cases. At a certain stage, Advocate Pretorius SC, who was then acting as the head of the PCLU, inquired about the docket, and I informed him that it had been uplifted from our office."

Nine:

10 "In April 2019, I became the acting head of the PCLU and was advised that the docket had not been located. Advocate Inzignati, who was then acting as the head NPS informed me that a proper search had been conducted, but that the docket could not be located. At that stage, Advocate Jiba had had her employment with the MPA terminated by the President, and Ms Lepinka had been suspended due to me in charge of removing an MPA computer from the office. It served no purpose at that stage to try and locate the docket."

10:

20 "A docket comprised of an investigation against General Henkel, as well as extracts from the Cradock Four formal inquest, and TRC amnesty hearing. Copies of the Henkel investigation were available, as were key documents related to the inquest and amnesty hearing. Further material related to the inquest was available at Rhodes University at archives in King William's Town. The TRC material was available either on the

Department of Justice website or at the State Archives."

11:

"I therefore gave the material in my possession to the investigating officer, Colonel Makhura, and advised him to reconstruct the docket. A decision was, however, taken to refer the case to investigators in Eastern Cape. I was able to locate considerable additional material relevant to the case, which was provided to those investigators. I do not have evidence at my disposal to suggest that the docket was stolen. All the material contained in the docket was easily re-obtained."

10

ADV QOFA-LEBAKENG: Thank you very much Advocate Abrahams I now go back to the final questions under theme three. Just to cover at least the questions forming under our statement that deal with the allegations.

COMMISSIONER GABRIEL: Which is where?

20

ADV QOFA-LEBAKENG: Chair, I was just going to the original themes that I had spoken about, and this would be closing off the Calata allegations against Mr Abrahams We have dealt with the central allegations. We have referred you to the relevant areas.

ADV ABRAHAMS: Perhaps before you continue, counsel, I recall having a meeting with Mr Calata at the Cape Town office of the Director of Public Prosecutions. I travelled there on business. I probably appeared in Parliament consulting with the other at the time, probably to brief Parliament on some of the work of the NPA. And I

arranged that I meet with Mr Calata, who had requested a meeting at the office. And I had a really long engagement with Mr Calata, who was of course the deponent to the application that gave rise to the President's contemplation of establishing this Commission.

The docket was missing at the time, and I was aware that the docket was, well, I was brought to my attention that the docket was missing, and I knew Advocate Macadam was looking for the docket at the time. This was a few weeks before the constitutional judgment that jettisoned me from office. And I made an inane commitment to
10 Mr Calata at the time.

Firstly, I made a commitment that we would do everything to find that docket, number one. Number two, I made a commitment that in the weeks ahead I will meet with the families and explain to the families what initiatives we have put in place to deal with TRC matters, and this matter particularly. And the resources that we have allocated, and what my commitment is and was at the time. It was important for me to meet with them. I wanted them to have confidence in the institution, in the conference, in the NPA, in my leadership, and what we have put in place to provide assistance to
20 the investigation of the complaint and the matter.

Mr Calata was very grateful for the meeting. He later posted a picture on social media of him and I shaking hands and thanking me for the meeting and the commitment that I made. To this day it pains me that I was unable to meet with him, and it is something that I feel was left unattended to that I would have liked to have done at the

time. It pains me immensely because I have made a commitment to Mr Calata, and I could not full fill that commitment of no fault of my own.

And perhaps I must apologise to Mr Calata and the family for my inability to have met with him at the time, and my inability to full fill the commitment I made some weeks before I was jettisoned. It must have been about three or four weeks or something of the sort.

ADV QOFA-LEBAKENG: Thank you very much, Mr Abrahams, but I think it is important. You probably delivered it a bit lightly. I think it will help to give a better context as to why you were unable. Of course, you take responsibility and you apologise, but it is important to explain to the Chair and Commissioners why you were unable.

ADV ABRAHAMS: Well, perhaps the starting point is when I took office as the NDPP. And I was seized by this application that we commonly refer to as Nkadimeng Two. And in that statement, I mean, in that application, serious allegations of political interference in the work of the NPA and TRC matters has been referenced by Advocate Vusi Pikoli and Advocate Anton Ackerman SC.

And when I had the meeting, perhaps even before I came to that meeting, everybody that knew me within the NPA was well aware that I was always very victim-centric. And I made a commitment as National Director, I was going to ensure that resources are made available within the NPA to assist whoever we were working with to take these matters forward. Because victims of TRC atrocities have been the subject of grave injustice by virtue of the history of these

matters that have been dealt with. Whether it was poor investigations, lack of resources, or political interference, as what this Commission received with consideration, I made a commitment from the outset.

So when we had the meeting with Mr Thembisile Nkadimeng, who was then the Mayor of Polokwane. During this meeting, she came with a team. Mr Varney was there, if I remember correct. The team was led by Advocate Muzi Sikhakhane SC. There were some other people, some other counsels that were present. Frank Dutton, 10 the late Frank Dutton, who was an investigator, was also present. And they made a presentation to me of additional evidence that they had acquired that the police had not obtained. That did not sit well with me. It left a very bitter pill in my mouth, a bad feeling in my heart, a bad feeling in my conscience.

And I asked to meet with her independently, and the legal team agreed that I sit with her, and we stepped out of the boardroom at the BGM building, at my head office. I should not say my head office, it was my head office. And I sat down, and I had a legal and factual political discussion with Ms Nkadimeng. But the most 20 significant portion of the discussion was if these political allegations are true, and it turns out to be true, this is bad.

It is bad for the NPA, it is bad for the country. Why did I say that? I said that because, under my watch, that was never going to happen, and I had a duty and responsibility to rectify that and deliver justice to the victims of TRC matters and their families. And I asked

her, I said to her, "Please give me time, I have never read the docket". I have received memoranda upon memoranda upon memoranda, I have written letters, I have signed letters as the head of the PCLU. I have signed letters and memoranda, whether it was to the legal resource centre, whether to law firms, whether it was to the Minister. Briefings, but I have never seen the docket. Allow me the opportunity to peruse the docket, personally peruse the docket, and to assign a new team to consider the matter.

10 I made a commitment that if there is a case to be prosecuted, there will be a prosecution. If there is not, there will be an inquest that will be held in respect of the matter. And that is how that meeting, the meeting, we went back into the boardroom, and there was an undertaking made. There was an agreement to my recollection that the civil matter, you know, Mr Varney's team will hold off on the civil matter. Yes, Mr Moray Hathorn was also there, from Webber-Wenzel. It is all coming to me slowly.

And a commitment was made that there will be a hold off on proceeding with the civil matter, and we will be given time to look at the matter. And I was really grateful for that.

