

**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 Rafik Bhana (SC) (for Adv B Ngcuka)
Adv Mfundo Salukazana (for Adv B Ngcuka)
Adv Nwabisa Ntshizana (for Adv B Ngcuka)
Mr Tabata (for Adv B Ngcuka)
Adv Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Ms A Thakor – The Calata Group
Mr J Venter – The Calata Group
Ms L Doubell – The Calata Group
Adv KD Moroka (SC) – DoJ representative
Adv Gwala (SC) – NPA representative
Adv Motlalepula Rantho (for SAPS)

2 MARCH 2026

DAY 15

PAGES 1 – 60



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PROCEEDINGS ON 2 MARCH 2026

CHAIRPERSON: Good morning.

ADV SEMENYA: Morning, Chairperson.

CHAIRPERSON: Yes, Mr Semenya.

ADV SEMENYA: Good morning Chair, good morning Commissioners, today we are scheduled to hear the evidence of Mr Ngcuka, but maybe with your direction we note that there is an objection I had of any cross-examination in respect of his testimony.

CHAIRPERSON: Yes.

10 ADV SEMENYA: With your permission, with the team, I think we will prefer to start with the application for cross-examination and then later the evidence of Mr Ngcuka.

CHAIRPERSON: Yes. I will prefer to start with the objection. Mr Bhana, you are representing Mr Tabata on behalf of Mr Ngcuka.

ADV BHANA: Good morning, Chair, thank you. That is correct; I represent Bulelani, Adv Bulelani Ngcuka.

CHAIRPERSON: Yes.

ADV BHANA: Instructed by Mr Dumisani Tabata of Ramsey Webber and with me are my two juniors, I do not know if you wish to have
20 them place themselves on record?

CHAIRPERSON: Yes, you may place them on record.

MR SALUKAZANA: Good morning, Chair, it is Mfundo Salukazana.

CHAIRPERSON: Salukazana?

MR SALUKAZANA: That is correct.

CHAIRPERSON: Do I not know you?

MR SALUKAZANA: You do.

CHAIRPERSON: Yes, I thought the face looks familiar. Yes?

MS MTSHIZANA: Morning Chair, I am Nwabisa Mtshizana.

CHAIRPERSON: Mtshizana.

MS MTSHIZANA: Nwabisa Mtshizana.

CHAIRPERSON: Yes, let me kick-start by saying on 27 February 2026 I issued a directive condoning noncompliance with application to cross-examine Adv Bulelani Ngcuka. And to cross-examine Mr Ngcuka on 2 March 2026 on the basis that there was no objection
10 or prejudice to any of the parties.

That application to cross-examine Adv Ngcuka was brought by Webber Wentzel on behalf of the Calata family and other family members. Under Regulation 8(3) read with the Rules of this commission, on 1 March the commission received an objection from Mr Tabatha representing Mr Ngcuka, objecting to the application to cross-examine.

And urged me as Chairperson to reconsider the directive authorising the Calata family and others to cross-examine Mr Ngcuka. I now invite Mr Bhana to present to me submissions on what basis I
20 should reconsider my directive, having regard to the fact that the directive was issued in terms of Regulation 8(3) read with Rule 37 of our rules. Mr Bhana?

ADV BHANA: Thank you, Chair. Firstly, just by way of the reasons why you should revisit your direction.

CHAIRPERSON: Yes.

ADV BHANA: Obviously it is a direction and it is not binding in the sense that it is not final. The short chronology will be helpful, Chair. The application to cross-examine was delivered on 26 February.

CHAIRPERSON: Yes.

ADV BHANA: There was no condonation application with that. A condonation application came on 27 February at about 11:00 and your directive was issued later that afternoon on the 27th at about 16:30. Obviously between the time of receiving the application to cross-examine, my attorney had to take instructions from Mr Ngcuka.

10 Those instructions were taken and it was clear that the application itself was defective. So basically we were not given *audi* when the direction was issued. That is a fundamental right of a party effected by an order to have the right of *audi* to make representations to you.

 Obviously when you did that, there is no criticism against the commission, you did not realise that there would not be... that there would be an objection, but there is an objection. And the time period that passed between receiving the application and the directive was barely a day and there was simply not sufficient time to indicate to
20 you before your directive was issued, what the position is.

 So in the interest of fairness and in the interest of your hearing from the party affected by the ruling, we obviously submit to you that you can revisit this and you should. And with that, if I can then just briefly set out the basis of the objection?

CHAIRPERSON: Yes.

ADV BHANA: Thank you, Chair. Chair, the basis of the objection basically is that it is completely ill-conceived in terms of the regulation, applicable Regulation 8(3) as read with the rule. And if I can obviously just refresh you, you are very familiar with these and you will be more familiar with me.

Whilst Regulation 8(3) provides any witness appearing before the commission may be cross-examined by a person, only if the Chairperson permits such cross-examination, should he or she deem it necessary and in the best interest of the functions of the
10 commission.

That obviously has to be read with the rules that enact it under the regulations and the pertinent rules are Rule 3. And whilst 3.1 and 3.2 set the general regime and that is essentially that safe where you direct to the contrary in relation to any specific witness, overall responsibility to present evidence is on the evidence leaders.

And the evidence leaders are the persons who put questions to witnesses. So we have been given the opportunity to lead Mr Ngcuka, but that does not dispense with the fact that if there is anything that requires clarity, it is the duty of the evidence leaders to
20 put those questions that will clarify that.

But we then get to the pertinent part of the rules and we submit this application is made completely outside of the rules and obviously you did not have the benefit of being addressed, but your ruling would also be *ultra vires* the provisions of the rules. So Rule 3.3 provides:

“If the commission’s evidence leader intends to present to the commission a witness...”

And this is very important:

“Whose evidence implicates or may implicate another person, it must through the secretary of the commission notify the person, the implicated person in writing within a reasonable time.”

And it sets out a number of things, but to pause for a moment, the opportunity to apply for cross-examination and obviously the
10 ultimate decision is only in your discretion, is only in relation to a witness who implicates a person. And in this instance the application is made on behalf of the Calata group.

Mr Ngcuka’s statement does not implicate anybody, let alone the Calata group. The Calata group are not implicated persons within 3.3, so it was not competent for the application for cross-examination to be brought. The threshold requirement, call it a threshold requirement, call it a jurisdictional fact to the application, if you want.

And as lawyers we often talk in our own lingo, but the *locus standi* to apply to cross-examine is only given to implicated persons.
20 So the Calata group as a group has no *locus standi*, but moreover the threshold requirement as a jurisdictional fact that they have got to show have not been complied with.

So 3.3 then sets out a number of things that the evidence leader informs the implicated person. Now it is also important to note the initial filter, if you want, is that performed by the evidence leaders.

They obviously make the determination if a person is an implicated person and if that determination is not made, that is a further reason for the application to be refused.

So under the rules you will then see that what the evidence leaders tell the implicated person. They tell that person that he or she may be implicated, in what way he or she is implicated, when the witness will give evidence that there is the opportunity to attend. And then 3.3.6:

10 “That if he or she wishes to give evidence himself
 or herself or sub (2), to call any witness to give
 evidence on his or her behalf, or to cross-
 examine the witness, he or she must apply within
 two weeks from the date of notice, apply in writing
 to the commission for leave to do so.”

We will deal with the condonation application shortly and you will read in the condonation application the Calata group say that they did not have, the statement was only provided, I think on 24 February. They could not comply with the two week period. But we will get to that issue in due course. Their problems are far greater than just the
20 timing and the condonation issue. Then 3.4:

 “An application in terms of Rule 3.3 above must
 be submitted in writing to the secretary of the
 commission within 14 days from the date of the
 3.3 notice.

And the requirements then become very important.

“The application must be accompanied by a statement from the implicated person responding to the witness statement insofar as it implicates him or her.”

You will see the application here is brought by the attorney, there is no statement from any implicated person and that is obviously because there is no implicated person involved. But the rule requires that there be a statement by such a person.

10 “The statement must make it clear what parts of the witness statement are disputed or denied and the grounds upon which those grounds are disputed.”

Now the affidavit is that of the attorney, there is no statement from any implicated person, the attorney’s affidavit tries to suggest the paragraphs in relation to which cross-examination should be allowed, but none of that is compliance with 3.4. 3.5 then provides:

20 “If an implicated person believes that the Commissioner's evidence leader did not give him or her the notice referred to in Rule 3.3 within a reasonable time before the witness could or was to give evidence and that this may be prejudicial to him or her, he or she may apply to the Commission for such order as will ensure that he or she is not seriously prejudiced.”

