

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

HELD AT:

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

BEFORE:

COMMISSIONERS:

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

EVIDENCE LEADERS:

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

REPRESENTATIVES

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

15 APRIL 2026

DAY 32

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

PROCEEDINGS ON 15 APRIL 2026

CHAIRPERSON: Mr Semenya.

ADV SEMENYA: Good morning, Chair and Commissioners. Today we have Ms Batohi to give her evidence and I assume Mr Gwala will be leading the witness' evidence.

CHAIRPERSON: Thank you. Is that so, Mr Gwala?

MR FENI: That is correct, Chairperson.

CHAIRPERSON: Thank you. Ms Batohi, are you going to give your evidence under oath or affirmation?

10 ADV BATOHI: Under oath, Chairperson.

CHAIRPERSON: Yes. 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 BATOHI: I do so help me God.

CHAIRPERSON: Thank you. Mr Gwala, your witness.

EXAMINATION BY ADV GWALA: Thank you, Chairperson. Good morning, Ms Batohi.

ADV BATOHI: Good morning, Advocate.

20 ADV GWALA: Until recently, you were employed as the National Director of Public Prosecution, is that correct?

ADV BATOHI: That is correct. I retired on the 31st of January this year.

ADV GWALA: When did you assume that position?

ADV BATOHI: On the 1st of February 2019.

ADV GWALA: All right. Once you were the Director of Public

Prosecution, and in particular in September 2025, you received a letter from the evidence leaders, is that correct?

ADV BATOHI: That is correct. It was a National Director.

ADV GWALA: Before we get into the details of your evidence, can we get to that letter?

CHAIRPERSON: Mr Gwala, please raise your voice and bring the mic closer to you. Thank you.

ADV GWALA: Is it better now?

CHAIRPERSON: Yes.

10 ADV GWALA: Thank you. Before we get into the details of your evidence, Ms Batohi, I would like just to go through that letter. Commissioners, it is in the bundle, in page SB00001. We will not read the entire document, we just want to contextualise our evidence. Have you found that page, Ms Batohi?

ADV BATOHI: I do, yes.

ADV GWALA: It is a letter addressed to you dated 22 September 2025.

ADV BATOHI: That is correct.

ADV GWALA: And it is signed by the evidence leaders.

20 ADV BATOHI: That is correct. Electronically signed.

ADV GWALA: Electronically signed. You are aware of the terms of reference of this Commission, and I will not ask you to read through that. But can you just take us through paragraphs three, four and five for contextualising your evidence?

ADV BATOHI: Thank you. Should I read that into the record?

ADV GWALA: Yes.

ADV BATOHI: Paragraph three:

"At the relevant time from 2019 to date you served as a National Director of Public Prosecutions. Prior to which you had served as the Provincial Director of Public Prosecutions from 2000 to 2009. In those capacities you would had access to information concerning decisions, discussions or policies affecting the investigation and prosecution of TRC related cases."

10 Paragraph four:

"The Commission therefore request your assistance with furnishing any material in your possession or to which you had access during your tenure that maybe relevant to its inquiry. This includes memoranda, correspondence, minutes of meetings or other audio and or documentary records relating to the TRC cases referred to by the Amnesty Committee for investigation or prosecution."

Paragraph five:

20 "In addition to providing such relevant material, the Commission requests, in the form of an affidavit, your own account of any discussions, decisions or considerations during your tenure as a Provincial Director of Public Prosecutions that may bear on the matters set out in the above-mentioned paragraphs 1.1 and 1.2 of the terms of reference. Such a statement will

assist the Commission in understanding the context within which decisions relating to TRC cases were taken."

ADV GWALA: All right. In paragraph five, the correspondence requires that you furnish an affidavit. Did you prepare an affidavit in response to that?

ADV BATOHI: That is correct I did.

ADV GWALA: Commissioners, the affidavit of Ms Batohi is uploaded, but it was not paginated at the time I last checked. What we propose
10 to do, we will refer to the tagged pages, should we need to.

CHAIRPERSON: At the bottom of the... (intervenes)

ADV GWALA: At the bottom of the page.

CHAIRPERSON: Of the papers.

ADV GWALA: But particularly, we will refer to the paragraphs.

CHAIRPERSON: Yes.

ADV GWALA: Where we go through a paragraph.

CHAIRPERSON: Yes.

ADV GWALA: Yes. Ms Batohi, your affidavit that is before you is from pages one to page 26.

20 ADV BATOHI: That is correct.

ADV GWALA: Before we confirm it, are there corrections that you would like to make to your affidavit?

ADV BATOHI: I think there is one or two. Counsel can direct... (intervenes)

ADV GWALA: Can I take you to paragraph 21 at page nine,

Chairperson and Commissioners.

ADV BATOHI: Yes.

ADV GWALA: Have you found the page?

ADV BATOHI: I have.

ADV GWALA: At the bottom, at the bottom of that paragraph, let us take the last sentence. It reads:

10 "During this time however internally the NPA continued to have virtual meetings and the PCLU conducted an audit of every death in detention case reported by the TRC identifying 59 cases for investigation in addition to those already under investigation."

That is what it says. But there is something you want to correct.

ADV BATOHI: That is correct.

ADV GWALA: You may go ahead.

ADV BATOHI: Chairpersons, Commissioners, I would like to correct, change the 59 to 55, cases for investigation. In addition to, and to add 59 already under investigation. And to delete the word "Those".

20 ADV GWALA: Thank you. Thank you, Ms Batohi. There is another typo that you wish to correct in paragraph 64 at page 24.

ADV BATOHI: That is correct.

ADV GWALA: The last sentence, Chairpersons and the Commissioners, in page 24, reads:

"Challenges including limited cooperation by other organs of state."

It should read:

"Challenges including but not limited to."

That is the correction that the witness wishes to make.

ADV BATOHI: That is correct.

ADV GWALA: Thank you, Commissioners. Other than those corrections, you regard this affidavit as the evidence that you want to present before this Commission.

ADV BATOHI: That is correct, Chairperson.

10 ADV GWALA: The signature that appears at page 26 is your signature.

ADV BATOHI: That is correct, at the top right-hand corner.

ADV GWALA: In what capacity did you depose to this affidavit?

ADV BATOHI: As the National Director of Public Prosecutions at the time.

ADV GWALA: Yes. What you have done, you have just covered paragraphs one to three of your affidavit. May we now proceed to deal with what you state in your affidavit in detail?

ADV BATOHI: Thank you, counsel.

20 ADV GWALA: In paragraph four of your affidavit, you mention your career path for the period 2000 to 2009. And you state that during that time you were the Director of Public Prosecutions in the province of KwaZulu-Natal.

ADV BATOHI: That is correct.

ADV GWALA: But surely your career as a prosecutor did not start in 2000.

ADV BATOHI: That is correct.

ADV GWALA: When did your career as a prosecutor begin?

ADV BATOHI: I would refer to myself as a career prosecutor. I started prosecuting at the Chats wood Magistrates' Court in December of 1986. And then proceeded to the office of the Attorney General, as it was known at the time, in 1992 as a junior state advocate. And then worked at the, as it was known, the AG's office at the time. And then in 1995, I was appointed as one of two prosecutors to the Investigation Task Unit, which was a unit that was
10 set up during the tenure of President Mandela, just post-apartheid, to investigate allegations of hit squad activities in the Kwa-Zulu police in particular.

I was at this unit for about two years. And I should disclose for transparency, I worked at the time with Advocate Howard Varney, who was a member of the Board. I returned to the Attorney General's office in 1997. In 1998, I was appointed a Deputy DPP then. The position of Attorney General had changed to Director of Public Prosecutions. That was after the NPA Act in 1998 was promulgated. I was then appointed as the head of the then Scorpions, the DSO in
20 Kwa-Zulu Natal. And was appointed in 2000 as the DPP for Kwa-Zulu Natal.

ADV GWALA: The position you held until 2009?

ADV BATOHI: That is correct.

ADV GWALA: What happened after 2009?

ADV BATOHI: In 2009, I left South Africa to take up a position at the

International Criminal Court in The Hague, as the Senior Legal Advisor to the Prosecutor, that is the Chief Prosecutor of the ICC. I remained there until 1 February 2019. That is nine years and three months. When I returned to South Africa to take up the position of NDPP.