20 CHAIRPERSON: Yes Advocate Abrahams, deal with that at paragraph 65 of your affidavit.

ADV ABRAHAMS: Absolutely, Chairperson. And Chairperson, from that moment, from that moment, Chairperson, I will deal with that in greater detail when I deal with the incoming matter. I just want to give some background to the commitments I made, and which ultimately

culminated. I made a commitment, and I provided resources. We advocate, we assigned advocates within the Priority Crime Litigation Unit. We arranged with the acting head of the PCLU to have prosecutors and advocates from the Directors of Public Prosecutions seconded to the Priority Crime Litigation Unit to render assistance at the time. And they were made available to engage with Mr Varney and his team in respect of all matters that Mr Varney and his team had identified as matters that ought to be investigated. It was a list. I cannot remember the names that were on the list. I think the Timol
10 matter was one of the matters on the list. But it ultimately culminated in this meeting. And it was heartfelt for me because of the commitment that I had made in respect of TRC matters. Which was very close to my heart. To be effective too. And that is what...
(intervenes)

CHAIRPERSON: Ms Qofa.

ADV QOFA-LEBAKENG: Thank you very much, Chairperson.

CHAIRPERSON: Yes.

ADV QOFA-LEBAKENG: I wanted to take him back because I did not want to pass the scope in which you were talking about. As far as...
20 (intervenes)

COMMISSIONER GABRIEL: So what area are you dealing with now?

ADV QOFA-LEBAKENG: Chairperson, I am particularly at section F, page 18. But Chairperson, I wanted to just close the loop to address the fact that shortly after his meeting with Mr Calata, it was a week or

two after that, that is when he was removed from office. And I wanted that to be clear, Chairperson.

COMMISSIONER GABRIEL: But we have dealt with the missing Cradock Four and I believe that that is dealt with in paragraphs 46 through 50.

ADV QOFA-LEBAKENG: Indeed, Chairperson. I wanted to make reference to Chairperson and Commissioners that the issue of the missing docket has been fully addressed from paragraph 46 all the way to paragraph 50.

10 COMMISSIONER GABRIEL: Do you confirm that, Mr Abrahams?

ADV ABRAHAMS: We have dealt with it. I have nothing more to add in respect of the missing docket. I think we have stated our position. My recollection is and... (intervenes)

COMMISSIONER GABRIEL: And what you have said... (intervenes)

ADV ABRAHAMS: Absolutely and I stand by that.

ADV QOFA-LEBAKENG: Chairperson, unless there is any issue on this particular issue of the missing docket, I will be happy to take consent if there is anything else, but otherwise we would like to deal with the second part, dealing with the... (intervenes)

20 COMMISSIONER KGOMO: Yes, if you can go there without much preamble.

ADV QOFA-LEBAKENG: No, no, not much. I apologise. I will not do that.

COMMISSIONER GABRIEL: So are you talking about section G?

ADV QOFA-LEBAKENG: Section, we have now dealt with section F.

COMMISSIONER GABRIEL: Okay.

ADV QOFA-LEBAKENG: We have passed section F. And now the next section that we want to deal with is section G. We are done with document two.

ADV ABRAHAMS: We are not. We need to deal with that in more detail. Could we perhaps talk about that?

ADV QOFA-LEBAKENG: Indeed, indeed. You will see that it is paragraph 51. And I would have wanted us to go directly from paragraph 51 because I would like to talk to the individual issue that
10 you raised there from paragraph 51.

ADV ABRAHAMS: The allegations are that there was political interference, I was under pressure. As National Director, I was under pressure. I can categorically state that I was not under any pressure. It was a commitment that I made having regard to the history of our TRC matters, and the allegations of political interference.

And that is why I embraced Ms Nkadimeng and the legal team and investigators to meet with me and my team at the NPA to discuss how we can deal with these matters going forward. But of course the first issue was the actual extant application. And we had
20 very fruitful engagements in that regard and ultimately culminated in a decision to prosecute. And I want to talk a bit about that.

I assigned... (intervenes)

CHAIRPERSON: Yes, if I may interpose. Where are we exactly Ms Qofa... (intervenes)

ADV QOFA-LEBAKENG: The allegations of pressure Chairperson.

CHAIRPERSON: Are we in G or H?

ADV QOFA-LEBAKENG: It is now at H.

CHAIRPERSON: Yes.

ADV QOFA-LEBAKENG: I want us to start from G now.

CHAIRPERSON: Please take control of your witness. Let us not go all over the evidence that you are presenting before us.

ADV QOFA-LEBAKENG: Thank you.

CHAIRPERSON: Because we do not know where we are now. You ask a question, and your witness responds by agreeing to a certain
10 section which is different, and you do not intervene to correct it.

ADV QOFA-LEBAKENG: Apologies, Chairperson. I will correct that accordingly.

ADV ABRAHAMS: We are not. We are dealing with G. With the greatest of respect, we are not dealing with H. When I say, and I make reference to under pressure, if one looks at Paragraph 51, there is no culpability attributed to my counsel with the greatest of respect. If one goes to Paragraph 51, Chairperson, what we say is this:

20 "The Calata applicants allege that the litigation instituted by Ms Thembisile Nkadimeng in Nkadimeng two exposed political interference and suppression of TRC matters. That the NPA failed to oppose her application, and that I as NDPP only acted under pressure of that litigation by engaging in settlement discussions, and thereafter charging the accused."

So, I am sorry, I was dealing with that aspect, Chairperson.

CHAIRPERSON: Yes.

ADV ABRAHAMS: Because it does not lie under G. I am sorry about that.

COMMISSIONER GABRIEL: And your response to those allegations?

ADV ABRAHAMS: Yes.

COMMISSIONER GABRIEL: Where do we find it?

ADV ABRAHAMS: So, my response is contained from Paragraph 52 onwards, all the way to Paragraph 68 of my statement. We are
10 detailing the meetings, the numerous discussions, and if we specifically go to Paragraph 66 on page 23 of the paginated bundle, this is part of the meeting, and we say:

"Immediately thereafter, I directed that a new team of prosecutors be assigned to the matter to study the investigation document, along with all other relevant material, to further engage with Nkadimeng's team, namely Varney, SC, Hathorn, Dutton and others, and to advise on the legal prospects and sustainability of a successful prosecution."

20 And I proceed 67:

"Against this backdrop my engagement as NDPP in discussions with Nkadimeng's legal representatives, and the subsequent decision by the NPA to charge the four former security branch officers, that is Coetzee, Pretorius, Mong and Radebe on 14 March 2016, much

to the satisfaction of Nkadimeng and her team, reflect the culmination of a process of investigation and prosecutorial assessment, and definitely not a capitulation to impermissible pressure."