Then we get to your powers, Chair, and that of the other

Commissioners and it is not simply to allow cross-examination, because there are three remedies allowed, if there is a proper application and obviously we submit there is not a proper application, the threshold requirements are not met.

But assuming they were, in deciding an application and I am at 3.6 of the rules:

10 “In deciding an application contemplated in Rule 3.3.6, the Chairperson may, in her discretion and on such terms and conditions as she may deem appropriate, grant leave to an implicated person...”

And here are the options:

- “(a) to give evidence;
- (b) to call a witness to give evidence on his behalf and/or;
- (c) to cross-examine the witness implicating him or her.”

20 All that you have in a defective application before you is a remedy that asks for cross-examination. You were not told why any prejudice that there may be and we submit there is none, cannot be cured by the Calata group calling a witness to give evidence.

Or that you give in this case the implicated persons, if there were such and we keep saying there are not any implicated by Adv Ngcuka, you have got to be addressed as to which of those three alternative remedies you should direct. So the threshold requirement

is not met, you are not told in the application why the other remedies are not sufficient and whilst, yes, it is worth also recapping 3.7:

“In accordance with Regulation 8(3), there is no right to cross-examine a witness before the Commission, but the Chairperson may permit cross-examination should she deem it necessary and in the best interest of the work of the Commission to do so.”

Now Chair, this hearing is obviously one that is to get to the truth of
10 matters, but it is not a curtain raiser and it is not a trial-within-a-trial for any claim or application that may come from the Calata group in due course.

So when you bear this in mind and the actual application, you will find that the application does not bring itself within the rules. The fundamental requirement that it has got to be made on behalf of an implicated person, and that is a jurisdictional fact, a threshold requirement which is compulsory.

There is no issue of discretion involved in there, is simply not made out in the application to cross-examine. All that you are told is
20 in the covering letter that accompany the application from Webber Wentzel on 26 February 2026 you are told we act on behalf of the Calata group and 24 other families. We refer to the timetable circulated and then paragraph 3, so they invoke the rule:

“Rule 3.4 provides that the application must be accompanied by a statement from the implicated

person responding to the witness statement
insofar as it implicates him or her.

And paragraph 4:

“We attach hereto our statements...”

The attorney statement, not the implicated persons:

“Setting out those averments that we dispute in
Adv Ngcuka’s statement.”

And then when you look at this, there are certain paragraphs that they
wish to cross-examine on, as I have submitted to you when I was
10 taking you through the rules. No suggestion as to why any other
remedy cannot be invoked.

And for example in relation to some of the issues, I have put
this up just as an example, there is no reason why... I am not sure if
Mr Ackerman has given evidence here or not, but it is something
that... all of this can be, there is a witness that is coming, if there is
anything that requires clarity, I use this as an example, from
Mr Ackerman, this can be put to Mr Ackerman.

It goes to the point that there are three different remedies
provided in the rules and you will decide a case has got to be made
20 out to persuade you which one to invoke.

Chair, I want to say at the outset it is not that there is anything
that we wish to shield Adv Ngcuka from, but the issue is a critical one
of *vires* and powers of the commission to direct a cross-examination
in circumstances where there is no meeting of the jurisdictional
requirements in the rule.

And we all know that in commissions the right of cross-examination is a very limited one, it is not even a automatic right, it is a privilege that you and the Commissioners give a party. But to qualify for that privilege, those requirements have to be met.

The other reason why it is critical is that this issue is going to arise in relation to other witnesses who we represent. Obviously we will deal with the application at the relevant time, but as a point of principle, this commission has to enforce its rules and it has to require that parties that bring applications comply with the rules and make
10 applications that are recognised and permitted under the rules.

So we submit that having had the benefit of hearing from us now, you should withdraw the direction that you were given and not permit cross-examination. If you can bear with me for a moment?

CHAIRPERSON: Yes.

ADV BHANA: To just consult with my team. Those are our submissions.

CHAIRPERSON: Thank you, Mr Bhana.

ADV BHANA: We thank you for the opportunity.

CHAIRPERSON: Thank you. Mr Varney?

20 ADV VARNEY: As the commission pleases. Chair, my learned friend Mr Bandla has not put up anything of substance... [intervenes]

CHAIRPERSON: Mr Bhana.

ADV VARNEY: Sorry, Mr Bhana.

CHAIRPERSON: Yes.

ADV VARNEY: Apologies, Chairperson and apologies to Mr Bhana.

He has not put up any substance to warrant disturbing the Chair's ruling. We would suggest that the opposition is without merit. This commission is entitled under rule, or rather Regulation 8(3) which my learned friend has read out, so I will not do so as well, read with Rule 3.7 to grant permission to cross-examine when the commission believes it is necessary and in the best interest of the work of the commission to do so.

CHAIRPERSON: Why was there reliance by you, Mr Varney, on why did you invoke Rule 3.4 in the application?

10 ADV VARNEY: In fact... [intervenes]

CHAIRPERSON: Was that inadvertent? Was that meant to mean Rule 3.7?

ADV VARNEY: Chairperson, it was likely inadvertent. We were of course looking for a procedure and the only procedure in terms of timeframes and what had to be put up was sitting in Rule 3.4. And also the evidence leaders indicated to us that we will have to apply for condonation because of Rule 3.4.

20 Our view, Chair, is that there is no procedure and no timeframes attaching to Rule 3.7 and Rule 8.3, but out of abundance of caution we applied for condonation nonetheless and we put up a statement even though 3.7 and Regulation 8(3) do not require it.

CHAIRPERSON: Yes and that is my confusion, because your application seems to be centred around Rule 3.7, Rule 3.4 when you have made an application under Regulation 8(3), which says any person may be cross-examined, not necessarily an implicated person.

ADV VARNEY: Yes, indeed and for good reason, Chairperson. I will just an example from another commission, the Marikana Commission of Inquiry which had largely similar rules to this commission. There George Bizos represented certain families. They were of course not implicated persons, but Mr Bizos as well as representatives of other families and surviving workers were permitted extensive opportunity to cross-examine.

CHAIRPERSON: Yes, but without reliance on Rule 3.4, I am sure.

ADV VARNEY: Yes. Yes, indeed. Chairperson, to the extent that we
10 refer to 3.4, that is inadvertent and we simply put it up for purposes of explaining why we were putting up a statement and applying for condonation, even though 3.7 and 8(3) do not require that procedure.

Chairperson, we in fact have no intention of cross-examining this witness on the basis of what was before this commission prior to 24 February, that was last week. It was only when we were given his statement that we realised we may have questions that move beyond follow-up or clarification that there might be objections to those questions.

So out of an abundance of caution we then applied, I think
20 within 48 hours of receiving that statement to cross-examine this particular witness. And realistically of course decisions cannot be made until one has seen the statements in question. I understand this Chairperson has already ruled that the parties may even apply for cross-examination with *viva voce* evidence and I think that commission reinforces the approach that the Calata group has taken.

Let me just see if there is anything else. Yes, Chairperson, in conclusion, it would really disrupt the fact finding function of this commission if in fact my learned friend is correct that the jurisdictional requirement is confined exclusively to Rule 3.4. It simply cannot be the case.

That would be only implicated persons that would have the opportunity to cross-examining and interested parties will be excluded altogether and that could not have been the intention behind the regulation read with the rules. Those are our submissions,
10 Chairperson.

CHAIRPERSON: Thank you, Mr Varney.

ADV BHANA: Thank you Chair, with your leave if I may reply?

CHAIRPERSON: Shall I give, before you Mr Bhana.

ADV BHANA: Yes.

CHAIRPERSON: May I give Mr Semenya an opportunity to respond?

ADV SEMENYA: Chairperson and Commissioners, I submit that the concession by Mr Varney that the invocation of Rule 3 was inadvertent, he says and we agree with that. And as regards the applicability of cross-examination clearly that is in the regulations and
20 Chair, you have just read Regulation 8(3).

In terms of that, the discretion is that of the Chairperson with, as they use the word jurisdictional fact that you deem it necessary or it is in the interest of the work of the commission. When those two are met, then the right to cross-examination would arise.

The difficulty in this instance is that the application was, the

statement was received pretty late for this exercise and if the Chair is minded that cross-examination may prove to be necessary and in the best interest of the work of the commission, that that would arise.

We would submit that the only outstanding element to that is the when, if the Chair is so minded. It would seem to us as evidence leaders that a date other than today, given the proximity to this application as well as the ruling if the previous one is valid, Mr Ngcuka and team may very well be entitled to a reasonable period to prepare for such cross-examination if it arises. Those are the
10 submissions of the evidence leader.