ADV GWALA: All right. Let us deal briefly with your period when you were the Director of Public Prosecutions in Kwa-Zulu Natal. Did your office deal with TRC-related cases during your time?

ADV BATOHI: No, we did not. The TRC matters at the time were
10 centralised at the National Office in Pretoria. And the PCLU, the Priority Crimes Litigation Unit, dealt with all the matters relating to the TRC.

ADV GWALA: And no cases were handled at the Provincial level?

ADV BATOHI: That is correct. Not that I am aware of. If there were any of the provinces, then the PCLU staff dealt with those matters.

ADV GWALA: Yes. But personally, were you ever involved in any discussions or decisions or considerations relating to the TRC cases during that time when you were the Director of Public Prosecutions?

ADV BATOHI: No, I was not.

20 ADV GWALA: Were you aware of any discussions or decisions or even considerations relating to such cases whilst you served as NDPP?

ADV BATOHI: Not that I can recall.

ADV GWALA: Now, in 2019, you then assumed the position as the National Director of Public Prosecutions. Can you, in summary form,

and perhaps just in highlights, explain the role of the National Director of Public Prosecutions?

ADV BATOHI: So, at the time I took office in 2019, the Commissioners will recall it was a time when the Zondo Commission was doing its work with regard to allegations of state capture. And I returned to South Africa at the time when the NPA had been particularly affected in this period. And there were challenges with resources, et cetera.

ADV GWALA: Sorry, can we do it this way? I am sorry to interject. I
10 just wanted you to highlight in general the functions or the role of the National Director.

ADV BATOHI: Oh, my apologies. So, this is not covered in my affidavit. But the National Director of Public Prosecutions is appointed by the President of the country. Section 179 of the Constitution sets out the issues relating to the National Prosecuting Authority. And effectively, the NDPP is the head of the NPA and deals with the running of the institution itself and all of the strategic, mainly the strategic and policy-related issues in respect of the NPA. But overall, the NPA is accountable for the work or the sorry the
20 NDPP is accountable for the work of the NPA.

ADV GWALA: So, in summary, the NDPP provides strategic direction to the work of the NPA.

ADV BATOHI: That is correct.

ADV GWALA: Does the NDPP get involved in the operational matters of the NPA?

ADV BATOHI: No, not at all. The NPA is a very large, well, it is a large organisation of over 5 000 staff members. The National Director is supported at the National Office by three or four, depending on the time, Deputy National Directors of Public Prosecutions. They have various portfolios. And then in terms of the structure of the NPA, as set out in the Constitution and elaborated in the NPA Act, there are Directors of Public Prosecutions that are appointed also by the President in each of the provinces. And the operational matters are managed primarily by DPPs or Special DPPs in the case of very
10 specific areas that require specialised expertise and skilled focus areas. And then, of course, there are Deputy DPPs and then the Prosecutors. So the technical and operational work of the NPA is dealt with from the DNDPP, but more so from the DPP level downwards.

ADV GWALA: Yes. In terms of accountability, to whom does the NPA account?

ADV BATOHI: The NPA accounts firstly and fore mostly to the people of South Africa through Parliament. So we are required to account to Parliament. And then, of course, there is accountability.
20 There is a level of accountability to the Minister. In terms of the Constitution, the Minister in Section 1791, well, 1791, the NDPP is the head of the NPA. The Minister, in terms of the Constitution, 1796, exercises final responsibility over the NPA. The NPA, as the implementing Act, unpacks this in Section 33, and very broadly it deals with certain reporting policy considerations and reporting

obligations that the NDPP has to administer upon the request of the Minister.

ADV GWALA: Right. Can we deal with the second aspect that arises from the letter from the Commission? You were required to assist by finishing any material in the possession of the NPA that may be relevant to the present inquire. This would include memorandums, correspondence, minutes of the meetings and so on. How did you engage with this aspect?

ADV BATOHI: I appointed Muzi Madlala, Mr Madlala, who is the
10 Chief of Staff in my office, to be the focal point to liaise either directly or through any other staff members with the Commission and to make sure that we do not wait for any request because, of course, the Commission will not know what we have, but to make sure that all the information that we have, that we cooperate fully with the Commission and that we provide any documents that relates to the TRC matters to the evidence leaders or to the Secretariat of the Commission.

So he was the focal point that was coordinating this aspect of it. In addition, we did discuss it at some point, the TRC Commission, at our EXCO meetings, and there was full support and agreement that
20 the NPA will fully cooperate with the Commission and give the Commission whatever it needs. And Advocate Mthunzi Mhaga, who is the Head of the Legal Affairs Division, was the person that was coordinating with the legal personnel, with various counsel that were involved in this matter, and we also decided that the NPA will pay for the legal representation of all ex-NPA staff, whether they are national

directors or any other member of staff that required legal assistance.

ADV GWALA: Perhaps just to conclude on that, can you take us to Paragraph five of the statement?

ADV BATOHI: Yes, would you like me to read the whole of it?

ADV GWALA: Yes please.

ADV BATOHI:

10 "I left South Africa in October 2009 and took up a post from 1 November 2009 at the Office of the Prosecutor of the International Criminal Court, the ICC, in The Hague, in the Netherlands. I returned to South Africa to take up the position of NDPP from 1 February 2019. I cannot comment or express on any personal opinion on the work of the NPA over the period that I was out of the country working at the ICC. However, if any of the witnesses identify as documents which to their knowledge are held by the NPA, which have not been submitted, all efforts will be made to find and provide such documents to the Commission."

ADV GWALA: Then in paragraph six you say:

20 "You are able to inform the Commission, whilst you are not able to comment about what happened prior to your involvement with the NPA, but you are able to inform the Commission about the key strategic interventions that you implemented upon becoming the NDPP."

ADV BATOHI: That is correct.

ADV GWALA: I think let us turn to that. Perhaps take us to Paragraph seven and Paragraph eight in summary form, if you can.

ADV BATOHI: Yes, so Chairperson and Commissioners, when I assumed the office of NDPP, the family members and the victims of apartheid-era crimes, concerned citizens, various NGOs, were actively demanding justice for victims. And I am not saying this is when they started. But when I took office, that was certainly the case. And demanding that government take steps to deal with TRC matters. This was also the time that the High Court in Pretoria was seized with
10 the Rodriguez matter, where allegations of possible political interference in the investigation and prosecution of TRC matters had surfaced.

I was well aware that the NPA that TRC matters had to be an absolute priority for the work of the NPA right from the outset. This we had to do within the NPA. Taking into account the context that we were facing at the NPA at the time. The NPA had been hollowed out by years of capture, neglected because of limited budget allocations, and the top echelons of the leadership had not been stabilised. So there were lots of challenges that the NPA was facing when I took
20 office in 2019.

In addition to you know staff morale being very low, fiscal constraints at the time, resource constraints. We nevertheless decided that we had to implement, focus on the implementation of three key interventions to deal with the TRC matters and to demonstrate to the people of South Africa that the NPA was, we were

committed to dealing with these matters. The TRC matters, and that we had a plan and that we were going to be dealing with these TRC matters.

But the three key interventions are set out, and they are, firstly, developing mechanisms to focus on and to better manage TRC matters. Secondly, to enhance engagements with relevant stakeholders, in particular the families of victims. And thirdly, to address concerns about alleged political interference in the investigation and prosecution of TRC matters, as had been pronounced in the courts in relation to the Rodrigues matter.

ADV GWALA: Just back to the main paragraph eight, you say:

"The top leadership of the NPA was not stabilised."

Can you expand on that? What do you mean by that?

ADV BATOHI: At the time that I took office, well, of course, there were lots of allegations, even at the Zondo Commission, about the NPA being part of state capture. Regrettably, the Zondo Commission itself did not make any recommendations or findings in this regard. I understand, due to time constraints. But at the time, you know we had to, there were various challenges that we were facing at the leadership level. As you would recall, because of a Constitutional Court decision, the NDPP, my predecessor, Advocate Abrahams, had left office at short notice. Which creates instability in any organisation. Advocate Jiba, the Mokgoro Commission was ongoing, and I think they made their findings shortly after I took office. So she was the Deputy National Director that left the NPA.