I proceed, Chairperson, at 68:

"At all the material times, my conduct in relation to Ms Simelani's matter was directed and ensuring that the matter was properly investigated, and that once the evidential threshold had been met, charges were brought, there was thus no failure on my part to prosecute."

So we do answer the question, Honourable Chairperson.

COMMISSIONER KGOMO: Yes, you see it is a simple set out, if you zoom in that way, we know where you are. And that is the point that the Chairperson is making.

ADV ABRAHAMS: Thank you.

ADV QOFA-LEBAKENG: Chairperson, I would understand why paragraph G and H would have made a confusion because both relate to pressure... (intervenes)

20 COMMISSIONER GABRIEL: Yes, so where ...[intervenes]

ADV QOFA-LEBAKENG: So that is only there, yes.

COMMISSIONER GABRIEL: How are you going to ...[intervenes]

ADV QOFA-LEBAKENG: Now we proceed to section H which then deals with the long shots that need to be made.

ADV ABRAHAMS: Yes, I think we have concluded Nkadimeng Two.

Perhaps let me take the Commission through H, on paragraph, that commences at page 24, from paragraph 69 onwards, Chairperson.

"The Canada applicants allege that following the launch of Nkadimeng Two, and the attendant of public attention, the NPA was under pressure, and that only then did families of other detainees, such as those of Ahmed Timol, Neil Aggett, begin to agitate for their cases, supported by civil society organisations and pro bono counsel.

10 It is suggested that the NPA's subsequent actions, including the reopening of inquests and the institution of certain prosecutions, were motivated not by constitutional duty, but by external pressure and a desire to deflect criticism.

Whilst litigation and public advocacy incidentally and fortuitously commenced at the inception of my tenure as NDPP, it did contribute to a new focus on TRC matters, as I stated earlier on, which was complimentary to my detail-centric approach to justice."

20 Which I have also earlier referenced.

"Whereas litigation and public advocacy is both inevitable and legitimate in a constitutional democracy, I however do not accept and strenuously deny that the NPA, under my leadership, acted unlawfully or that we succumbed to improper political pressure, either to

suppress or to selectively resuscitate such matters.

To the contrary, the PCLU focused on a number of post-TRC matters, during which consideration was given to the reopening of several inquests. These processes commenced during early February 2016.

I made available members of the PCLU to regularly engage with Hathorn, Varney SC Dutton and other persons in relation to TRC matters.

10 In relation to the death of Mr Ahmed Timol, I submitted a memorandum to the Minister requesting that he approach the Judge President of the Gauteng Division to appoint a Judge to preside over the reopening of the inquest. In October 2017, judgment was delivered, reversing the earlier inquest finding and recommending the investigation and prosecution of Rodriguez and others for murder and defeating ends of justice. Rodriguez was charged with Timol's murder in July 2018.

20 In the case of Dr Neil Aggett, I similarly caused a memorandum to be prepared recommending that the Minister request the Judge President to appoint a Judge to preside over the reopening of the inquest.

Following a request from Premier Willies Mchunu of Kwa-Zulu Natal. I directed the PCLU to investigate the prospects of reopening the inquest into the death of

former ANC President Chief Albert Luthuli.

I directed the Deputy National Director of Public Prosecutions Head National Prosecution Services to engage with the PCLU and the DPPs to establish whether TRC matters ought to be referred to the DPPs to determine a framework thereon and to action the process"

As I had addressed in detail earlier on.

10 "Aside from providing regular in-person briefings to the Minister on matters relating to the NPA, including post-TRC matters and the work of the Missing Persons Task Team, I also submitted numerous memorandums to the Minister thereon, including a comprehensive memorandum to brief the Honourable President on matters relating to the NPA."

Of course, these included matters relating to TRC matters. I then continue:

20 "These steps that were taken during my tenure as NDPP demonstrate proactive, not reactive, combat. At all material times, we actively sought to utilise the available legal mechanisms to revisit post-TRC matters and apartheid-era deaths in detention and to ensure accountability where the evidence permitted.

Accordingly, the characterisation of the NPA as having acted only when under pressure from litigation is a

distorted portrayal. In this regard, the decisions I took and the acts I performed were rooted in constitutional and statutory duty, and by my innate commitment to a victim-centric service in delivering justice, informed by evidence, not by a fear of any reputational harm."

ADV QOFA-LEBAKENG: Thank you very much, Chairperson. I think this now takes care of 90 percent of the evidence of Mr Abrahams. We are now just dealing with the last section of the actual nature of the evidence, which I believe he will speak to from his own heart.

10 ADV ABRAHAMS: Yes.

COMMISSIONER GABRIEL: And that is dealt with in Paragraphs 95 to 78.

ADV QOFA-LEBAKENG: Indeed.

ADV ABRAHAMS: Chairperson, Commissioners, I accept the deep, emotional and prejudicial place from which the complaints have filed the application that resulted in the President establishing this Commission. I wholeheartedly support the work of this Commission, and I commend the work of the Commission to date. And I remain available to assist this Commission with whatever I am able to going
20 forward that I have not been able to address today.

Chairperson, Commissioners, I deeply empathise and sympathise with the victims and their families and what they have gone through to date. But notwithstanding my deep empathy, my deep sympathy and the support that I have provided at all material times during my role as National Director, the allegations levelled at

me should not be taken from a point of merely giving uncorroborated, unsubstantiated, unsupported conjecture and statements.

There is not a single person that has come before this Commission, whether it is a private person, whether it is a lawyer, whether it is a politician, whether it is a prosecutor, at whatever level, not a single person has come here to this Commission to say Sean Abrahams had decided not to pursue this matter for political reasons.

I can assure you, Chairpersons, Commissioners, and the victims and their families, the families of the victims, there was never, ever, for one moment, any political interference and any political influence whatsoever in any decision I took as National Director. Any processes I invoked to support the delivery of justice to the victims and their families in respect of the TRC matters. We embrace Ms Nkadimeng, we embrace every other victim, we embrace the list of cases that Mr Varney and his team have provided to us. And in my briefings to my team, I made it clear, the victims of crime require justice.

This is what I have always stood for in my career as a prosecutor, and this is what I want to stand for and be remembered as, as a National Director. It should not be referenced with isolated incidents. It must be looked at and contextualised of what I did, which is before this Commission. It was not a shallow, hollow commitment. It was not a promise without results. The results speak for themselves. And I was fortuitous enough to be able to lay the groundwork for future NDPPs to be able to push forward and push on

with what we put in place when I was National Director.