COMMISSIONER KGOMO: Mr Semenya, on what you are advancing, would the commission not factor its powers unduly and irregularly by saying not following what the Chair has indicated in the first place, because what Mr Varney advanced in the first place was an aberration, more an aberration than maybe, ja, was it not an aberration? And if it is an aberration, that can be ignored?

ADV SEMENYA: Well I would submit, Chair, that aberration or inadvertence may very well be interchangeable in the context. That what we are submitting though is that at least the applicability of
20 cross-examination under 8(3) of the regulation is present. So it would still be within the powers of the commission and that particularly of the Chair, if she is so minded to conclude that the interest of the work of the commission is extent. Those would be my response, Commissioner. Thank you, Chair.

CHAIRPERSON: Thank you, Mr Bhana?

ADV BHANA: Thank you, Chair. The first point to make is this, there is independent self standing right to cross-examine under 3.7 divorced from the rest of Rule 3. So when our learned friend Mr Varney says to you it was inadvertent, firstly it is a submission from the bar, it was not inadvertent, there was every intention to rely on it and we will show you why.

The reliance was made by an attorney, an experienced attorney and made under oath, but you do not need to get entangled on the inadvertence issue, although I will address you on that. The
10 primary submission is that 3.7 is not a self standing independent right which you can divorce from the remainder of what is in Rule 3 dealing with cross-examination.

And that includes 3.3, 3.4, the remedies we have that they read to you, I think that was under 3.6. So when you follow the regime of the rule and there is a very good reason for this and that is because there is a very limited role for cross-examination in these proceedings.

The evidence leaders and they have an experienced and substantial team, are the persons firstly tasked to check if there are
20 discrepancies in their witness statement with other documents or other witness statements or other evidence that they have. They work through that, they filter it, they decide what questions are going to be put and which witnesses are to be led.

CHAIRPERSON: But Mr Bhana in this case you have applied to lead evidence of Mr Ngcuka.

ADV BHANA: Yes.

CHAIRPERSON: So the evidence leaders have very little role to play with regards to the leading of his evidence.

ADV BHANA: Yes. But that does not abdicate their responsibility completely.

CHAIRPERSON: Yes.

ADV BHANA: To put... [intervenes]

CHAIRPERSON: That is so, but that that should also not be lost sight of.

10 ADV BHANA: Yes, we take the point, but the evidence leaders can put any questions for clarification that they want, they can examine Mr Ngcuka and that is primarily their responsibility as evidence leaders. But to come back to the point, the entire premise of the argument that we heard from Mr Varney is that there are some self standing rule or right under 3.7 to cross-examine where you do not have to follow what precedes it.

20 And that is completely incorrect as a legal premise. There is no self standing right, there is not a 3.7 right to cross-examine and a 3.3 and a 3.4 right, I call it a right for the moment or right to make application to cross-examine. So once that is appreciated, you are bound by your rules, Chair, and you are bound to give effect to all of 3, not just 3.7.

COMMISSIONER GABRIEL: Mr Bhana.

ADV BHANA: Yes?

COMMISSIONER GABRIEL: What do you make of the fact that the

heading to Rule 3 deals ostensibly with two types of persons who give evidence to the commission, witnesses presented by the commission's evidence leader and implicated persons and their evidence.

ADV BHANA: For the... [intervenes]

COMMISSIONER GABRIEL: Is the focus of Rule 3 as narrow as you suggest it is?

ADV BHANA: Firstly we all know the difficulty of relying on headings for interpretation, so keep that as a caution whether one can rely on
10 headings, but having said that, there is no tension between that. The primary responsibility, whether it is an implicated person or a witness presented by the commission, the primary responsibility to lead evidence and to test that, remains on the evidence leaders.

What then is provided for, there is an indulgence if I can call it that, where it is an implicated person the indulgence to apply for cross-examination by parties who are not the evidence leaders is then provided in the rules. So the short answer is there is no tension between those two provisions.

COMMISSIONER GABRIEL: Thank you.

20 ADV BHANA: But let us deal then with the issue of this inadvertence, because you have been told this from the bar, it is just a convenient alt to try and get over the difficulty provided by the rest of the rule. Firstly, in the application letter itself, as I read to you the letter that accompanied the application, Webber Wentzel's letter of 26 February, the partner Ms Asmita Thakor replies pertinently on Rule 3.4.

Then more importantly when you get to the condonation application, so if it was inadvertence as one mistake and it must be explained under oath, it is akin to a withdrawal of an admission. You bring an application under a particular rule, you cannot just stand up and say well, I inadvertently brought this under the wrong rule.

But my submission to you is that it is not inadvertence, there was a specific reliance on 3.4 and correctly so, because they realised they had to follow the regime, the entire regime under 3 that deals with cross-examination, starting at 3.3. So when you read the
10 condonation application and if I can just look at the main application, I have made the points to you.

This is, this main application does not meet the threshold requirement, it was incumbent on the party seeking the cross-examination to make out a proper case and bring itself within the rules. They tell you they bringing it under 3.4 and then you read the condonation application and under oath Ms Thakor says a few things to you which are relevant to your dismissing this argument that it was inadvertent under Rule 3.4.

Again in the condonation application, 27 February the letter,
20 covering letter again deals with noncompliance with 3.4 and I want to make the point, I am not for the moment addressing the time issue on the condonation, but the reliance on the rule. You then get to the affidavit itself and you see in paragraph 3:

“This application was made in terms of Regulation
8(3) read to the extent necessary with 3.4 of the

Commission's Rules."

There is no reliance in this affidavit or anywhere on Rule 3.7. One cannot... [intervenues]

CHAIRPERSON: Yes.

ADV BHANA: Create a basis of for an application when none was put forward. So you see that pertinently in paragraph 3. Again in paragraph 6 there is the reliance on Rule 3.4, so you now have four instances of reliance on 3.4. There has got to be a proper explanation if you are now told this was inadvertent, not just a
10 statement from the bar when the shoe pinches. You have no such explanation.

But we also remind you of our primary submission. You cannot make isolated self-standing application under 3.7, that is not what is envisaged, so you can never get away from 3.4. You cannot say this is a 3.7 application, so I do not have to meet the other requirements under 3. That is the... [intervenues]

CHAIRPERSON: Yes.

ADV BHANA: Primary submission.

CHAIRPERSON: But is your own submission, Mr Bhana, that
20 Mr Ngcuka is not an implicated person.

ADV BHANA: Is not a?

CHAIRPERSON: That the Calata group... [intervenues]

ADV BHANA: Yes.

CHAIRPERSON: Are not an implicated person.

ADV BHANA: Yes. And that is because it goes to the point that you

cannot come and willy-nilly cross-examine people, you know, the point is a different one. It is not that Mr Ngcuka is not an implicated person, it is that Mr Ngcuka does not implicate anybody.

CHAIRPERSON: Yes.

ADV BHANA: So there is nobody that can invoke in relation to Mr Ngcuka's evidence, there is nobody that can invoke 3.3 and that is why they do not bring themselves within 3.3 and the regime in 3.3, 3.4 et cetera.

CHAIRPERSON: Yes.

- 10 ADV BHANA: Because he has not implicated anybody. Then of course we had anecdotal evidence about the rules in another commission, whether it was argued in the other commission, what the rules were are not before this commission and are irrelevant to this commission. So what happened there and what Mr Bizos was allowed to do or not do is entirely irrelevant.

If I may then just address the point raised by the Commissioner on the fettering of the discretion. There is no fettering of a discretion because what is required is that to obtain the right to cross-examine you must bring yourself within the rule.

- 20 If you are bringing yourself within the rule, the commission has to apply its mind as to which of those three alternatives it is going to allow, the 3.6 alternatives and there is simply no issue that by allowing, by not following the rules you would be fettering your discretion. You are obliged to follow those rules.

Those are your rules. They are the rules of this commission.

One cannot selectively apply them or simply suggest well, we are going to depart from them, because that would be a fettering of our discretion. The rules provide the circumstances under which an application can be brought.

There is a very good rationale for those circumstances and that is primarily the issue of leading evidence and testing evidences on the commission leaders and if there is going to be a departure, you have got to find a provision in the rule which permits of that departure. That is not there. But more importantly the Webber
10 Wentzel application does not ask you or does not invoke a departure from the rules. They pertinently invoke the rules.

So what they have done here is they have invoked the rule but they have not brought themselves within the very rule under which the application is made and this convenience of simply submitting from the bar that it was inadvertent is not to be accepted. Those are our submissions.

CHAIRPERSON: Yes, thank you, Mr Bhana.