So at the DPP level, there were challenges, and of course the NPS is one of the biggest units in the NPA, which Advocate Jiba headed, which did not have a permanent Deputy National Director. In the DPP level, which is really where the work happens, if my memory serves me right, there were possibly out of 10 or nine or 10 DPPs at the time, 6 positions were vacant and were being held by acting DPPs. So there were serious issues with regard to having permanent leadership at those very important high levels.

ADV GWALA: All right. You inherited the NPA that was dealing,
10 among others, with TRC cases.

ADV BATOHI: That is right.

ADV GWALA: And you told us that they were dealt with by the PCLU.

ADV BATOHI: That is correct.

ADV GWALA: All right. And who was the head of the PLCU when you took over as the National Director?

ADV BATOHI: The PCLU at the time, there was an acting head for quite a while. I think it was Advocate Tory Pretorius who was the head when I was appointed. And shortly after I took office, I
20 appointed Advocate Chris Macadam to be the acting head, who was a Deputy DPP in the PCLU at the time.

ADV GWALA: Yes. In your assessment, was it adequately resourced?

ADV BATOHI: In my assessment, not.

ADV GWALA: Yes.

ADV BATOHI: Given the very extensive mandate of the PCLU, which was not only TRC matters. I do not have the proclamation in front of me, but the PCLU dealt with various other aspects of certain international crimes, terrorism-related matters. So they had quite an extensive mandate and the TRC was one aspect of it.

ADV GWALA: In paragraph 17 of your statement, you deal with the appointment of Advocate Macadam as the acting Special Director of Public Prosecution.

ADV BATOHI: That is correct.

10 ADV GWALA: Can we, before we get there, in paragraphs 10 to 16, you highlight the principles that govern the NPA.

ADV BATOHI: That is correct.

ADV GWALA: Would that be a fair assessment?

ADV BATOHI: That is correct. Broadly, what is in the Constitution.

ADV GWALA: Yes.

ADV BATOHI: And the NPA Act.

ADV GWALA: And the NPA Act. Now, you have just told us of three interventions that you would implement or that you would undertake upon assuming the office. And you start dealing with those actually
20 from paragraph 17 onwards. Paragraph 17, we have just dealt with now. Can you take us through paragraph 18?

ADV BATOHI: So, very early in my term, on the 3 April 2019, I took a decision after consulting with the relevant internal staff members that all matters which fell outside of the core mandate of the PCLU be returned to the DPPs in whose jurisdiction these crimes had been

committed.

ADV GWALA: What informed that decision?

ADV BATOHI: What had happened prior to me taking office is that during Advocate Abraham's term, there were cases that were brought to the National Office to be managed at a national level and not in the DPP offices. And these cases were being dealt with in the PCLU. And I decided that these were not within the mandate of the PCLU, and that those cases should be returned to the DPP's divisions to be managed. Well, if the investigations were completed, for
10 investigations to be managed, or for cases to be prosecuted in the DPP offices themselves.

ADV GWALA: But would this include the TRC cases?

ADV BATOHI: No, not the TRC matters.

ADV GWALA: How were the TRC cases going to be dealt with?

ADV BATOHI: So, the TRC matters. We had decided that because of the fact that the TRC had limited resources, in my view at the time, given the extensive mandate, and given the priority focus that we needed to, that we needed to take with regard to TRC matters, we decided that we will decentralise the TRC matters. That means that
20 the PCLU will still manage it, there will be a coordinator in the PCLU, but that the DPPs in the divisions would deal with the guiding of the investigations and the prosecutions with regard to TRC matters.

We ensured that there would be continuity of prosecutors who were dealing with these matters, and we also, at the time, ensured that there was nodal points that would be appointed in each

of the DPP offices they were identified, who reported directly at the time to the acting special director of public prosecutions in the PCLU.

ADV GWALA: All right. What you have done, you have just taken us through paragraph 18 of your affidavit. Now, can you take us through paragraph 19, please?

ADV BATOHI: So, it is important, again, to understand that the resources in the NPA were extremely limited when I took office. And there was an urgency to deal with so many priorities at the time. The TRC matters was one priority. The state, the cases emanating from
10 the Zondo Commission, you will recall at the time, the country was impatient for state capture matters to be properly investigated and prosecuted. And we were dealing with an NPA that had been hollowed out and trying to deal with the limited resources to address various priorities, including, and I hate to say the normal priorities of crime in our country, which is murders, sexual and gender-based violence, commercial crimes, et cetera.

So, we were really trying to deal with capacitating the NPA to deal with a whole range of priorities. We really did, at that point, we realised that there was a need to have dedicated prosecutors across
20 the country, as well as dedicated investigators. And also to clarify at this point, Chairperson and Commissioners, that the NPA does not investigate TRC matters. The DPCI is seized with the investigation part and the NPA prosecutors work with them to guide in terms of the prosecutor-guided investigations model and to assist the investigators in any way that they need to.

At this early stage, we held several meetings with the DPCI to explore ways in which we could focus on the TRC matters and also enhance the capacity to investigate and prosecute these matters.

ADV GWALA: Yes, in paragraph 19, you referred to several meetings with the DPCI. Did you participate in those meetings?

ADV BATOHI: I participated in several meetings, not all of them.

ADV GWALA: Okay, can you take us through paragraph 20 then?

ADV BATOHI: In the one meeting that was held with the DPCI on the 31 January 2020, the purpose of this meeting, and I recall there was
10 General Lebeya, who was the head of the DPCI at the time, also attended this meeting, together with other officials in the DPCI that I cannot recall. But the key aspect, one of the key challenges that the DPCI was also facing at the time was capacity to investigate these matters. And I am not, and General Lebeya was dealing with serious capacity constraints in the DPCI. And up until he left, he had stated that the DPCI was only, I think, 50 to 60 percent capacitated.

So they were always struggling with capacity. And he had stated at that meeting that he was looking at hiring retired detectives. And they were going to put in an advert in March of 2020 in order to
20 get additional capacity to be able to have a dedicated capacity to deal with TRC matters. We also were looking at appointing additional capacity at the time. Initially on a contractual basis, because it is easier and quicker. And considering also that there were serious staff shortages in the NPA at the time. So we were looking to hire prosecutors on a contract basis.

ADV GWALA: Yes. Commissioner, I will refer to page SB0026. Are you able to identify that document?

ADV BATOHI: Yes, Chairperson, this is an internal memorandum. That is sent from myself to all Deputy National Directors.

ADV GWALA: On what page are you?

ADV BATOHI: Sorry, at the first page of the memo, which is on page 24 oh 26.

ADV GWALA: 26.

ADV BATOHI: Oh, my apologies, Chairperson. Page 26.

10 ADV GWALA: Yes.

ADV BATOHI: Yes. This is an e-mail that is sent from Ms Nomceba Monageng, who was my PA at the time dated 23 June 2020. And sent to myself, to Advocate Mhaga, Advocate Rodney de Kock, the Deputy National Director, Head of NPS, Advocate Macadam, and other staff members. And it states:

"Dear Principals and Colleagues. Below are the notes for your reading."

20 So clearly there were notes that were attached to this particular e-mail. But Danie, who, to be clear, Chairperson, because it is a bit unclear, the e-mail at the bottom, you see the name Danie. Mr Danie Smit, at the time, was the Chief of Staff in my office. So... (intervenes)

ADV GWALA: And who was Ms Nomceba Monageng ?

ADV BATOHI: Nomceba Monageng was my PA.

ADV GWALA: Yes.

ADV BATOHI: And it appears from here that Danie is the person who sent an e-mail to, it is not clear who, but states that there is a meeting to be held with General Lebeya and Brigadier Xaba from the DPC on 31 January 2020. And it sets out... (intervenes)

ADV GWALA: The e-mail is dated 23 June 2020. So she is referring to the meeting that would have occurred in January.

ADV BATOHI: That is correct. She is forwarding an e-mail.

ADV GWALA: Yes.

ADV BATOHI: Of Danie's that refers to the meeting of the 31 January
10 2020. And Danie briefly... (intervenes)

ADV GWALA: That meeting of January 2020 is the meeting that you held with General Lebeya of the DPCR.