COMMISSIONER GABRIEL: So can I ask you to explain then what you mean in Paragraph 81, when you told us that you do not accept that you failed your duties as NDPP?

ADV ABRAHAMS: Absolutely.

COMMISSIONER GABRIEL: Would you go on in the second sentence?

ADV ABRAHAMS: Yes, I will read the sentence and respond to it with your leave. 81 says:

10 "For these reasons, any allegations that I have failed in my duties to prosecute TRC matters as NDPP is with respect incorrect. It conflates institutional and historical challenges with personal fault and attributes to me a responsibility for systemic shortcomings and challenges that have long predated and indeed post-dated my tenure."

I think specifically in making reference to the issues that we highlighted in annexure I think it is SKA3.

COMMISSIONER GABRIEL: The memo to the Minister.

20 ADV ABRAHAMS: The memo to the Minister. Where we identified the history of the NPA's role and the role in the management of investigations and the prosecutions of TRC cases and the challenges that were faced right up until the commencement of my tenure as National Director. And that is really what we are emphasising. Do not fault me on that. I had no role to play there, but I have now made

a commitment. Judge me on what I am doing and what I have done. And what did we do? And we say this in Paragraph 80 of my affidavit, or in Paragraph 28. We say:

10 "In my tenure, TRC matters received requisite, dedicated attention from the NPA. Inquests were re-opened, including the Ahmed Timol matter and the Neil Aggett matter. Prosecutions, such as in the Simelani case, were authorised and pursued. That is the Rodriguez matter, which was prosecuted and convicted in respect of the death of Ahmed Timol. That is the Rodriguez matter. And, of course, the Simelani matter, where those four policemen were charged.

I am unable to comment on the challenges that the prosecutors were seized with once the decision had been made in the Simelani's matter to prosecute. That is something the Commission must establish from the prosecutors that were seized with the matter or the acting head of the PCLU who dealt with the matter at the time.

20 But I have no recollection of the challenges they faced as prosecutors. Ultimately, I know somebody died. One of the accused died. There were some other challenges, but I cannot recall. It is too long ago. And the NPA did not give me, I mean, much of what we are talking to today is historical information that I have been able to reflect on.

The NPA had made a commitment to provide me with a lot of documents. I have written to them three communications where I set

out what I wanted. And this included memoranda, EXCO meeting minutes, because at EXCO level, I addressed the issue of TRC matters and what needed to be done. That is how serious we regard TRC matters.

I wanted copies of the files and memoranda with respect to all the TRC cases that I was seized with while I was there in the PCLU. I did not get any. I have got zero. The NPA did not come to the party. They gave me nothing.

CHAIRPERSON: Is that the correspondence that you allude to in
10 paragraph 82?

ADV ABRAHAMS: That is indeed correct. That is indeed correct, Chairperson. I make reference to that. And, you know, I would have liked to get more comprehensive evidence as to my direct and personal role in respect to specific cases. I talked about the memoranda, why I had signed off a particular memoranda, why I made certain decisions. I could not do that. And it is regrettable because I am certain it would have assisted the work of this Commission quite greatly.

We took steps to develop frameworks and policy guidance to
20 handle this TRC matters going forward. What we did, no previous National Director before me could do, for reasons that they testified before this Commission, why they could not or were unable to do. But I made it clear to the Minister when I met with the Minister, Minister, there may be post-TRC prosecutions. These are the matters that we are currently looking at. The Minister said to me,

"Thank you for briefing me, you full fill your mandate. If there is merit in a case, you proceed".

The Minister understood the concept of what our relationship entailed, what his relationship entailed as the political head with final responsibility over the NPA and my role as National Director. He understood the engagement. We both understood the engagements, the level of engagements we need to have, to be had. And I think the Minister took refuge from the finding of the Ginwala Commissioner in identifying what the relationship between a Minister of Justice and a
10 National Director ought to be. But there is also an old judgment, I have not read it for a long time, probably last read it maybe about 10 years ago.

I think it is the judgment in the Prosecutor General of Namibia versus the Attorney General or vice versa that details the relationship of how a National Director or a head of prosecuting authority of a country should relate to a political head or someone's final responsibility over an institution. Bluntly put, the Minister did not try to interfere in my work at any point in time. Nobody tried to interfere in my work at any point in time. Not the President, not the
20 Minister of Justice, not a Deputy President, not any Minister.

COMMISSIONER GABRIEL: But you established resources.

ADV ABRAHAMS: And that was the great difficulty. And if we had the requisite resources, if the priority consternation unit had powers, a typical example that I will give, if the priority consternation unit had the resources and the powers that the investigating directorate, for

example, has now within the NPA, that empowers them to subpoena people, to issue searches and seizures, obtain search and seizure warrants, not dependent on the police, not dependent on any other law enforcement authority, be able to exercise their responsibility, be able to question people in terms of the NPA Act, derive information, further their investigation in respect of the matter.

That would have fast-tracked prosecutions significantly in respect of post-TRC matters. And that is a process I would have advocated for in respect of dealing with matters of such nature.

10 Ultimately, it is a political decision.

ADV QOFA-LEBAKENG: Chairperson and Commissioners, I think that should pretty much take us to the end of Mr Abrahams statement. Unless there is really anything else that the Chairperson of the Commissioners would want to address.

CHAIRPERSON: Yes.

ADV QOFA-LEBAKENG: But somehow this takes us to the end.

CHAIRPERSON: Thank you. I think this would be an appropriate time to adjourn for lunch and we will continue at 14:00.

INQUIRY ADJOURNS

20 INQUIRY RESUMES

CHAIRPERSON: Mr Gwala, any clarificatory questions?

QUESTIONS BY MR GWALA: Thank you, Chairperson and Commissioners. I have just a few clarifications that I need from Adv Abrahams. Good afternoon, Adv Abrahams.

MR ABRAHAMS: Good afternoon, counsel.

MR GWALA: If I take you to page 105 of the bundle that you were working on, it is a memo that you sent to the minister. You will tell me when you found the page?

MR ABRAHAMS: I am there.

MR GWALA: Yes, thank you. In paragraph 6.5, I want to read it. It says:

10 “A particular case in point is the Nokuthula Simelane matter where a formal inquest before a judge will be held. It is a fact that evidence will be led of key witnesses and key evidence being unable to be located. It is only to be expected that the Judge would require an explanation as to why this matter was not investigated prior to 2011.”

My question is on the following part:

20 “In this regard I attach as Annexure C, a copy of a affidavit of former NDPP, Adv Vusi Pikoli and as Annexure D, a copy of affidavit of the then head PCLU, Adv Anton Ackermann SC. Both advocates allege high level political interference aimed at preventing the investigation of the TRC cases in their affidavits.”