ADV BHANA: Thank you, Chair.

CHAIRPERSON: We will take a short adjournment before we come
20 with a ruling.

[End of recording]

HEARING ADJOURNS

HEARING RESUMES

CHAIRPERSON: This is my ruling.

RULING

I issued a directive in this matter on the basis that it was made under Regulation 8(3) read with Regulation 7.3 which reads as follows:

“Any witness appearing before the commission may be any witness whether implicated or not, may be cross-examined by a person only if the Chairperson permits such cross-examination, should she or he deem it necessary in the best interest of the functions of the commission.”

10 It is my considered view having heard Mr Bhana on behalf of Adv Ngcuka in his objection that my ruling cannot, my directive cannot be varied. But I direct that it be varied to the extent that the direction gave Mr Ngcuka the right to be cross-examined today. I therefore direct that cross-examination of Mr Ngcuka be on a date to be determined by this commission.

ADV SEMENYA: As the commission pleases.

ADV VARNEY: As the commission pleases.

ADV BHANA: Thank you, Chair, is it envisaged that the evidence in
20 chief of Mr Ngcuka is given today or do we... [intervenes]

CHAIRPERSON: Yes, it is envisaged that we will proceed with the evidence in chief of Mr Ngcuka.

ADV BHANA: Thank you. Chair, may we also, while you are considering practical issues, raise this. We ask then that in the light of your ruling that you amplify your ruling that the examination of

Mr Ngcuka is going to be in relation to those aspects identified in his statement.

CHAIRPERSON: Yes.

ADV BHANA: Otherwise it is of course a blind free for all.

CHAIRPERSON: Yes.

ADV BHANA: So if we can confirm that.

CHAIRPERSON: Yes.

ADV BHANA: And also what would assist is, we have been given two lever arch files by Webber Wentzel at 10:00 this morning, of
10 documents that may be put to Mr Ngcuka. Now we are told that they are all somewhere in the applications, but of course it does not help to troll through two lever arch files. If you can direct that they simply give us a list of the page numbers of the documents that are going to be put? It will also shorten the time spent with Mr Ngcuka and how long we will need to come back on the adjourned day for the cross-examination.

CHAIRPERSON: Yes. Mr Varney, are you able to assist Mr Bhana in regard to that?

ADV VARNEY: Yes, we can do that, Chairperson.

20 CHAIRPERSON: Yes, now that we have sufficient time to burn for that.

ADV VARNEY: As the commission pleases.

CHAIRPERSON: Yes. And may I just get an indication from the evidence leader, what time span are we looking at in terms of inviting Adv Ngcuka to come back for his cross-examination?

ADV SEMENYA: Chair, we would think 14 days would be reasonable period for cross-examination to happen, but we are not inflexible about that.

CHAIRPERSON: Yes. Mr Bhana?

ADV BHANA: Chair, we have no difficulty with the time period, obviously it will be at a time that can accommodate us reasonably.

CHAIRPERSON: Yes. So two weeks would be sufficient time for you?

ADV BHANA: Yes, subject... [intervenes]

10 CHAIRPERSON: To prepare Mr Ngcuka for his cross-examination.

ADV BHANA: Indeed, subject to diaries and if we can also just ask them that Mr Varney's list of documents that are going to be put, if those can be given to us within the next... he obviously came today ready and knows the list, if it can be given to us within two days?

CHAIRPERSON: I direct that the list to be provided or to be furnished by Webber Wentzel be given to the Tabata attorneys by 4 March 2026.

ADV VARNEY: We shall do so, Chairperson.

CHAIRPERSON: Thank you. Mr Bhana, your witness.

20 ADV BHANA: Thank you, Chair. If I can have half a minute just to get organised?

CHAIRPERSON: Mr Bhana, would it be convenient for us to adjourn now for tea, in order to properly prepare Mr Ngcuka for his evidence in chief, before we proceed?

ADV BHANA: Chair, we are in your hands. We have, we can proceed now or we can take the tea adjournment.

CHAIRPERSON: I think it should be convenient to take a tea adjournment and reconvene rather at 11:05.

ADV BHANA: As it pleases you.

CHAIRPERSON: We will take a short adjournment.

[End of recording]

INQUIRY ADJOURNS

INQUIRY RESUMES

10 CHAIRPERSON: Mr Bhana.

ADV BHANA: Thank you, chair. Good morning, Mr Ngcuka. How are you today?

ADV NGCUKA: I am fine, and thank you very much.

ADV BHANA: Yes, thank you. Can I call you Adv Ngcuka?

ADV NGCUKA: No, call me Bulelani.

CHAIRPERSON: Shall we proceed to take an oath before you proceed, Mr Bhana?

ADV BHANA: Yes, thank you, chair.

20 CHAIRPERSON: Adv Ngcuka, are you going to take an oath or an affirmation?

ADV NGCUKA: Oath.

CHAIRPERSON: Please state your... An oath?

ADV NGCUKA: [No reply].

CHAIRPERSON: An oath?

ADV NGCUKA: Yes, an oath.

CHAIRPERSON: Please state your full name for the record?

ADV NGCUKA: My name is Bulelani Thandabantu Ngcuka.

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

ADV NGCUKA: So help me, God.

CHAIRPERSON: Thank you. Mr Bhana, your witness.

BULELANI THANDABANTU NGCUKA (duly sworn states)

EXAMINATION BY ADV BHANA: Thank you very much, chair. Adv
10 Ngcuka, you made a statement dated, it simply says February 2026,
but I believe it was furnished on the 24 February 2026.

ADV NGCUKA: That is correct.

ADV BHANA: You have that statement before you?

ADV NGCUKA: That is correct.

ADV BHANA: What I propose to do is just to give you a chance to go
very briefly through the initial portions of the statement, and when we
get to the sections that deal with the allegations of attempts to
influence or pressure the NPA, from paragraph 35, I will then put
particular paragraphs to you. So, firstly, do you confirm that the
20 statement that you made on 24 February 2026, do you confirm it
under oath?

ADV NGCUKA: Yes, I do.

ADV BHANA: Thank you. Can you then, very briefly, because a lot
of it is set out in the statement, and I might add, very impressively so,
just tell the Commission, firstly, about your personal background?

ADV NGCUKA: Yes. Well, I stated that I was born in Middledrift in the Eastern Cape, and that I studied at the University of Fort Hare, where I obtained my BProc degree. Whilst at the university, in fact, in 1997, when Steve Biko died in police custody, 1977, yes, we organised a memorial service. Sorry, chair.

CHAIRPERSON: Thank you, advocate...

ADV NGCUKA: I state that we, as students, we organised a memorial service to commemorate the death of Steve Biko in police custody. The rector of the University at the time refused for us to use
10 the great hall, which forced us to organise the memorial service, I mean, to have the memorial service at the sports stadium.

We were then arrested and sent to KuGompo, which is Fort Glamorgan in East London. We spent about a week there, and then we were charged with contravention of the Right of Assemblies Act, and sentenced initially to R30 or 30 days' imprisonment, which was later on appeal converted to a cautionary discharge.

I completed my degree, worked for a short while at Tanzania as a prosecutor, and then I was offered articles of clerkship by the late Prof Mukanga [?]. I served my articles with him, and at that time
20 the practise mainly focused on political trials and human rights cases.

Some of the cases that we handled were those of Joseph Mdluli, who also was killed by the police, and then the Biko family, we represented the Biko family, we represented the Mohapi family, who also was killed by the police in custody. So we handled a

number of trials, including the PAC trial in Bethal, that of Zeph Mothopeng.

Tiemo was killed by the police on the 19 November. I accompanied Mrs Mxenge to the mortuary, that is where we found Tiemo. The stab wounds in his body were just too much to bear. then helped by the family to organise his funeral.

I was detained on the 30 November 1981. I spent eight months in solitary confinement, and later I was then asked to give evidence against my colleagues, Patrick Maqubela and two others
10 who were charged with high treason. I refused to testify. I was sentenced to three years' imprisonment, which I served in various prisons, including Leeuwkop, Victor Verster, Helderstroom in Calidon, and so forth.

The day before I, two days before I was released in 1985, I was visited by Mrs Mxenge, who was then running the firm, together with my wife. We spent a day together, I was still in prison. The following day I was informed by the head of the prison that the woman who had visited me had died.

I later learnt that it was Mrs Mxenge who had died. I was
20 released on the 3 August, and from prison I was taken straight to the mortuary to visit Mrs Mxenge. Later, I left, I went to Switzerland. I joined the International Labour Office, I worked there in the Equality of Rights Branch called Egalité.