ADV BATOHI: Yes, that is correct. And Danie puts together just a brief four points of what were some of the key agreements at this meeting. One is to put a plan together to... (intervenes)

ADV GWALA: Sorry, the acronyms relating to the TRC cases.

ADV BATOHI: That is correct.

ADV GWALA: All right.

ADV BATOHI: One is to put a plan together to address all the 140
20 outstanding cases, how it will be prioritised. Two advocates, Macadam and Brigadier Xaba, will develop a plan, and the team will report to General Lebeya.

ADV GWALA: Who was Brigadier Xaba?

ADV BATOHI: My understanding is that he is a member of the DPCR.

ADV GWALA: All right.

ADV BATOHI: And three, also resource planning, which was critical. General Lebeya had indicated that he is in the process of appointing about 200 former SAPS officials retired by advertisement on 1 March 2020, which will also deal with the backlog of TRC cases. And fourthly, the team will meet in the next two to three weeks and report to the NDPP and General Lebeya.

ADV GWALA: Just for completeness, in paragraph 20, you mentioned that General Lebeya was the head of the DPCI and has
10 since retired.

ADV BATOHI: That is correct, he has since retired.

COMMISSIONER KGOMO: Now for the public, the DPCI are the HAWKS.

ADV GWALA: Yes.

COMMISSIONER KGOMO: Sometimes it is better for the people.

ADV GWALA: Yes. I just do not [indistinct] to the HAWKS. That would be the HAWKS. What does DPCI stand for?

ADV BATOHI: It is the Directorate of Priority Crimes Investigations. So the official name is the DPCI, also known as the HAWKS.

20 ADV GWALA: Yes. Thank you, thank you Commissioner. I would like you to take us... (intervenes)

COMMISSIONER GABRIEL: Mr Gwala, before you read this page, 00026.

ADV GWALA: Yes.

COMMISSIONER GABRIEL: Advocate Batohi, it is correct that, if I

am reading this correctly, at this time of the meeting on the 31 January 2020, there were 140 outstanding TRC cases, according to this.

ADV BATOHI: That is correct.

COMMISSIONER GABRIEL: Okay, just bear that number in mind when you deal with paragraph 21 of your affidavit.

ADV GWALA: Yes, can you take us through paragraph 21?

ADV BATOHI: So, as I indicate there, that the onset of COVID-19, you will recall, Commissioner, Commissioners, that we went into hard
10 lockdown in March of 2020. It did have the effect of slowing down the implementation of certain initiatives. But at this time, internally, the NPA continued to have virtual meetings, and the PCLU conducted an audit of every death in detention that was reported by the TRC, identifying 55 cases for investigation, and in addition to the 59 already under investigation.

So, I will clarify that my recollection at this time, in 2014, sorry, in 2020, when this meeting happened, is that we were given to understand that there were 140 outstanding cases. I should state at this point that Advocate Singh, who is the coordinator of TRC matters,
20 and dealt with all of the operational matters, will have a better understanding of all the figures and how they relate to each other, and where there may be figures that do not seem to be, you know, the same. She will be able to explain why.

But with regard to what I say in paragraph 21, after the audit, these figures, these 55 cases were identified, in addition to 59 that we

were, as a result of the audit, aware that was under investigation at the time.

COMMISSIONER GABRIEL: So, Ms Singh will be able to explain this discrepancy in numbers?

ADV BATOHI: That is correct.

ADV GWALA: Thank you. Thank you, Commissioner. In paragraph 22 onwards, you talk of the workshop that you had together with the DPCI, that is the HAWKS. What was the purpose of those workshops, of that workshop, the one in December 2020?

10 ADV BATOHI: Yes. So, we wanted to develop a sort of common approach and understanding to how we deal with the TRC matters. It involved a review and the reconciliation of the NPA and the DPCI TRC case lists. Because they had their own case lists, the NPA had their case lists, and things were not speaking to each other.

So we wanted to reconcile all of this and come up with one consolidated list. Also, to look at the case management process by the NPA nodal points in the divisions that I had mentioned earlier. Including the liaison with provincial heads of the DPCI to identify and assign, and to identify and assign experienced investigators and
20 prosecutors to the cases. As well as to strengthen communication between the NPA and DPCI, and to be clear about the PCLU's oversight role and management of these matters.

ADV GWALA: Yes, in paragraph 23, you referred to another workshop that was held in February 2021.

ADV BATOHI: That is correct.

ADV GWALA: Can you take us through that, who were the participants in that workshop?

ADV BATOHI: So, at this workshop, the NPA and the DPCI both attended a virtual workshop, which was organised by the Foundation for Human Rights to discuss the establishment of a dedicated capacity for TRC matters. And there were several proposals that were presented at this workshop, including a discussion on the NPA's decentralised model with national oversight.

We clarified that the capacity in the offices of the DPPs
10 would be reinforced by the appointment of dedicated resources, and that a deputy DPP would deal exclusively with the management and oversight of TRC matters at the head office in the NPA, reporting directly to the deputy national director of public prosecutions, the late advocate RJ de Kock.

ADV GWALA: Yes, just for completeness, not that important, this B0028 and 29 constitute the invitation sent by the Foundation for Human Rights.

ADV BATOHI: That is correct.

ADV GWALA: Who were the organisers of the workshop of February
20 2021.

ADV BATOHI: Yes.

ADV GWALA: And you say you participated in that workshop.

ADV BATOHI: I did.

ADV GWALA: All right.

ADV BATOHI: I participated in a couple of workshops.

ADV GWALA: Ja.

ADV BATOHI: So it is not clear here, but I seem to recall this is one that I did participate in.

ADV GWALA: Yes. In an attempt to capacitate the NPA, you approached the Department of Public Service and Administration to approve the additional capacity of prosecutors. That you state in paragraph 24. Can you take us through that?

ADV BATOHI: Yes, so during 2021, we approached the Department of Public Service and Administration, which is the responsible
10 department to approve deviations for additional capacity for a period beyond 12 months to prosecute cases emanating from the TRC. The reason for this is that these appointments were normally 12 months, and we wanted to have more stability in the people that were dealing with this matter. So we therefore asked for the deviation to appoint them for a period beyond 12 months. And this approval was granted in September of 2021 to appoint capacity additional to the establishment of the NPA for a period of three years. So as a result in the 2021-22 financial year, the NPA appointed 13 additional prosecutors, bringing the total to 23 dedicated prosecutors that were
20 working on TRC matters.

ADV GWALA: Okay. And can you take us through paragraph 25?

ADV BATOHI: So this approval was coupled with the establishment of a TRC component on the 6 September 2021 at the NPA's national office, still within the office of the NPS, with Advocate SH Singh as the coordinator of this component. Her duties were to oversee TRC

matters, to deal with all related matters, challenges, to coordinate the progress of TRC matters in all divisions. The rationale behind establishing the TRC component was to adopt a focused approach with dedicated capacity that would ensure prioritisation of TRC matters. It was also to enhance the NPA's internal capacity to process both, and processes, sorry, to ensure effective handling of these cases. And without, I emphasise, without any undue political interference as per the Rodriguez judgement. The TRC component was to adopt a prosecution-guided investigation methodology in order
10 for prosecutors to guide the investigators from the very early stages of the investigation, and enhance the prospects of successful prosecutions.

ADV GWALA: And can you take us to paragraph 26 as well?

ADV BATOHI: So this PGI model yielded positive results.

ADV GWALA: Can we explain what is PGI?

ADV BATOHI: Yes, the Prosecutor-Guided Investigative Model that I just mentioned in the context of paragraph 25.

ADV GWALA: Yes.

ADV BATOHI: Where prosecutors guide and advise investigators
20 from early stages of the investigations to enhance the prospects of successful prosecutions. This model yielded some positive results if one has regard to the important inquests that were reopened and are pending in court, which include, amongst others, those of Griffiths Mxenge, Chief Albert Luthuli, the North Crest Five, the Cradock four, as the victims have been known as, and also Steve Biko.

It demonstrates that there was a commitment in the NPA to deal with these matters. So in cases where, at the end of investigations, we were not able to prosecute anyone for various reasons, and Advocate Singh can give a lot of details on this. That at least we reopened inquests some of them where there were inquests already held, and there were various findings that no one was responsible for the death or death relating to suicide, et cetera. Where we reopened these inquests, and in most of them, if not all, have called for formal inquests so that all the evidence can be led, and at least the families can get some level of disclosure, of closure, even if there is no prosecutions that can be initiated in these matters.