We can stop there. That is the context of my question. Now did you at the time of writing this memo have any personal knowledge of the allegations of political interference?

MR ABRAHAMS: Thank you for asking the question. Chairperson, I did in the context of me being a subordinate to Adv Anton Ackermann SC at the time. So I was aware by virtue of what he had shared with us in the office, we were a small unit and of course this does effect the work of the unit and you know for somebody to be removed. Having a presidential mandate, having constitutional and legal responsibilities and then of course having to removed and everything that played before that, I am aware of it by virtue of it having been brought to my attention by Mr Ackermann SC.

10 MR GWALA: So... [intervenes]

MR ABRAHAMS: And it was live in a sense of, it was a live situation, when it was happening, when it was brought to my attention. How it transpired I cannot go into the details, I was not there, but I was aware of it by virtue of what was shared with me. I can just leave it that.

MR GWALA: What you know is what you were told by Adv Ackermann SC, not that you had personal experience of political interference?

20 MR ABRAHAMS: Not at all. I personally have never had any instance of political interference. When I say this was live and it was what Adv Ackermann was sharing with us, he is the head of the unit. And when he says to us this is what is going on, this is why certain decisions was made, I understood it in the context of what was transpiring at the time.

MR GWALA: Okay. Now from your perspective, what do you

attribute the non-prosecution of the TRC cases during the tenure, otherwise you were at the PCLU or when you were there?

MR ABRAHAMS: You are asking me to give my opinion?

MR GWALA: No, no, no, what do you attribute... what do you attribute to non-prosecution to?

MR ABRAHAMS: In the main I would attribute it to a number of factors. I think firstly, the unwillingness and inability of the police to cooperate efficiently in investigating the matters. Secondly, I attribute it to the task team that had been established, there was some task
10 team, I cannot remember the same of it, that has been established at some point that was constituted by director-generals of various departments and the heads of key institutions, where there was some concerns raised around the prosecution of TRC matters. And that deliberate delay that impacted, the chain reaction that impacted are not providing the requisite assistance to the NPA and the PCLU, to help fill its legal and constitutional mandate.

MR GWALA: I understand when you talk of assistance; you would mean the investigation capacity?

MR ABRAHAMS: That is correct.

20 MR GWALA: Yes, but, but my question is not why was there no investigation. I am asking why no prosecution?

MR ABRAHAMS: Oh. Mr Gwala, I am giving you... you have asked me for the reasons that I think why matters were not prosecuted. Those are the reasons that I can proffer.

MR GWALA: Okay.

MR ABRAHAMS: I cannot give any views as to why a special director, why a deputy national director or why a national director did not prosecute cases, where there was evidence to prosecute. But the cases in which there was no evidence to prosecute, there was reliance on investigations. The NPA did not have investigative powers. You cannot expect of a special director to issue a directive to prosecute in the absence of a *prima facie* case, in the absence of evidence.

MR GWALA: So... [intervenes]

10 MR ABRAHAMS: Neither... I am not finished, I am sorry, I am not finished. Neither can you expect that a deputy national or a national director, but for avoidance of doubt when I became national director, I was unconcerned with any possible inhibitions that may prevent me from any degree. I was not going to allow anyone to influence in decisions in relation to prosecution and that is why I embraced the victims of crime and the lawyers to push these matters forward.

MR GWALA: So where there cases that were ready for prosecution that were not prosecuted during the time when you were at the PCLU?

20 MR ABRAHAMS: Honestly counsel, Chairperson, I am completely unaware; I am unable to answer your question. Simply by virtue of, you know, I had a special director, I was a senior state advocate. I in the main concentrated on terrorism, state security issues, issues relating to intelligence legislation, espionage and other matters that impacted on security of the country. The TRC matters that were

allocated to me, which is by the way they were not the main focus of my work when I was a senior state advocate. The main focus of my work was to deal with the other legislative statutory offences that resorted under the mandate and proclamation of the priority crimes investigation unit.

MR GWALA: And then when you were as the NDPP, were there cases that were ready for prosecution that were not prosecuted?

MR ABRAHAMS: Well I cannot say that, because when we made a decision in respect of the Nokuthula Simelane matter that decision
10 was made to prosecute. That was some six months after I took office as national director. The matters in relation to where decisions were made that inquests must be held in respect of these matters, evidently you cannot decide an inquest must be held if there is efficient evidence to proceed with the prosecution. So that would... I mean that would be an egregious abuse of prosecutorial powers and responsibilities, it will be irrational to do so.

MR GWALA: One aspect before the last, I am reading paragraph 56 of your statement, it is at page 20. That is where you making the assertion that relates to the Simelane matter... [intervenes]

20 MR ABRAHAMS: Sorry, page 20?

MR GWALA: Of your affidavit.

MR ABRAHAMS: I am there, Chairperson.

MR GWALA: It says the evidence... [intervenes]

MR ABRAHAMS: Counsel, which paragraph is that?

MR GWALA: 56.

MR ABRAHAMS: Oh, thank you.

MR GWALA: It is typed page 18 of your statement.

MR ABRAHAMS: I have found it.

MR GWALA:

“This evinces that, far from suppressing the matter, the PCLU under my acting leadership treated it with seriousness and was engaged in ensuring that investigations were brought to a point where a proper prosecutorial decision could be taken”

10

When you say investigations, you mean investigations Nokuthula matter not in the TRC cases at large?

MR ABRAHAMS: Chairperson, I think the context under which where I addressed this aspect, relates strictly to the Nokuthula Simelane matter.

MR GWALA: Okay, no I wanted to get clarity on that, so that if it relates to other matters, we could deal with that. Lastly you know I am representing the NPA, you indicated that there were documents that you sought and were not provided to you. Are you able to provide a list of specific memorandums or specific documents that you would have wanted the NPA to provide to you?

20

MR ABRAHAMS: I wrote, I think I wrote three letters, three communications. We dispatched three communications to my recollection. The documents that I received specifically related to the Nokuthula Simelane matter, but the civil matter that had been filed

and the process that involved.

The engagement between ourselves and Ms Nkadimeng's legal team, memoranda that was submitted to me I have those. But I had set out a list that many people present here, I believe it was circulated to everybody for some other reason, but the list that I set out and I am speaking from memory and I have not looked at it since I dispatched it at the time.

10 This list was so important, because of firstly my role initially as a state advocate, then as a senior state advocate and as the head of the unit. Where many memoranda was submitted to me and there were files in respect of each case and I needed access to those memoranda from the PCLU in respect of all those matters.

MR GWALA: So you specified them?