I participated in the anti-apartheid movement, and then I studied... Oh, I forgot something. When I was in prison I also

completed my LLB with Unisa, and when I was in Geneva, I then did my Master's at the University of Webster, focussing on international relations.

Again, when I was in prison, I forgot that, the Law Society made an application to have me struck off the roll. I resisted that, and successfully too, and so I came back into the country after I had studied in Geneva. I came back and then settled in Cape Town, I joined the firm of NJ Yekiso & Associates, back into doing political trials.

10 I was again detained in 1988, because as the UDF, we then decided to organise a celebration of Mr Mandela's 70th birthday. You might recall that that year the anti-apartheid movement in the UK had organised a big concert at Wembley Stadium. We decided to do the same thing.

I was then detained because I was the chairman of the Mandela Birthday Committee. I was detained under the State of Emergency, I spent a month or so in prison. I was released, went back to practise. In 1989 I was again detained, because at that time we organised the Defiance campaign, and I was one of the leaders in
20 the Western Cape of that Defiance campaign.

Detained again, spent another two months in prison. Upon my release I was served with a pending order confining me to Newlands Bastille district, which included Gugulethu. No visits between 6 in the evening and 6 in the morning. I could not be visited by more than two people at a time, and that was it.

And then in 1990, with the unbanning of the ANC, I was invited to serve on the ANC Constitutional Committee. We then drafted the ANC's position in the negotiations, I participated in the negotiations and then went to Parliament.

I was the chief whip of the majority party in the senate. I served in the various committees, I chaired the Joint Committee that appointed the Human Rights Commission, the Joint Committee that appointed the Public Protector, I served on those committees, I served on the Judicial Services Commission.

10 With the new constitution I also served on the Constitutional Assembly, I served on the Constitutional Committee of the Constitutional Assembly, I led the discussions on the judiciary. And so with the adoption of the new Constitution, I was appointed the Deputy Chair of the National Council of Provinces, and then a year later I was appointed the National Director of Public Prostitutions.

ADV BHANA: Yes, if you can just pause there for a moment. You were appointed on the 1 August 1998. And when did your term of office end?

ADV NGCUKA: I assumed office on the 1 August, and I left office on
20 the 31 August 2004.

ADV BHANA: Now, you wanted to include some of this background in the statement. And can you just explain to the Commission the reason why you wanted to put this before the Commission, and how this influenced your attitude to cases that had come before the TRC?

ADV NGCUKA: Thank you. Now, I thought it is important that the Commission understands who is the person who assumed this office, and what my background is and why I treated these cases, the TRC cases in the manner in which I did. Two things that I did not mention that I think are important.

Joseph Mdluli, I have mentioned, was killed by the police. Four of them were later charged, and one of those was a guy called Andy Taylor. And this was the guy who investigated us when we were detained. They were subsequently charged, and their case was
10 dismissed at the end of the State case, it was badly handled.

Later, you might know, there was a case of General Magnus Malan. They were charged just before 1994, they themselves. Again that case was dismissed at the end of the State case, it was badly handled. And so I took the decision that these cases, I did not want that to happen to them, and so that is why I had these cases handled in my office.

ADV BHANA: So what was your personal attitude or standing as to the vigour with which cases that emanated from matters revealed that the TRC should be prosecuted?

20 ADV NGCUKA: No, I mean, I really wanted those cases to be prosecuted, seriously so, I wanted the people who had committed those atrocities to be charged and sentenced, and that is the conviction that I had.

ADV BHANA: Yes. Just to pick up on a portion of your statement, in paragraph 15 of your statement, you were not served a notice to

appear before this Commission, or subpoenaed to come before the Commission. You have come before this Commission voluntarily so, is that correct?

ADV NGCUKA: That is correct.

ADV BHANA: And why do you do so?

ADV NGCUKA: Because I thought that it would assist the Commission if I gave the background to what happened and what I did. Because these cases were referred to my office at the time when I was the National Director, and therefore. I thought it is important
10 that account about what I did when I received these cases, and so to give the Commission the background to the work that I initiated.

ADV BHANA: And you are here to give frank evidence to assist the Commission in its work, is that correct?

ADV NGCUKA: That is correct.

ADV BHANA: Can I pick up at paragraph 18 of your statement, and if you can just elaborate on that? Basically, you deal with the position you found when you started at the NDPP, and in particular, we are interested in the position as to resources that were there and available.

20 ADV NGCUKA: Yes. Well, when I reported for work on the 1 August, I went to the Department of Justice and I met with the Director General, who told me that they have budgeted R6-million for my office. And that money was sufficient to pay for my salary and the few people that I will employ, that it will take me probably another six months or so to set up the office.

I had no office, nothing. So I went around looking for offices, and when I found the offices, there was no furniture, nothing, absolutely nothing. And there was a great expectation from government and from people that my office will solve some of the problems that were prevailing in the country at the time, and so I came into office literally with nothing.

I was fortunate in that my brother-in-law was working at the Reserve Bank. And the Reserve Bank had this habit of changing their furniture every five years, so I inherited the furniture from the Reserve
10 Bank, that is how I started my office.

And I was then forced to rely on other government agencies for the work that I had to do. So I had to foster relations with the Department of Justice, with the Police, with Intelligence and all other government departments and work very closely with them, and those are the people who helped me to set up the office.

ADV BHANA: Generally, can you talk about the level of availability of resources in your office at the time, and perhaps take us through to the end of your tenure in 2004? What limitations were there on resources? How readily were resources available? How did you
20 have to prioritise decisions?

ADV NGCUKA: Oh, yes, I mean, we really had a challenge. When I was in government, when we came into office in 1994, it is a matter of public record that we inherited a country that was bankrupt, had no money. And so I knew that, and so the resources that were available to us to set up these structures were very, very limited. And hence we

relied a great extent on cooperation with the other departments, sharing the resources, which were very, very limited, that was the problem.

ADV BHANA: How did that change, if at all, by the time you left office in 2004?

ADV NGCUKA: No, it had not changed, but it had improved.

ADV BHANA: Considerably, was there still tension, fighting for resources to investigate different types of crime?

ADV NGCUKA: There were serious tensions. We used to fight a
10 great deal with Treasury, because those guys, they will tell you that they are trained to say no whenever we ask for money, so, indeed, that was a problem.

ADV BHANA: And did that place a constraint on how resources were allocated, choices had to be made, and did that scenario persist by the time you left in 2004? I understand it might have gotten a bit better because you fought for resources and you did a whole lot of things. But was there ever a position where there were ample resources available to do whatever was necessary to be done in your office?

20 ADV NGCUKA: No, no, we did not, we did not have enough resources, even up to the time I left. I mean, I make the point, for example, that when I established the Specialised Commercial Crimes Unit, we had a big problem. Commercial cases were not being prosecuted because they did not have experienced investigators, and we had files that were collecting dust here in the Johannesburg office.

And so I had to work with the Business Against Crime to establish the courts, the first court that we set up was in Pretoria. And also we had to employ investigators from the private sector, and I had to use the Business Against Crime for us to be able to do that work. So that speaks to the availability of resources.

ADV BHANA: Yes. In your statement in paragraph 19 you say:

10 "I inherited a prosecution service which was characterised by low staff morale, which lacked credibility and legitimacy in the eyes of the majority of society, which viewed the prosecution services as part and parcel of the State's oppressive State machinery.

There was also high levels of criminality, particularly in areas such as the Western Cape. In that year there were 166 pipe bomb incidents and no arrests or prosecutions. In KwaZulu-Natal there was extreme political violence, and Gauteng experienced a high level of car hijacking."

20 Can you against that give the Commission a feel for the different areas of criminality, if I can call it that, which you had to turn your attention to and devote limited resources to?

ADV NGCUKA: We had serious problems in the Western Cape, gangsterism, as well as – there was an organisation called PAGAD, which started off fighting gangsters, but at the end, they themselves were the perpetrators of violence in that area. I will give you one

example. There were a number of bombs that were exploding, there was one that exploded in the Hollywood Cinema in the Waterfront. Again we also had one of the investigators in that case who was killed, but the magistrate, who also was killed, were the same people in the Western Cape.

And there were no successful arrests or prosecutions, and so I had to start a new unit called the Investigating Directorate on Organised Crime and Corruption, where I had to work with the police and the intelligence people, take those and put them under my wing,
10 working flat out.

I started what was then known in South Africa as "prosecution-led investigations", because in the past they were working separately. The investigators would go on their own, they would investigate a case, after a year or two and then bring the docket to the AG's office. It would take another six months starting the docket and then issuing instructions, which delayed matters.