ADV GWALA: In fact, we can put it like Advocate Singh will actually deal with the details of this.

ADV BATOHI: Yes, that is correct, she will.

ADV GWALA: Okay. Still Paragraph 27 about the capacitation. Take us to?

ADV BATOHI: In April of 2022, there was a Special Director of Public Prosecutions in the NDPP's Office NPS that had been appointed, and she had functions in the NPS. But was also, one of her functions was to assist with strategic oversight of TRC matters. A Deputy Director of Public Prosecutions, DDPP and administrative personnel were also appointed to oversee and support the progress in TRC matters. Two additional state advocates were also added to the TRC component. And this is just at the National Office component that Advocate Singh leads the coordination.

ADV GWALA: Yes, Paragraph 28?

ADV BATOHI: As far as the DPCI is concerned, to the best of my knowledge, after the COVID lockdown was over, in April 2021, they appointed 34 former police detectives for a contractual period of three years, dedicated to the investigation of TRC cases, who worked together with the NPS, 23 dedicated prosecutors. And again, Advocate Singh will give details of how this worked.

ADV GWALA: In Paragraph 30, you talk of the presentation made to the justice.

10 ADV BATOHI: Yes.

ADV GWALA: The portfolio on justice and correctional services. Can you summarise that, and what did you report to them?

ADV BATOHI: Yes. We made several reports to the Portfolio Committee over my tenure. In most of the report, if not all, the TRC cases would have been dealt with. But I recall that the Portfolio Committee also specifically asked for a separate presentation at some point only on TRC matters. But during this presentation in June, we mentioned the added capacity in the NPA. And I mentioned here 16 prosecutors and 33 investigators. I am not sure whether
20 those, those we will have to check those figures and make sure they are correct. Because I referred to 23 dedicated prosecutors in Paragraph 28. So I do need to check those figures, Chairperson, at the time. The PGI initiatives were really, we focused on that and worked in very, very close cooperation with the DPCI. And as I mentioned, these are addressed in Advocate Singh's affidavit. And

there was a lot of focus also at this time on training, which Advocate Singh will deal with in more detail. But at a strategic level, we realised that the, I mean, prosecutors were you know we have very experienced prosecutors. But investigating and prosecuting these very old matters required some specialised skills that prosecutors needed to have, as well as investigators. And so there were a lot of training initiatives at the time to ensure that we enhance the prospects of successful prosecutions at the time. And Advocate Singh will elaborate on that tomorrow.

10 ADV GWALA: The next key intervention you speak about is the enhancement on the stakeholder management.

CHAIRPERSON: Mr Gwala, if I may interpose, would this not be a convenient time to adjourn for tea before you deal with the next issue?

ADV GWALA: Thank you, thank you, Commissioner.

CHAIRPERSON: Yes.

ADV GWALA: I did not notice time.

CHAIRPERSON: We will take a tea adjournment until 11:15.

INQUIRY ADJOURNS

20 INQUIRY RESUMES

CHAIRPERSON: Mr Gwala?

ADV GWALA: Thank you, Chairperson and Commissioner. We were moving to the next topic, but there is something that you need to explain. There appears to be a discrepancy in paragraphs 28 versus what is stated in paragraph 30. It is confused, in paragraph

... (intervenes)

CHAIRPERSON: Versus what is stated in what paragraph?

ADV GWALA: In paragraph 23, sorry, paragraph 28. You make reference to 23 dedicated prosecutors and in paragraph 30 you make reference to 16 prosecutors. Can you explain that?

ADV BATOHI: Yes. I just want to clarify, this is before Advocate Singh's time and she will not be able to, but there is an explanation. If one looks at April 2021 there were 23 dedicated prosecutors. In paragraph 30 we are referring to a presentation made in June 2022,
10 so clearly the numbers have dropped between that period and there would have been a need to recruit and make sure that these positions were filled, but one of the challenges we did face is that because these positions were contractual positions and these prosecutors were getting experience in prosecutions, when there were permanent positions advertised within the NPA they attended to apply and some of them were appointed, so we were constantly trying to make sure that the capacity was maintained in this particular component.

ADV GWALA: Yes, thank you. Now the next topic that we will be dealing with relates with the engagements you had with family
20 members and the victims of the conflicts of the past. Now it starts in paragraph 31 at page 13 of your statement. Can you take us through that paragraph?

ADV BATOHI: So upon assuming office and as I mentioned, amidst all of the pressures that the NPA was facing at the time, we took steps to meet what representatives of families whose members of

these families have been victims of Apartheid era crimes, with legal teams, including former TRC Commissioner and organisations supporting such families, including the Foundation for Human Rights, FHR, and the Apartheid Era Victims Family Group, the AVFG, and if I may continue ... (intervenes)

ADV GWALA: Yes please.

ADV BATOHI: On the next paragraph we deal with some of those meetings. In April ... (intervenes)

ADV GWALA: Perhaps before we go to the next paragraph, that is
10 paragraph 32, can we deal with your engagements that you had from a different document? Can you go to SB, Commissioners I will refer to SB00063, that is where that document begins, no 65, no, no, no 65, I apologise, I apologise, Commissioners. You can identify to that document if you have found the page.

ADV BATOHI: Yes, this is the document that I received from the, a letter from the Foundation for Human Rights, which sets out notes from a meeting that was held with the South African Coalition on Transnational Justice on 17 April 2019.

ADV GWALA: Ja, but particularly can you just read paragraph 1 and
20 2 of that letter?

ADV BATOHI: Paragraph 1:

"On behalf of the South African Coalition on
Transnational Justice..."

Sorry, I should say that the letter is ... (intervenes)

ADV GWALA: Quite long.

ADV BATOHI: It is quite long and it is signed by Yasmin Sooka as the Executive Director of the FHR.

"On behalf of the South African Coalition on Transnational Justice I would like to express my appreciation to you and your team for the constructive meeting held on 17 April 2019. For your ease of reference I attach the list of the family member, lawyers and former Commissioners who were present yesterday in our meeting.

10 The families have requested that I convey their appreciation for the meeting with you. I would also like to follow up our meeting by confirming a suitable date and time for a meeting in the week of 6 July 2019 to follow up on all of the issues raised. This meeting will take place with the legal and investigating teams representing the families of victims.

20 Given the Minister's recent decision to reopen the Agget and Haffejee inquest, it is quite critical that such a meeting takes place quite soon. The recent death of Stephen Whitehead has once again raised the need to act with urgency so that the families of the victims are able to access justice in their lifetime."

ADV GWALA: Yes, can I take you to page 67, the same document? I want to check with you your understanding of the matter relating to Els and (indistinct).

ADV BATOHI: Yes.

ADV GWALA: It is reported, it is recorded in that correspondence from the FHR.

ADV BATOHI: That is correct.

ADV GWALA: Can you take us through what you understand about that matter? Perhaps can you just read that paragraph into the record?

ADV BATOHI: Sure.

10 "We note that Ms Andrea Johnson is reviewing the said
SANS and Neville Els matter and that her preliminary view
is that there is not sufficient evidence to ground an
indictment. In this regard we respectfully refer you to the
ruling by Judge Mohle in the Timol inquest where on the
evidence before him he ruled that Els should be
investigated for misleading the court in that he stated that
he only knew of the allegation of assault on detainees from
the media, which is in conflict with the police records which
reflect that he was present as one of the interrogators when
Professor Naik (Naik) was detained around the same time
20 as that Ahmed Timol was detained, was subjected to the
helicopter method of torture."

ADV GWALA: Yes, then can you stop there? I just wanted you to have an understanding of what we are dealing with. What do you know about the matter of Els? Let us put the question in this manner, after the judgment that is referred to there in that paragraph, what

happened to those matters?

ADV BATOHI: So these matters were being dealt with by the DPP in North Gauteng, it is Pretoria, and the DPP made a decision to decline to prosecute a case. There was a review of, a request for a review to the NPA, this review process was handled by the late Advocate Rodney de Kock. So in terms of the Constitution, the NPA Act, the NDPP has the power to review decisions of a DPP, NDPP does not take decisions to prosecute.