MR ABRAHAMS: I specified it, I specified that I had minutes of meetings in respect of ExCo meetings that I had, memos that I had submitted to the national director when I was at the PCLU. And of course other memoranda when I was a national director that was submitted to me in respect of the various inquests, the various briefings and what it really did. It really hampered my ability to come
20 before this commission and take this commission and the public fully into confidence as to what was before me.

MR GWALA: Was there a response from the NPA?

MR ABRAHAMS: I cannot remember the gentleman's name, he was... I think he may have been the chief of staff to the former national director, he had been assigned to provide information to me.

I had sent him a further communication, I sent him a reminder, I phoned him. Up until he has not come back to me. And I was not going to beg the NPA for information they should ordinarily give me to assist this commission in its work. And that is why if you read the back part of my statement, I implore this commission to execute its full powers to obtain the information from the NPA. I think it was manifestly unfair, my evidence probably would have been about 80 percent, I am pushing it a bit, probably about 50 percent better insofar as factually in respect of specific matters. But I am confined to this.

10 MR GWALA: So your answer is that there was no response, they did not explain whether they have or they do not have, there was no response from this gentleman?

MR ABRAHAMS: No, he did give me some information, I got some documents. These are the documents that are annexed hereto. There are other documents that I did receive that was not relevant for my evidence.

MR GWALA: Maybe my question is too general. Insofar as those that they did not give to you, there was no explanation why it was not given?

20 MR ABRAHAMS: The one, perhaps maybe in fairness to him, the one docu... well the explanation was simply we cannot find some of the documents. The former chief of staff who served under me had retired, they could not trace certain documents, but I was very surprised that many other witnesses came before this commission and they were able to testify extensively on documents that had been

provided to them. And I got the distinct perception, rightfully or wrongly, that somewhere a decision was made, let us just give him this, that is all he needs. Which is not fair to the work of this commission.

MR GWALA: No, I accept that. I am asking this question so that I can make a follow-up on the responses that would have been given, so... [intervenes]

MR ABRAHAMS: Perhaps let me assist you, Mr Gwala and the commission. I am happy to work with my legal team to submit a
10 document to you, a short note to say this is what we asked for, here is a copy of our letter, give an indication of what was given to us and what is missing. I do not think it is going to take this commission further if you and I are going to debate this any further. And perhaps that is a better solution if we can take this offline and I am happy to send some sort of a communication in that regard.

MR GWALA: I think that would be fair.

MR ABRAHAMS: Because I really do not want to sit here to cast aspersions on anybody, that is not what I came to do. I came here to assist the commission.

20 MR GWALA: Thank you, Commissioners.

CHAIRPERSON: Thank you, Mr Gwala. Ms Rikhotso?

QUESTIONS BY MS RIKHOTSO: Thank you, Chair. Good afternoon, Adv Abrahams.

MR ABRAHAMS: Good afternoon, counsel.

MS RIKHOTSO: I just have a few short questions. So just in relation

to the PCLU, so the PCLU at the time it was established, was it found in VGM?

MR ABRAHAMS: That is correct. You know, let me give you some background.

COMMISSIONER KGOMO: Maybe she does not want...

CHAIRPERSON: The background.

COMMISSIONER KGOMO: The background. If there is a follow-up, let her.

10 MR ABRAHAMS: Thank you, Chairperson. Could you please repeat your question?

MS RIKHOTSO: The PCLU, at the point of its establishment it was based in the VGM building. Am I correct?

MR ABRAHAMS: That is indeed correct.

MS RIKHOTSO: Yes. And in regard to the membership, let me put it that way, of the PCLU, you indicated it was quite a small team?

MR ABRAHAMS: That is correct.

20 MS RIKHOTSO: Right, but I think one thing that we have not quite, I think some of us may not have grappled with it, is the fact that the PCLU was not created to deal specifically with only the TRC matters, notwithstanding the small size of the PCLU. You, as a team you dealt with many national, matters of national importance that were ongoing at the time. Am I correct?

MR ABRAHAMS: That is indeed correct.

MS RIKHOTSO: So now you indicate... you spoke to the lack of resources, right. So and I was also a prosecutor in the time of your

lack of resources.

MR ABRAHAMS: So you know what I am talking about.

MS RIKHOTSO: Yes.

MR ABRAHAMS: The challenges you faced.

MS RIKHOTSO: Yes, I was in court every day, preparing every single day for court, there was no help.

MR ABRAHAMS: You confirm how I implored upon you guys to do more with little.

MS RIKHOTSO: Indeed.

10 MR ABRAHAMS: Thank you.

MS RIKHOTSO: So with that in mind, the membership of the PCLU, whoever the prosecutors were and I do not know how capacitated it eventually became by the time you were NDPP. How capacitated had it been, become by the time you came there?

MR ABRAHAMS: I will try and assist you as best as I possibly can. So initially the unit constituted Anton, Adv Anton Ackerman, Adv Chris Macadam, Dr Torrie Pretorius and of course her PA. I later joined, which takes us to five. That was in 2024 when I joined.

MS RIKHOTSO: 2004.

20 MR ABRAHAMS: That is 2004, my apologies. Adv Nthunzi and Mhaga joined in 2006. I am not sure when Adv Susan Bukau joined. She may have joined either shortly before or Adv Mhaga or shortly after Adv Mhaga, but it is more or less at the same time. I could have it wrong, but okay.

MS RIKHOTSO: And who?

MR ABRAHAMS: Adv Susan Bukau.

COMMISSIONER KGOMO: Okay.

MR ABRAHAMS: It is actually Dr Susan Bukau, but ...

COMMISSIONER KGOMO: Okay.

MR ABRAHAMS: And Bukau [spelt]

COMMISSIONER KGOMO: Yes.

CHAIRPERSON: Yes.

MR ABRAHAMS: And later on, well the missing persons was created I think in 2005, that was constituted by Ms Madeleine Fullard and her
10 team. Initially there were two of them and I think they, I mean I think they became four or five, but it included forensic anthropologists, some investigators.

And the unit later became... the missing persons task team later became permanent under my watch as national director, because they were contractual workers and I made sure it becomes a permanent structure within the NPA and I forgot to mention that earlier.

When I became national director, the acting special director was... or not acting special director, she was a coordinator, was Adv
20 Andrew Johnson who now heads the IPID or the ID, the investigating directorate. It was Dr Torrie Pretorius, it was Adv Chris Macadam, Adv Susan Bukau, a PA, there may have been one or two other people.

But during my tenure a number of other people joined, but I cannot give you a figure. But these were people who were seconded

from other offices to assist on various matters, including TRC matters.

MS RIKHOTSO: So in essence there was never a team that was specifically set aside for TRC, it is just that it was just one of the things that you would be prosecuting alongside sabotage, treason, sedition, all of those things?