So I changed that, I brought all those under one roof, the Intelligence, the investigators, analysts and prosecutors, all working together, and we succeeded in ending that violence in the Western
20 Cape. At the end of the day, when we were done, we had probably more than 100 people who had been arrested and charged, and others served life imprisonment.

Equally, we had experienced serious levels of violence in KZN, particularly in an area called Richmond. We had in the space of three weekends more than 100 people killed, you know. We worked

on that, I established another entity in KZN that is focused exactly using the same model, focused on dealing with those, and I appointed a guy called Chris McAdam to lead that investigation. They did very well, we again were able to succeed, to find those people, prosecute them, and have them sentenced, you know, so we dealt with those issues.

Similar things happened here in Gauteng with car jackings. In the past we had focused just on arresting the people who were behind, who were doing the hijackings. But when we started, we
10 said, no, let us look for the kingpins, because the guys were running around taking the cars, they sell them somewhere. There is somebody who is organising, who order these things, and we focused on that. And again I am happy to say we were very successful with what we did.

ADV BHANA: The picture that emerges is a number of priority areas requiring prosecution, competing areas, competing for limited resources.

ADV NGCUKA: That is correct.

ADV BHANA: Is that the environment which you referred to in your
20 statement, in which you confirm was to be found at the NPA while you were there?

ADV NGCUKA: That is correct.

ADV BHANA: You then in your statement deal with TRC matters, and perhaps you can very briefly take us through that, essentially, paragraphs 25 to 34 of your statement?

ADV NGCUKA: Yes. I think it is important to note that when I set up the NPA, I inherited the people who were working there, and some of these people are the ones who were prosecuting us when we were reaching the struggle. And so I had to deal with these people that I believed, correctly so, that indeed were part and parcel of the system that was oppressing us, and so I had to work with them.

So I was worried, I was worried that I could not have the very same people to prosecute the TRC cases. And so when I received the report from the TRC, the first thing I did was to appoint then
10 Vincent Saldanha, who I knew from Cape Town, I had worked with him ...(intervenenes)

ADV BHANA: Is that Judge Saldanha now?

ADV NGCUKA: That is Judge Vincent Saldanha now, I knew him very well. And I then appointed somebody else also from the office, who was based in the Johannesburg office, Brent Ferreira. I asked them to do an assessment of these cases because I needed to have a record and know which cases were ready for prosecution, which cases needed to be further investigated, what the shortcomings were, and so forth.

20 They did that, and then they gave me a report. Based on their report, we then agreed that we needed to have a specialised unit in my office that will give focused attention on the TRC matters, which is why we then created what we then called the Priority Crimes Unit. And I appointed Anton Ackermann to head that ...(intervenenes)

ADV NGCUKA: Yes, perhaps...

ADV NGCUKA: Anton had just finished doing the long case that he was involved with involving Wouter Basson, so I then appointed him to do that.

ADV BHANA: Yes, perhaps just before we go further on that. In paragraph 27 of your statement you say, you firstly talk about the Human Rights Investigative Unit, which we have abbreviated as HRIU. And you then say:

10 "The HRIU report identified challenges in several high-profile cases. Notwithstanding the rejection of several amnesty applications by the TRC, the available evidence in many cases was not, in the unit's assessment, sufficient to sustain a successful prosecution in a number of these cases. In some cases offences had prescribed, in others witness availability or reliability presented insurmountable obstacles. Many additional matters could not be processed to prosecution stage due to the pending amnesty committee applications brought by suspects,

20 further delaying decision-making."

ADV NGCUKA: That is correct.

ADV BHANA: You obviously confirmed that, but perhaps can you just elaborate on that?

ADV NGCUKA: Yes, no, no, no, I do confirm that. There were some of the cases, you take, for example, you take the Biko case. In that

case we realised that we did not have sufficient evidence to get a conviction. We knew, we all knew that the police had killed Steve, we knew that.

And so to go and take those police to court when we did not have sufficient evidence, they would have been acquitted, and we would have ended up with "egg on our faces". To go and prosecute a case that you know you are going to lose, the evidence was just not enough for us to do that, so those were some of the challenges.

ADV BHANA: And I presume channelling limited resources to
10 prosecuting those cases which you took a view would not, you would not get a prosecution on?

ADV NGCUKA: I mean, most importantly, counsel, was that you are going to go and take people to court well knowing that you are going to lose. It would have been wrong.

ADV BHANA: Yes. In paragraph 28 you deal with Mr Silas Ramaite, and then you say you decided that all TRC cases should be brought to the Special National Projects Unit (SNPU), the Scorpions, headed by Chris McAdam. Is there anything you wish to elaborate on in that respect?

20 ADV NGCUKA: Yes. Silas informed me that there were these cases that were, these dockets in fact, that were in the Pretoria office, these are old cases, and that nothing was being done about them. Nobody was paying any attention to those cases, and so we then realised that it is possible that also in other DPP offices throughout the country, there may well be some of these cases that are there and which are

not getting the attention they deserve. So it is on that basis that I then issued the directive that all these TRC cases must be centralised and be brought to my office.

ADV BHANA: And classified as priority crimes, as you state in paragraph 31 of your statement?

ADV NGCUKA: Correctly so.

ADV BHANA: And you say:

10 "That was to ensure a single, specialised, nationally coordinated approach to prosecutions emerging from the TRC."

ADV NGCUKA: Correct.

ADV BHANA: In paragraph 32 you say:

"After assessing evidentiary sufficiency, witness availability, legal viability and the prospects of a constitutionally compliant prosecution, the PCLU identified approximately 21 cases warranting further investigation."

ADV NGCUKA: Yes.

ADV BHANA: You confirm that?

20 ADV NGCUKA: Yes, I confirm that.

ADV BHANA: And I do not know if it is from those 21 cases, but by the time you left office, I understand at least six cases were taken to court, so to speak, of those cases that the office identified warranting further investigation.

ADV NGCUKA: That is correct.

ADV BHANA: In terms of the benchmark and the environment that was at the NPA, in your assessment, was that a good track record or not?

ADV NGCUKA: Oh, yes, that was good work that had been done. The guys had worked flat out, given the limited resources that they had. I was satisfied with the work that the unit had performed at the time, I was very impressed with the work that they did.

ADV BHANA: We then get to the section that deals with the allegations of attempts to influence or pressure the NPA to stop
10 investigations or prosecutions during your tenure. And can you deal with paragraph 35 of your statement, please?

ADV NGCUKA: No attempts during my time, nobody tried to do anything, I mean, there were no such attempts at the time. But what I can then say, and probably we are going to get to it, we were invited into a meeting that was convened by the Director General of the Department of Justice to look into amending the prosecutorial policy insofar as it dealt with the TRC matters.

My office was represented then by one of my advisors, Lungisa Kosi, and another guy called Gerhard Nel. Gerhard Nel's
20 responsibility in my office was to prepare legislation that had to go to Parliament, he was specialising, he was drafting legislation. We discovered early on that it is important for us as the NPA, if any legislation is to be passed, that we are consulted and that we contribute to it, and so we created that capacity in my office.

So Gerard and Lungisa went to that meeting and they came back and reported to me what had transpired in the meeting. And their view, which I accepted, was that there was no need for us to participate in that forum, and that there was no need for us to change the prosecutorial guidelines that we had, and that is it.

ADV BHANA: Yes. In paragraph 35 you also state:

10 "I am also not aware of any collusion by any member of the NPA with any such attempt to stop the NPA from investigating or prosecuting TRC cases."

ADV NGCUKA: Nothing of the sort happened during my tenure.

COMMISSIONER KGOMO: Mr Ngcuka...

ADV NGCUKA: Yes, sir.

COMMISSIONER KGOMO: The invitation by the Director General that you have referred to, you do not have a date for that? Were any minutes taken?

20 ADV NGCUKA: I do not know. Remember, Commissioner, I did not attend that meeting myself, And so my colleagues had gone to the meeting and they came back and reported to me, and that was it, as far as I am concerned, the matter ended there. So I was not aware of any minutes or dates. I cannot remember the date, but it would have been somewhere in 2003.

COMMISSIONER KGOMO: Yes.

ADV BHANA: Thank you, Commissioner. Adv Ngcuka, in paragraph 36, you say:

"I have in the above background set out the context and circumstances in which the office of the NPA was established within an evolving prosecutorial environment, at a time when South Africa was establishing, for the first time, a single independent national prosecuting authority. This required significant institutional reform, the development of new systems, policies and standards, and the consolidation of prosecutorial functions previously dispersed across apartheid-era structures."