I hasten to add the NDPP does decide in specific cases like
10 terrorism, et cetera, POCA, racketeering, but generally the DPPs take decisions to prosecute. They have the power to do so, legal power, and the NDPP has the power to review their decisions.

The NDPP also has the power to delegate certain powers in terms of the Act, so the decision to, the review power was delegated to the Head of the National Prosecution Service at the time, Rodney de Kock, the Deputy National Director of Public Prosecutions. So he was dealing, and just so that the Commission understands to the extent that it might not, all of the DPPs report to the National Director through the Deputy National Director and that would have been
20 Advocate de Kock at the time.

So he had delegated authority to deal with review matters and this matter was dealt with by him and there is an affidavit by Leon Veenemans, which is an attachment to Advocate Shabnam Singh's affidavit, it is Advocate Veenemans and he sets out the process in that affidavit of what happened in the review up until the decision that

was taken by Advocate de Kock at also to decline to prosecute that case.

Advocate Singh will deal with the process and the details, but at a very high level just to say that there were various challenges that Advocate de Kock at refers to and that is set you tin Veenemans' affidavit relating to witnesses, particularly one witness that was abroad in London at the time, I think it was a Mr Issop who then withdrew his, was not willing to testify or make an affidavit, so there were various challenges that were faced in terms of the investigation and Advocate de Kock at declined to prosecute that matter, but the entire process is set out in the affidavit and Advocate Singh will take the Commission through that process to the extent that the Commission wants more details about what exactly those challenges were and what happened in that matter.

ADV GWALA: Yes, thank you, thank you. Let us then go back to your statement. You were taking us, you were in paragraph 31, the next is paragraph 32. There in paragraph 32 you state, and I will read it myself:

"In April and August 2019 meetings with stakeholders served to understand the frustrations in seeking to obtain justice for their loved ones, explore issues regarding dedicated capacity to deal with TRC cases."

I highlight the following:

"Discuss concerns over alleged political interference that led to prolonged delays in the investigation and

prosecution of the TRC cases and explore possible forms of cooperation to obtain the common objectives of seeking justice for the victims of the (indistinct).”

When in that paragraph you refer to political interference that would have led to prolonged delays in the investigation and prosecution of the TRC cases, these allegations of political interference related to what period?

ADV BATOHI: To the period before I took office.

ADV GWALA: Okay.

10 ADV BATOHI: And I can categorically state now that there has been absolutely no political interference in the work of TRC or any other matters that we, that the NPA handled during my tenure.

ADV GWALA: Okay. Perhaps whilst you deal with that let us deal with this question, you have read the papers in the application that is in the High Court, have you not?

ADV BATOHI: Yes that is correct, some time ago.

ADV GWALA: Your summation, your understanding of the papers insofar as it relates to the allegations of interference, any form of interference, to what period do they pin their case to?

20 ADV BATOHI: It is until 2017.

ADV GWALA: And you assumed your office in 2019.

ADV BATOHI: That is correct.

ADV GWALA: Let us then continue, we will skip paragraph 33, it is there for the reading for everyone, not that it is not important, but it is there for the reading. Can you take us through paragraph 35?

ADV BATOHI: From June 2020 onwards we strengthened our efforts to communicate with victims and their families. In fact, there was an issue that was raised at the Portfolio Committee on Justice and Correctional Services about concerns that the NPA's poor communication with families of the victims, the concerns about this and there were, you know complained about not being timeously updated by the NPA or receiving communications from the NPA before decisions were made public and I think that related to, that particular matter related to the opening of an inquest where a public
10 statement was made and after this in particular, even though we had right from the outset, it was hugely important that we communicate with victims and families constantly, letting them know what is going on, clearly there was an issue.

So we dealt with this matter and I know that there is a document, counsel will perhaps refer to it later, from Advocate de Kock at to DPPs about this matter in the bundle.

ADV GWALA: Yes. Commissioners, it will be page 00090 in the bundle.

CHAIRPERSON: Page?

20 ADV GWALA: Page SB00090. If you find that page we can continue. Have you found the page?

ADV BATOHI: I have, yes.

ADV GWALA: Can you just summarise the, it is from Advocate RJ de Kock who was a Deputy National Director of Public Prosecutions, NPS, and it is addressed to all Directors of Public Prosecutions.

ADV BATOHI: That is correct.

ADV GWALA: And the subject is TRC communications with the victims and families.

ADV BATOHI: That is correct.

COMMISSIONER KGOMO: Right, and it is dated the 20th of June 2022.

ADV GWALA: Thank you, Commissioner, yes. Would you want to read through this?

ADV BATOHI: Well yes, just that is Advocate de Kock's signature
10 and you will note here, Commissioners, is that Advocate de Kock writes to all DPPs and to the Special DPPs, which will include the DPP in charge of TRC matters specifically, but understanding that at this point matters had been decentralised to all DPPs and we referred to the Portfolio Committee matter. He refers to it on 1 June where there was an issue, a serious concern raised by the Committee about poor communications and that the NDPP had to tender an apology and in paragraph 4 to avoid a recurrence the NDPP has directed that henceforth a name list of all families and victims, together with their contact numbers be obtained.

20 Should the families be legally represented, their contact details should be reflected thereon. Prosecutors must liaise with families to ensure that a more victim-centred approach is followed. She reiterated that prosecutors were the lawyers, people's lawyers and the prosecutors must play an active role in liaising with families.

 The NDPP also emphasised the NPA's commitment to

ensuring progress on the TRC matters with the creation of a dedicated component within the NPS and a dedicated capacity within the NPA to deal strictly with TRC matters only. In line with the NDPP's directives, kindly let us have a contact list detailing the names by not later than 29 July 2022. I paraphrase.

ADV GWALA: Yes, thank you. Then there is a further engagement you referred to in paragraph 37.

ADV BATOHI: Yes, that is correct.

ADV GWALA: That was an engagement with the FHR.

10 ADV BATOHI: Yes.

ADV GWALA: And the ... (intervenes)

ADV BATOHI: It is two engagements that is referred to in 23 and 24.

ADV GWALA: Yes. You can confirm that there has been several engagements you had with the families and the stakeholders in relation to TRC cases.

ADV BATOHI: Yes, I have had engagements and, but more so Advocate de Kock and the other staff members of the NPA would have had a lot more engagements with the families in particular.

20 ADV GWALA: What is your assessment of the outcome of those engagements? For instance, were families satisfied?

ADV BATOHI: My understanding is that families that we engaged with were very satisfied with the fact that we had adopted this approach. If I recall there was a letter by Mr Kajee that he wrote thanking the NPA and in particular for the sessions were they were able to actually meet with prosecutors and investigators and discuss

the cases themselves, so a lot of effort was put into keeping the families updated or the legal representatives about what was happening in investigations and prosecutions.

ADV GWALA: Until the time you left the office were such engagements occurring?

ADV BATOHI: Yes, that is correct.

ADV GWALA: In paragraphs 42 and 43 you talk about accountability to Parliament, you have covered that briefly. I do not think we need to get to that in detail.

10 ADV BATOHI: Yes.

ADV GWALA: But can we, we will come back to the letter of Mr Kajee once it is located, but can we take paragraph 45, it is on page 17 of your statement.

ADV BATOHI: Yes.

ADV GWALA: You can take us through that paragraph.

ADV BATOHI:

20 "So when we appeared before the Portfolio Committee on the 25th of November 2022 to provide a further progress update on the TRC matters the NPA informed the Committee members that the dedicated capacity had been further enhanced and it stood at 25 dedicated prosecutors and 40 dedicated investigators who had been appointed in the divisions.

This had resulted in an additional 32 new investigations having been opened from May, between

May and October of 2022, bringing the total to 129 matters under investigation at that time.”

ADV GWALA: So would it be correct to say the number of cases that are being investigated kept increasing as work as being done?

ADV BATOHI: Yes, as the work was being done and assisted by the enhanced capacity, of course.

ADV GWALA: Ja.

ADV BATOHI: And Advocate Singh again can speak a lot to the detail of that.

10 ADV GWALA: All right.

ADV BATOHI:

“The Committee was also informed that the progress was linked to monthly monitoring and evaluation of progress on all matters and the implementation of interventions to ensure support to the divisions and regular interactive DPCI, NPA engagements which were referred to as accountability sessions, attended by prosecutor and investigator seized with a relevant matter, together with their supervisor and Heads and also ongoing skills transfers.”