MR ABRAHAMS: Not quite. When Adv Anton Ackerman headed the unit, he decided who dealt with which matters. He and Chris Macadam in main dealt with TRC matters. Matters allocated to Dr Torrie Pretorius, to myself, to Adv Ntunzi and Mhaga were at their
10 discretion and their direction. So they were responsible for TRC matters, but of course would allocate matters to us, but we also dealt with wider matters.

MS RIKHOTSO: Okay, so the bulk of the load remained with Macadam and Ackerman?

MR ABRAHAMS: In respect of TRC matters.

MS RIKHOTSO: Yes.

MR ABRAHAMS: That is indeed correct.

MS RIKHOTSO: Okay, you have also indicated that you and this is a piggyback of Mr Gwala's questions where he asked you what you
20 thought were the hindrances or that prevented the TRC matters from proceedings. And one of them you indicated was the DG's task team. Did you ever sit in those meetings?

MR ABRAHAMS: Gratefully not.

MS RIKHOTSO: Also the understanding you have of the hindrances, it is, if I can put it, second-hand information.

MR ABRAHAMS: It would be best that we leave it for the people that experienced it first-hand. I am sure some of them have testified before this commission already.

MS RIKHOTSO: Ja. I have no further questions, thank you.

CHAIRPERSON: Thank you. Ms Ntambeleni?

QUESTIONS BY MS NTAMBELENI: Thank you, Chair. Good afternoon, Adv Abrahams.

MR ABRAHAMS: Good afternoon, ma'am.

MS NTAMBELENI: I just have one issue or one aspect to canvass
10 with regards to what you have already put before the commission this morning. Earlier when the skeleton of how your evidence will be led was given, reference was made to the aspect that the Craddock Four dockets that went missing were not requested by you, but by the office of the acting NDPP. Am I correct?

MR ABRAHAMS: That is indeed correct.

MS NTAMBELENI: Thank you. And then you then later on came to speak about this particular issue in your affidavit at paginated page 18 where we see the abundance of your understanding regarding the Craddock Four dockets, from paragraph 47.

20 MR ABRAHAMS: That is indeed correct, Chairperson.

MS NTAMBELENI: My understanding of the reading of what you then say, you know, as together or against what was already put before you gave evidence on this issue, it is that you do not have a clear or recollection of what Adv Macadam has already said before the commission.

MR ABRAHAMS: I simply have no recollection of the matter at all.

MS NTAMBELENI: At all?

MR ABRAHAMS: Safe for the question that arose, I have no recollection aside from what Mr Macadam has said. I have no recollection of the matter.

MS NTAMBELENI: Right.

MR ABRAHAMS: Yes.

MS NTAMBELENI: And then also we then go back to the affidavit which is the Calata affidavit and particularly Annexure FA47 where
10 reference is made therein regarding memoranda that was shared between yourself and Adv Jiba and in that memoranda it is Adv Jiba asking for clarification about particular cases which involved the Craddock Four case there. Am I correct?

MR ABRAHAMS: Can you repeat your question, please? It sounded more like you were making a statement, without disrespect.

MS NTAMBELENI: No, no. Apologies. What I am saying is then having said what you said, right, regarding your lack of recollection of what Adv Macadam is saying and then you later come to read his affidavit in the Calata matter, which is Annexure FA47, which refers to
20 a memoranda that was transmitted between yourself and Adv Jiba. Where Adv Jiba was simply asking clarification about cases, one of those cases involving the Craddock Four case.

MR ABRAHAMS: If it related to cases of the PCLU, then it would have included that matter.

MS NTAMBELENI: Yes. So having read that particular memoranda

between yourself and Adv Jiba, according to your reading, is there any...

CHAIRPERSON: Was there such a reading in this evidence before us, Ms Ntambeleni?

MS NTAMBELENI: Apologies, Chair.

CHAIRPERSON: Because these are supposed to be clarificatory questions.

MS NTAMBELENI: Yes, Chair. So what then the Annexure FA47 says is that on 26, if I may just go to that particular memorandum.

10 CHAIRPERSON: But is that the evidence that was led by Adv Abrahams before us?

MS NTAMBELENI: No, Chair.

CHAIRPERSON: Then it is not a clarificatory question. Clarificatory questions are meant to clarify the evidence that he has tendered before us.

MS NTAMBELENI: It is so, Chair. Chair, what I just wanted to understand is that having understood what is said in the Annexure FA47, was there anything that Adv Macadam says which says that there was request of the Craddock Four dockets by Adv
20 Jiba.

MR ABRAHAMS: Not to my recollection, but I do not have that memo before me, if you can tell me what it says, then I can answer you, I can answer the commission better. I have no recollection of the specific content that you are alluding to.

MS NTAMBELENI: The memo that I am referring to is the memo of

26 April 2013 which was sent to you by... [intervenues]

CHAIRPERSON: Was that the evidence that was led by Adv Abrahams, Ms Ntambeleni?

MS NTAMBELENI: Thank you, Chair, I will then... [intervenues]

CHAIRPERSON: Thank you.

MS NTAMBELENI: Stand down from that point, thank you.

CHAIRPERSON: Thank you. Ms de Vos?

MS DE VOS: Chairperson, Commissioners, we have no questions for this witness.

10 CHAIRPERSON: Thank you. Ms Tsagae?

MS TSAGAE: Chair, we also do not have any questions.

CHAIRPERSON: Yes. Mr Propy?

MR PROPY: Thank you, Chair, I just have two. Afternoon, Adv Abrahams. Mine is just... [intervenues]

COMMISSIONER KGOMO: You just have two?

20 QUESTIONS BY MR PROPY: Questions of clarification. It is more just for my, to ensure that my understanding is correct and I am going to make reference to paragraph 43 on page 17. The aspect I wish to focus on is when you assumed responsibilities for TRC cases, I am just reading from... and my focus is at the time there were only a handful of TRC matters under consideration by the PCLU. And you have given evidence that you could not recall the number, it could be somewhere in your affidavit. Purely just for my understanding, the evidence you gave in respect of the memo at paragraph 4 which states the 13 matters, I am asking this in relation to trying to

understand Adv Macadam says 2009 he asked the DPCI to investigate 10 matters. So what I am asking is, were in 2014 the matters that he then gave to you, is it related to the 13 or is it other matters.

MR ABRAHAMS: I am really unable to respond thereto positively in any way, simply because I say here Adv Macadam would have transmitted a handover report to me. I did not receive that from the NPA and I have no recollection of him having given me a handover report and specifically inserted it in this affidavit in the manner that I
10 have, because I would have believed it was for the commission to then establish from Adv Macadam when he did come to testify, did you hand over a handover report to Adv Abrahams and do you have a copy of the handover report?