ADV NGCUKA: That is so.

ADV BHANA: And you go on to say in 37:

"The prosecutorial terrain during the early 2000s was new, complex, constantly evolving, necessary to build national capacity, ensure consistency, establish specialised units, restore public confidence in the prosecuting authority. These institutional priorities required careful allocation of limited resources and personnel."

ADV NGCUKA: I confirm that.

ADV BHANA: Do we understand that the competition for resources was not just across these very high-profile crime areas, but also on an administrative front that there were huge challenges in terms of resources?

ADV NGCUKA: That is correct.

ADV BHANA: And you say in 38:

"Within this context, the NPA was simultaneously confronted with high-profile resource-intensive matters, including complex commercial crime prosecutions, organised crime syndicates, national security cases and international law matters arising from South Africa's obligations under the Rome Statute."

10 This reinforces what you said earlier by way of the examples that you gave.

ADV NGCUKA: Yes.

ADV BHANA: I just want to go back to an aspect. In paragraph 35, you said, you were not aware of any collusion by any member of the NPA or any attempt to stop an investigation or prosecution. Had there been such an attempt, I am postulating a hypothetical, had there been such an attempt or an approach made to you, what would your attitude have been and why?

20 ADV NGCUKA: You know, when you are the national director, you get all sorts of approaches. People come to you every other day, try to influence you, to persuade you, do this, can you help me, can you have this case withdrawn, can you do that. You listen and you tell them where to get off.

 And so if there had been such an attempt, I would have been able to say, no, no, this is not how things work, this is what works,

and this is what I will do. At the end of the day, the decision remains mine, and mine alone, and I would be able to say, no, no, no, I do not go along with this, and I did that successfully throughout. But I was never even approached on this one to say, let us, can we do this, no. At the time I left, no one had approached me. I was very sure about these cases, sir, given my ...[intervenes]

ADV BHANA: This being TRC cases?

ADV NGCUKA: TRC cases, yes, given my relationship with the victims of these cases. You know Mrs Mxenge, she was killed on the
10 2 August. A week before she was the main speaker at the funeral of Goniwe and Calata in Cradock, and later she was killed. And so this is something that I hold very dear, and it is something that I wanted to do. And her killers have never been found, never been found, and those are things that I wanted to do.

ADV NGCUKA: And how would that position or that attitude, that sympathy have factored into any decision had you been appointed to be influenced not to proceed with cases?

ADV NGCUKA: Never, never. You know, this thing about political interference, it would happen if you allow it, if you allow it as the
20 National Director, then of course there will be. But at the end of the day what I have been saying is, the decision is yours and yours alone, and you tell people, no, this is not how this is going to work. I mean, I can give you a number of examples about a number of other cases where people have tried to persuade me not to take action, sending lawyers, advocates, making representations ...(intervenes)

ADV BHANA: Would those be non-TRC related cases?

ADV NGCUKA: Yes, yes, but I was able to rebuff all those attempts and say no, so it never happened during my time. If it had happened, I would have been able to say no, no, sorry, it is not going to happen.

ADV BHANA: Yes. And in paragraph 39, if we can just go back to the statement. You say:

10 "The TRC cases presented particular evidential and operational challenges. They were decades old, they were decades old, relied heavily on witnesses whose memories had faded or were no longer available and required intensive investigation in an environment where both investigative and prosecutorial resources were severely constrained. Evidence had also been destroyed in many cases..."

And then in paragraph 40 you say:

20 "Decisions that were taken at the time were not a function of political preference or external influence. They were driven by the need to ensure that prosecutions proceeded only where there was a reasonable prospect of success, where the evidential foundation could sustain a successful prosecution in accordance with prosecution policy and policy directives.

The limited progress on certain TRC cases must

therefore be understood within the broader context of the NPA's developmental stage, the competing demands on its scarce resources and the operational complexities inherent in prosecuting apartheid era crimes decades after they occurred."

Can you perhaps elaborate for the commissioners on those aspects?

ADV NGCUKA: I thought I had already referred, for example, to the
10 Biko case, you see, which really speaks to this paragraph, because these were the challenges that we had, and these were the shortcomings that we experienced.

ADV BHANA: Yes. Can we then deal, in paragraph 41 you round this off by saying:

"At no stage did I receive, tolerate or act on any instructions designed to shield any individual organisation or political actor from lawful prosecution."

ADV BHANA: Do you confirm that again?

20 ADV NGCUKA: I do.

ADV BHANA: And the decisions that you say:

"Were taken were consistent with the NPA's constitutional mandate informed by its prosecutorial policy, evidential sufficiency, institutional capacity, and the need to build a

functional and credible NPA."

You confirm that?

ADV NGCUKA: Yes, I do.

ADV BHANA: Can you just then round this aspect off, and you have briefly spoken about it, with what you state in paragraph 42:

10 "For years as an activist and practising attorney, I acted for families of those murdered by apartheid police. That work was not peripheral to my professional life and my very being. As NDPP, I was at all times fully committed to ensure there was accountability for the grave human rights violations of the past."

ADV NGCUKA: Correct.

ADV BHANA: Lastly, under the heading:

"The response to the allegation that you did not approach the president."

In paragraph 43 one deals with certain averments that arise in the Calata affidavit. Can you speak to that?

20 ADV NGCUKA: Yes, I mean, there is a letter that was written by Commissioner De Beer to Anton. There is a letter that was written by Commissioner De Beer, who was in charge of detectives, written to Anton Ackermann, suggesting that he or I should approach the president, for the president to decide who should investigate these cases. I stated that I found that to be nonsensical because the

president's determination was very clear. These cases were referred to my office and they were handled in my office.

There was, commissioners, I mean, a challenge, really, that we had throughout the work of the Scorpions. There was tension between the Scorpions and the police. There was a view held that the Scorpions were receiving better media attention, that they were getting better resources, and so these tensions were there.

And yet, in the final analysis, I was responsible for the prosecution of all cases coming from the police, from the DSO, from
10 everybody. And so it was in the interest of justice that I made sure that even the police, wherever they were, they were successful in the work that they did. And so these challenges and these tensions would manifest themselves one way or the other, and it was important for me that I tried to manage them.

This was one of those, because the police here were refusing to give Anton, Mr Ackermann the investigators that he was requesting, and used this thing of saying, "Go to the president". There was no need to go to the president for that, the determination had been made and it was very clear, and so they were just refusing
20 to assist, you know, so ja.

ADV BHANA: Finally, can you, it is a long time ago and obviously one is not requiring absolute accuracy, but at the height of the time that you were there, what was the highest number of investigators you can recall you had available?

ADV NGCUKA: We probably had roughly about 300, between 300 and 350 investigators, about 55 lawyers, somewhere there, 50, 55, and about 30 or so analysts, and about five or so accountants, so that was the number, they were very few.

ADV BHANA: Yes. Can you give the Commission, I mean, that is an abstract number, but routing it with what was happening on the ground, how thinly were those investigators spread, those 350 investigators?

ADV NGCUKA: Very, very, very, very, very thinly. You see, the
10 difficulty that, well, it was not a difficult, I mean, what we introduced were teams. We did not have one single investigator investigating a case, people worked as teams. So you therefore have a team that will have prosecutors, analysts, investigators, all working together in one particular project.

That is why it was very difficult just to take one person out of the team, because we had teams, people were working as teams. And everybody wanted all their cases to be investigated by the DSO, and it just was not possible, we did not have the numbers to do that. It was very, very difficult to decide which cases to take and which
20 cases not to take. All of them deserved the attention, but it was challenging.

ADV BHANA: Thank you, Adv Ngcuka. Chair and members of the Commission, that is all that we wish to lead on. And we are in your hands whether you want to put questions now to Mr Ngcuka or wait.

CHAIRPERSON: Thank you, Mr Bhana. Mr Semenya, are there any questions, or Mr Varney, any questions of clarifications?

ADV VARNEY: Chairperson, I think it is probably best that we do our questions all at the same time, both by way of clarification and cross-examination.

CHAIRPERSON: Yes, thank you. Mr Semenya?

ADV SEMENYA: We also defer to cross-examine after cross-examination by the Calata Group, chair.

CHAIRPERSON: Thank you. Ms Moroka, sorry about ...(intervenes)

10 ADV MOROKA: She was going to come.

CHAIRPERSON: Ah, Ms Moroka, I am used to you sitting that side, so I did not see you seated on this side. You are seated on the wrong side.

ADV MOROKA: The intention, chair, was to confuse.

CHAIRPERSON: Yes.