20

ADV GWALA: Yes, paragraph 46?

ADV BATOHI:

“We appeared again before the Portfolio Committee on the 17th of September 2024 and we were able to show the Committee that since 2019 the NPA had indeed

been committed to dealing with TRC matters and the report showed progress made over the years and progress that was being made continuously.

The presentation highlighted that in 2024 the dedicated capacity had been slightly reduced due to the expiration of some of the three year contracts that had started in 2021. These setbacks were offset by Deputy Directors of Public Prosecutions in the divisions overseeing and guiding TRC prosecutors.

10 Further, where there were no dedicated prosecutors the DPP's appointed prosecutors from the permanent staff to assist on TRC matters. In some divisions where there is no dedicated prosecutor DDPPs oversee these matters, that is Deputy DPPs. These measures enabled the NPA working with the DPCI to sustain progress on investigations which stood at 126 as at September 2024."

ADV GWALA: Yes. Paragraph 47?

ADV BATOHI:

20 "We did get budget allocations which were favourable and we therefore obtained approval in October 2024 for the creation of 19 permanent posts."

And this is important because it is for the first time that we get permanent prosecutor posts. I explained earlier that with the temporary capacity contracts where there were permanent posts that

were advertised in the NPA, prosecutors in the TRC components would prefer those permanent posts.

So we now had 19 permanent posts that were created in the NPA dedicated to TRC matters and at that time of making the affidavit the process was underway to apply for an additional 10 posts, but in the interim what is happening is that, and Shabnam can, Advocate Singh can talk to this, we have looked at where the most cases are and the workloads and looked at reallocating resources and dedicating some of the existing resources to areas where there
10 are, the workload is greater and whether these 10 additional posts, I am not sure what the current National Director is doing about it, but what we did do is reallocate resources so that, you know cases did get the necessary attention.

ADV GWALA: In paragraph 48 you deal with the submissions that were made by FHR to the Portfolio Committee and which you were asked to respond. What were those submissions, if you recall?

ADV BATOHI: They were very comprehensive submissions and I think they are included in the bundle. We were asked to respond in writing to those submissions, which we did on the 27th of March 2025,
20 and I understand that that response is also in the bundle.

ADV GWALA: The response is in, sorry, the submissions themselves are in SB00160, your response, sorry, sorry, are in the document in SB00160.

ADV BATOHI: Yes the NPA response is SB000160.

ADV GWALA: Is it triple zero or double zero?

ADV BATOHI: Or is it double? I am not sure.

ADV GWALA: Yes.

ADV BATOHI: My apologies.

ADV GWALA: Up to SB00199.

ADV BATOHI: That is correct.

ADV GWALA: All right. Can you take us through paragraph 50?

ADV BATOHI: I should just mention quickly in paragraph 49 that after those submissions were made to the Portfolio Committee there was a virtual Portfolio Committee meeting that was convened where
10 the committee considered the responses that the NPA had provided, not just the NPA, but the DPCI as well, the responses that we had provided to the FHR submissions. So there was a virtual meeting that was held.

I recall at that Portfolio Committee meeting Doctor Zade Kimmie of the FHR did raise some concerns still and I committed to meeting with him after that to discuss these matters. We did meet with him, I did meet with him at the NPA's head office to deal with any, to listen to and understand any remaining concerns and also to strengthen our working relationship, given that as I always said it was
20 our common goal, the NPA as well as the families and the legal representatives to pursue justice for the victims of Apartheid era crimes.

We had a very constructive meeting with Mr Kimmie and a colleague of his at the NDPP's office on the 1st of January 2025 and there was a further commitment to develop structured engagements

with the FHR, NPA and DPCI.

ADV GWALA: Thank you. In the next chapter you deal with the assessment of the TRC measures implemented by the NPA, in particular you deal therein with the period from the judgment of Rodrigues. Can you in summary tell us or tell the Commission what did the NPA do following the judgment in the Rodrigues matter?

ADV BATOHI: So as I indicated earlier, when I took office in February 2019 the South Gauteng High Court was seized with this matter and the judgment in the matter was delivered on the 3rd of
10 June 2019 and I understand that that is also in the bundle.

The judgment referred to, I now deal with paragraph 52, political interference having materially affected the ability of the NPA to properly deal with TRC cases in that the resources that were necessary to conduct proper investigations were not forthcoming, whereas the court did not pronounce on the form of this political interference, it nonetheless found that whatever form the political interference took the NPA was enjoined in terms of both its constitutional and legal responsibilities to act on behalf of society and protect the public interest. At 53 the court further found as follows.

20 ADV GWALA: Perhaps you can leave paragraph 53.

ADV BATOHI: Yes, it is a quote from the judgment.

ADV GWALA: What is of importance to me is what was the reaction of the NPA following this judgment?

ADV BATOHI: Thank you, counsel. Following the judgment at paragraph 54 I communicated with the then Minister of Justice

Lamola, the Minister of Justice and Correctional Services, Mr Ronald Lamola, regarding the possible way forward. In April 2022 I received an unsigned copy of a legal opinion provided by the Department of Justice, the Branch Court Services which suggested that it might not be appropriate for a retired Judge to undertake an investigation, which was one of the options on the table at the time.

ADV GWALA: What investigation will that be?

ADV BATOHI: As suggested in the Rodrigues judgment to look into possible political interference in the work of the NPA.

10 ADV GWALA: Yes.

ADV BATOHI: Considering that the courts might be seized with a matter as a final arbiter, the opinion suggested that an investigating panel, chaired by senior counsel, might be more appropriate.

ADV GWALA: Did you appoint a senior counsel to deal with the matter?

ADV BATOHI: Well I did in 2023, but already before that in May 2022 I wrote to the Minister requesting him to appoint a panel headed by senior counsel to investigate this aspect.

ADV GWALA: Yes.

20 ADV BATOHI: In July the Minister and I had a virtual meeting, 27 July 2022 to discuss the matter and the Minister decided to source a legal opinion from the office of the Chief State Law Advisor to guide on the next steps and then on 29 August 2022 I received a legal opinion of the office of the Chief State Law Advisor from Minister Lamola. The Minister indicated that premised on paragraph 19 of the

opinion it fell within the discretion of the NPA to decide, upon consideration of the facts, whether an investigation was warranted. Then the opinion of the paragraph is set out there and then what I did after that is on the 5th of October 2022 I wrote to Minister Lamola to inform him that after having carefully considered the matter, and I would add together with the Executive Committee of the NPA, the leadership of the NPA had decided to appoint senior counsel whose mandate would be to review the measures that have been adopted by the NPA to deal with TRC matters and to assess whether they are appropriate.

10

If they were found not to be adequate, senior counsel would be asked to make recommendations to strengthen them. If in the process of the review senior counsel have reason to believe that there is information that would amount to a violation of section 1(1) of the NPA Act, such issues were to be escalated to the NDPP to take forward accordingly. If necessary, the NPA would refer the matter for criminal investigations. Counsel would be given three months to conduct the work.

ADV GWALA: The counsel was eventually appointed.

20 ADV BATOHI: In January 2023 Advocate Dumisa Ntsebeza SC was appointed.

ADV GWALA: Yes, and he provided the opinion.

ADV BATOHI: That is correct, he provided an opinion, first a draft in June 2023 and then a final opinion was received on 2 November 2023.

ADV GWALA: The Commissioners, the opinion, for what it is worth, is in SB00308.

COMMISSIONER KGOMO: What does it mean for what it is worth?

Is it worth our while?

ADV GWALA: It is, it is, it is.

CHAIRPERSON: Come again with the page number?

ADV GWALA: The page number is SB00308. It makes, you deal in paragraph 62, you deal with the key findings of Advocate Ntsebeza assisting you with how to deal with the TRC cases, can you take us

10 through that?

ADV BATOHI: Yes.

"The key findings in his opinion was that the measures that were adopted and implemented by the TRC component in the NPA, that is to deal with TRC matters, were in large part adequate, that many cases were at the beginning stages of investigation and identified challenges, including the availability of evidence, the tracing of witnesses, dockets and inquest reports, legal representation for ex-SAPS employees and budgetary constraints for reconstruction that is of (indistinct), amongst others."