Or establish from the NPA from the PCLU and that was not done and I am really, really constrained, Chairperson, to be able to respond thereto simply because I do not recall receiving a handover report from Adv Macadam and that is why I phrase it in this matter.

He would have provided with a handover report, but as you could see from the evidence and even on Mr Macadam's own
20 evidence he continued to deal with TRC matters.

MR PROPHY: My question merely was if that handful relates to the 13.

MR ABRAHAMS: I am unable to respond thereto.

MR PROPHY: Okay.

MR ABRAHAMS: I do not know.

MR PROPHY: Then the second part relates to the memo when you make reference to poor investigations, it is referenced twice to the Chikane matter and the Simelane matter. I am asking this with reference to you saying that the memo was a contribution of many members of the unit. So in respect of the Chikane poor investigation, was that a contribution by somebody else in the memorandum or your personal experience?

MR ABRAHAMS: That certainly would have been the contribution of the authors of the memorandum who did the draft on my behalf. So
10 the information extracted from... the information contained in the memorandum was settled by members of the Priority Crimes Investigation Unit that was seized with these matters at the time.

MR PROPHY: And would the answer be the same in respect of the contribution in the Simelane matter and who... [intervenes]

MR ABRAHAMS: Absolutely.

MR PROPHY: Who were they?

MR ABRAHAMS: So at the time, at the date of the memorandum which was July 2015, it would have been... so the acting head or the coordinator, the coordinator or acting head of the unit would have
20 been Adv Andrea Johnson who now heads the ID. But she would have delegated, probably delegated that to Adv Chris Macadam or Dr Torrie Pretorius. So I would say that chances are that Adv Macadam and when I read the language, it is, you know it is much Adv Chris Macadam's language. I have spent a lot of time with him, I have known him since 1996, so I know his language. So it would have

been his language that he would have used. So I would say under correction that it would have been Adv Chris Macadam.

MR PROPHY: Thank you very much.

MR ABRAHAMS: Thank you.

MR PROPHY: Thank you, Chair.

CHAIRPERSON: Thank you. Mr Varney?

MR VARNEY: Chairperson, some of our questions will exceed the bounds of clarification questions, so we will apply to cross-examine Adv Abrahams.

10 CHAIRPERSON: Thank you. Mr Semenya?

MR SEMENYA: Before we comment, Chair, I am advised there is Adv Ntshizana on Teams, I do not know how that works.

CHAIRPERSON: Ms Ntshizana?

MR SEMENYA: Yes.

CHAIRPERSON: Representing who?

MR SEMENYA: Adv Mpshe and others.

CHAIRPERSON: Okay. Ms Ntshizana?

MS NTSHIZANA: Chair, we do not clarification questions for this witness.

20 CHAIRPERSON: Thank you.

MR SEMENYA: Well anticipating that there will be cross-examination which would not have known about before, we defer our questioning of the witness, Chair.

CHAIRPERSON: Thank you.

COMMISSIONER GABRIEL: Adv Abrahams, your memorandum to

the minister of 15 July 2015, it is identified in the record as SKA3. What you did in there was to set out an extensive history of how these matters were either progressed or impeded during the course of time. And you also delivered a synopsis of matters you are presently dealing with, you dealt with the fact that investigations were poor and you were worried about what inquests would reveal about the lack of investigations. Have I summarised that correctly?

MR ABRAHAMS: In part.

COMMISSIONER GABRIEL: In part... [intervenes]

10 MR ABRAHAMS: Chairperson... [intervenes]

COMMISSIONER GABRIEL: Well I am just trying to get the gist of what I want you to focus on. Now you were the head of the office at that time, so the buck stopped with you.

MR ABRAHAMS: Absolutely.

COMMISSIONER GABRIEL: And you would not have wanted to mislead the minister. Correct?

MR ABRAHAMS: Absolutely.

COMMISSIONER GABRIEL: Okay. And this memorandum you submitted to the minister in terms of Section 33(2)(A) of the NPA Act
20 and the title reflects that.

MR ABRAHAMS: Absolutely.

COMMISSIONER GABRIEL: So did you have confidence in the facts represented in this memorandum, as you present them to the minister?

MR ABRAHAMS: These are... I am very, very appreciative of you

raising this question, Commissioner. I had complete confidence in what my colleagues had drafted, simply by virtue of the history of the working relationship, the professional relationship that we endured over a very long period of time. And I had no reason whatsoever to doubt that. And I accepted their *bona fides*.

COMMISSIONER GABRIEL: And you believed in what you were representing to the minister?

MR ABRAHAMS: Absolutely.

COMMISSIONER GABRIEL: Okay, thank you.

10 MR ABRAHAMS: Thank you.

CHAIRPERSON: Ms Qofa-Lebakeng, I dare say there is no re-examination... [intervenes]

MS QOFA-LEBAKENG: Indeed.

CHAIRPERSON: Pursuant to these questions.

MS QOFA-LEBAKENG: Absolutely.

CHAIRPERSON: Thank you.

MS QOFA-LEBAKENG: No questions, Chairperson.

20 CHAIRPERSON: Thank you, Ms Qofa-Lebakeng. Adv Abrahams, we are grateful for you, to you for having come to give evidence before this commission. As you are aware, there is an application for your cross-examination that will be brought by the Calata group, after which the evidence leaders will have an opportunity to put questions before you. For now you are excused as a witness, but you may be recalled for that kind of cross-examination.

MR ABRAHAMS: I understand, Chairperson.

CHAIRPERSON: Thank you.

MR ABRAHAMS: And thank you, Chairperson.

CHAIRPERSON: These proceedings are adjourned until tomorrow at
09:00.

INQUIRY ADJOURNS UNTIL 15 MAY 2026

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


FORUM OF ORIGIN : Inquiry

CASE NUMBER : N/A

TRANSCRIBERS : M Botha, L Lerm, B du Plooy

DATE COMPLETED : 2026-05-15

NUMBER OF PAGES : 121 (Including front page)
M Botha: Page 1-32
L Lerm: Page 33-96
B du Plooy: Page 97-119

TRANSCRIBERS : 

TRANSCRIBER'S NOTE:

- Where no information provided, names transcribed phonetically.
- Grammar errors types verbatim.



MzansiSA Business Solutions
Arbour Square
Cnr Melle & Jutta Street
Ground Floor, Office 3
Braamfontein, 2001
TEL: 011 339 1289
E-mail: transcription@mzanzisa.com
E-mail: mzanzisa1@gmail.com