EXAMINATION BY ADV MOROKA: Which has succeeded. Yes, if I may, chair. Mr Ngcuka, can I take you to paragraph 20 of your affidavit?

ADV NGCUKA: All right.

20 ADV MOROKA: And whilst you put a finger to that paragraph, I want to also refer you to paragraph 40 of your affidavit.

ADV NGCUKA: Thank you.

ADV MOROKA: I am going to read to you what the Constitution says about prosecutorial policymaking.

ADV NGCUKA: Thank you.

ADV MOROKA: And ask you for your understanding of what this means. It is section 179(5).

FEMALE SPEAKER: Which is paragraph?

ADV MOROKA: It reads as follows:

"The National Director of Public Prosecutions must determine with concurrence of the Cabinet Minister responsible for the administration of justice."

And I want your understanding of what is meant by:

10 "With concurrence of the Cabinet Minister prosecution policy which must be observed in the prosecution process."

Now, that section of the Constitution read with paragraph 20 of what you have told the Commission, I just wanted to understand what was your understanding of what were your responsibilities having regard to what you say at 20 and what you say at 40, paragraph 40 of your affidavit?

ADV NGCUKA: You must also read the National Prosecuting Authority Act, I just cannot remember which section now, which says:

20 "The Minister of Justice has the final responsibility for prosecution policy."

So what it therefore means is that, in determining the policy, one has to work very closely with the Minister of Justice. So that was my interpretation of it, and that is how it worked, and it worked very well in practise.

ADV MOROKA: It talks, the section talks about "concurrency", and the dictionary meaning of "concurrency", if I may, means in agreement.

ADV NGCUKA: Correct.

ADV MOROKA: So I would assume the National Director of Public Prosecutions and the Minister must agree on policy?

ADV NGCUKA: That is correct.

ADV MOROKA: And am I might understand that does not amount to interference if the Minister were to say: "Let us talk about this"?

10 ADV NGCUKA: No, no.

ADV MOROKA: Thank you. Those are my ...(intervenes)

ADV NGCUKA: In fact, in fact, to ensure that there is smooth functioning of the system, it is very important that you work very closely with the Minister.

CHAIRPERSON: Thank you, Ms Moroka. Ms Rantho.

ADV MOROKA: Sorry, if I may, one last question.

CHAIRPERSON: Yes, Ms Moroka.

20 ADV MOROKA: There was a time in our lives, Mr Ngcuka, when we worked very closely together, so I can ask this question. The building that housed the NDPP, what was it called?

ADV NGCUKA: It is Victoria and, it is VGM Building, Victoria and Griffiths Mxenge Building, named after the two of them.

ADV MOROKA: Thank you.

CHAIRPERSON: Ms Rantho.

ADV RANTHO: Good morning and thank you, Commissioners. I hope today, Commissioner, I have got it right. Am I audible enough?

CHAIRPERSON: Yes.

EXAMINATION BY ADV RANTHO: Thank you, Commissioners. Good morning, Adv Ngcuka. Mine is about just two questions relating to paragraph 43 of your affidavit.

ADV NGCUKA: Sure.

ADV RANTHO: And then I just seek clarity as to whether my understanding is correct in terms of your version, that you are
10 informing the Commission that the issue of De Beer's letter was more of lack of adherence to intergovernmental relations by State organs rather than anything else. Is that how...? (intervenes)

ADV NGCUKA: That is correct.

ADV RANTHO: And then another one, just the last one that I thought maybe it is left hanging, the issue of your last sentence where you said you then assigned, I think, Adv Ramaite and Adv Leonard McCarthy to resolve the issue. So we are just interested as to outcome, is it what you understood, that you cannot tell the Commission as to whether such issue was ever resolved or there was
20 any meeting in that regard by (indistinct)?

ADV NGCUKA: Yes, I mean... oh, sorry, sorry, sorry. Yes, I mean, the issue really has always been the availability of the investigators. And so Anton wanted the investigators and he went to the police, he could not get. And so he went to the Scorpions and there was a tiff to

and fro between him and Jeff Ledwana, and I said, guys, deal with these issues.

So as far as I am concerned, those issues were dealt with because I was never again informed after that that the challenges, that there are problems. At no stage did anybody come back to me and say, sir, these are the problems. So I said to the guys deal with these issues, and I was satisfied that the matter had been attended to.

ADV RANTHO: Thank you, Commissioners.

10 CHAIRPERSON: Thank you, Ms Rantho. Ms Ntloka ...(intervenes)

ADV MOROKA: Madam chair, my apologies, please. There is one last question that I forgot to ask.

CHAIRPERSON: Yes, Adv Moroka.

ADV MOROKA: Mr. Ngcuka, in paragraph 82.2 of Mr Calata's affidavit, I am sure you have not seen it, I am not sure if you have, reference is made to the D'Oliveira Unit.

ADV NGCUKA: Yes.

ADV MOROKA: Are you able to tell us anything about that unit? And if I may tell you why I am asking the question, it is because we have
20 had evidence in this Commission that it was absolutely successful, it was a wonderful unit. You talked to us about the difficulties that you encountered as the National Director, and the comparison has been drawn that it succeeded, where you did not succeed.

ADV NGCUKA: Thank you. The D'Oliveira unit, I inherited that unit. It is the unit that did the cases of De Kock, Wouter Basson and

others. Indeed, they did good work, they did very good work. And I then integrated them into the Scorpions, and they carried most of the work that they were doing there, they took it back into the Scorpions.

This is the first time that I hear that we did not succeed with our work. It is a matter of public record that the Scorpions and all the institutions that I ran during my time did very well, and so whoever says that probably is not speaking, telling the truth.

ADV MOROKA: My apologies, can I be more specific, with regards to the TRC cases?

- 10 ADV NGCUKA: No, they were not investigating the TRC cases, the D'Oliveira Unit did not. In fact, in fact, the reason why we took some of these cases from the Pretoria office was because they were not being attended to, which is why we brought them into my office, so that they could receive the attention they deserved, so, no, no, they were not handling those cases.

- I mean, some of the cases which that unit were dealing with when I took them over will include the Helderberg. Remember the plane that crashed outside of Seychelles, the crash, the President Samora Machel plane crash, the disappearance of Rocks Dlamini,
20 they were handling all those sorts of cases.

And so they continued to do that, but unfortunately we could not succeed with those investigations, but I inherited, I inherited that unit and I incorporated it into the Scorpions. There were good people who did a lot of good work.

CHAIRPERSON: Are you through, Ms Moroka?

ADV MOROKA: I am through, thank you, chair, my apologies.

CHAIRPERSON: Thank you. Ms Ntloko.

ADV NTLOKO: Chair, my leader is here today.

CHAIRPERSON: Oh, Mr Gwala.

ADV GWALA: Good morning, commissioners. Chairperson, we do not have clarification questions at this stage.

CHAIRPERSON: Yes.

ADV GWALA: We would however reserve a right to do after cross-examination, if needs be.

10 CHAIRPERSON: Okay.

ADV GWALA: By, Commissioner.

CHAIRPERSON: Am I missing anyone?

ADV VARNEY: Chair, we do not have any questions, as mentioned, but before I forget, Chair, may I be excused from the proceedings tomorrow? I have to sit with Adv Anton Ackermann to prepare for the leading of his evidence for later in this week.

CHAIRPERSON: Yes.

ADV VARNEY: But my learned junior and the rest of my team will be present.

20 CHAIRPERSON: Okay, thank you for alerting us to that.

ADV VARNEY: As the chair pleases.

CHAIRPERSON: Thank you, you are excused for tomorrow. Adv Ngcuka, we thank you for having availed yourself to come and give evidence before this Commission it is greatly appreciated. As has been arranged this morning, you will be recalled to come and be

cross-examined by Mr Varney on behalf of the Calata Group. So we hope you will make yourself available for cross-examination, otherwise we thank you for having come to give evidence. You are excused as a witness.

ADV NGCUKA: Thank you, thank you, Commissioner.

CHAIRPERSON: Mr Semenya.

ADV SEMENYA: Chair, the next witness is going to present evidence virtually. For that reason, might I just ask for a standdown of 10 minutes to get the logistics in place?

10 CHAIRPERSON: We will take a short adjournment.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Semenya.

ADV SEMENYA: Thank you, Chair. The next witness is scheduled for tomorrow. We thought it would provoke no controversy to have the witness today, but it does. So might the witness stand over for tomorrow?

CHAIRPERSON: Yes. These proceedings are adjourned until tomorrow at 10 o'clock.

20 ADV SEMENYA: As the Commission pleases.

INQUIRY ADJOURNS UNTIL 3 MARCH 2026

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