20

62.3:

"That the monitoring and oversight role of the TRC monthly reporting system was accepted. That the appointment of dedicated prosecutors provided

certainty and accountability, that appropriate communication channels have been set up between prosecutors and families, that the accountability sessions were important were the TRC, DPCI Heads (that is the Hawks) in each division and prosecutors met to update one another on approaches adopted and developments in each case. It also found that the hybrid structure of the TRC component was satisfactory, the TRC component is made up of a combination of
10 both dedicated TRC investigators and prosecutors, working together towards a common objective.

The opinion also accepted that the NPA, through the TRC component, retain centralised control and the sole responsibility under the authority of the DNDPP, NPA, which ensures that investigators and prosecutors are assigned solely to investigations and prosecutions.”

ADV GWALA: Yes. Then in page SB00377 he makes certain recommendations.

20 ADV BATOHI: Yes, that is correct.

ADV GWALA: Yes. The recommendations are there for the reading. What is of interest to me is whether the NPA has done its best to implement the recommendations as per that opinion.

ADV BATOHI: Yes, that is correct. Advocate Shabnam... A lot of it is operational in nature and Advocate Singh will testify about that

tomorrow when she appears before the Commission. There is one particular recommendation, if the Commissioners will please bear with me, you also can guide me, it is on the guidelines or policy.

ADV GWALA: What is that?

ADV BATOHI: My apologies for this, Chairperson.

COMMISSIONER GABRIEL: Are you looking under recommendations?

ADV BATOHI: Yes, I am.

ADV GWALA: You say the recommendations deal with what?

10 ADV BATOHI: Well, my recollection is there was something about a policy issue that was mentioned, but I do not see it here.

COMMISSIONER GABRIEL: It is not paragraph 150.2.

ADV BATOHI: Ah, thank you. That is correct. Speeding does not help sometimes. The NPA should expedite the finalisation of a TRC prosecutor policy and training manual. In this regard the matter was discussed and it was considered that the current policy of the NPA, which deals with the prosecution of cases, was sufficient. In addition the NPA had prioritised TRC matters. In this regard I should mention at this point that it was included in the annual operation plans of the
20 NPA and the NPS.

My understanding is right from 2020 to 2025, but counsel will perhaps deal with that at a later stage, I am not sure, but we did, what we did do is include in the annual plans very specifically that the TRC matters needed to be dealt with and there were specific indicators related to TRC matters and I do not have a copy of it here, but I am

sure that in Advocate de Kock's Performance Contract there was also an issue relating to monitoring, to investigating and prosecuting TRC matters and monitoring progress with those TRC matters.

So this particular recommendation it was decided that the current prosecution, the Prosecution Policy sufficiently deals with it and, but there was a lot of work. There was no training manual as such, but there is a lot of work that has been done with regard to training and Advocate Singh will testify about that.

ADV GWALA: Chairperson and Commissioners, the operational plan
10 that the witness is talking about is being printed through the assistance of the evidence leaders. It is not before you at the moment, but it will be before you shortly.

CHAIRPERSON: Yes.

ADV GWALA: Thank you. Let us finalise then. We will, not now, ask for a stand-down for five minutes, because I am told that such documents are available, but there are people avoiding, are moving up and down.

CHAIRPERSON: Yes.

ADV GWALA: They are circulating that document, but we are not
20 asking for a stand-down, I just want to finalise that and then we will move on or we will ask for a stand-down. Let us then conclude what you say, your evidence as per the statement that you have submitted and I want you to take us and just read it into the record, paragraph 65 and 66.

ADV BATOHI: The conclusion here, counsel?

ADV GWALA: Yes.

ADV BATOHI:

"By deposing to this affidavit I have sought to demonstrate that since 2019, through the actions set out above, taken concrete steps to ensure that there is accountability for the atrocious crimes referred by the TRC.

10 The NPA's actions and progress in dealing with TRC cases during this time bear testament to this. In line with the NPA's victim responsive approach, the NPA will continue to prioritise interests of victims in Apartheid era crimes in the pursuit of justice for them and their loved ones."

I would hasten to add, Chairperson, that at times I must concede things did not take place as quickly as one would have liked it to, particularly the victims and the families and, but it was circumstances that we are operating in that made it difficult, but we certainly tried to do whatever we can and Advocate Singh will set out a lot more of the technical and operational detail to fast-track these matters, to
20 progress with them and to get them to a point where DPPs could make decisions either to prosecute or to open inquests, as appropriate. Thank you.

ADV GWALA: Ja. In paragraph 65 you limit your accountability from the period since 2019 to the time you retired. What I would wish to enquire from you is this, how have you ensured that your

predecessors, the former NDPPs, were able to come to the Commission and account for their (indistinct)?

ADV BATOHI: Chairperson and Commissioners, as I mentioned we took a decision at the ExCo, Executive Committee, that we will fully cooperate and support all NPA staff members with the current or ex, and that with regard to previous staff members we will, the NPA will provide the necessary financial support for legal counsel, should they need it, and I appointed Mr Madlala in the NDPP's office to coordinate and as well as Advocate Mahaga to coordinate with ex-
10 colleagues to make sure that they got the relevant support that the necessary documentation was provided, et cetera.

I did not receive any reports from any one of them that there were any challenges, but certainly there was a structure, there was key focal persons put in place to make sure that we render the necessary support to them.

ADV GWALA: Earlier you testified that you are not aware of any allegations made, allegations of interference or pressure being exerted to NPA, at least during your period, but you were the NDPP.

ADV BATOHI: Yes.

20 ADV GWALA: How would you advise such matters should be dealt with if there was an interference? How would you have deal with an interference?

ADV BATOHI: So if there was any political interference from either a President or a Minister, the Executive, member of the Executive, then if for example there was an interference with regard to TRC matters, I

think the first thing a National Director would be required to do is to have a conversation with the relevant member of the Executive and to explain that interference in the work of the NPA could amount to a criminal offence and that in the view of the National Director what the member of the Executive is, what the Executive is doing could amount to a criminal offence and inform them that if this continues as a National Director you will have to take the necessary steps to ensure the matter is investigated and potentially prosecuted.

10 It is possible Executive members may not be aware of limitations of power, et cetera, so it is important to have a conversation to put the relevant person, so to speak, on notice that this is not acceptable and could amount to an offence and if it continues then a National Director has no option but to investigate and prosecute the matter.

ADV GWALA: May I just consult with my junior?

CHAIRPERSON: Yes, you may.

ADV GWALA: Can you talk a bit about the Prosecuting Policy? The Act assigns its powers to the NDPP to determine the Prosecution Policy, you are aware of that.

20 ADV BATOHI: That is correct.

ADV GWALA: Can you take us to that, particularly the role that would be played by the Minister?

ADV BATOHI: So I think it is section 21 of the NPA Act.

ADV GWALA: Yes.

ADV BATOHI: That states that an NDPP, and I think the Act

... (intervenes)

ADV GWALA: And the Constitution?

ADV BATOHI: Yes, and the Constitution.

ADV GWALA: Yes.

ADV BATOHI: The NDPP shall determine Prosecution Policy in concurrence with the Minister and after consultation with the Directors of Public Prosecutions, and so the Minister certainly has a role to play in aspects of policy of the NPA. The way it would unfold in practice is that the National Director would in the NPA decide that you know, this
10 is a policy matter that needs to be dealt with and then would engage with the Minister with regard to the policy, get any inputs from the Minister.

Of course we need to, you have to in terms of the Act consult with DPPs and then at the end of the day policies are conducted in concurrence with the Minister, as per the law.

ADV GWALA: All right Commissioner, I think that time has come for me to request a stand-down, maybe just for five minutes.

CHAIRPERSON: Yes.

ADV GWALA: So that the document is circulated.

20 CHAIRPERSON: We will adjourn for five minutes.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Mr Gwala?

ADV GWALA: Thank you, Chairperson and Commissioners. Thank you for the indulgence. These documents came to us in the morning.

We have now placed before you four documents, four sets of documents, and if I may just describe them. One document will be the National Prosecution Service Annual Operation Plan 2025/2026. The second document, Chairperson and Commissioners, will be the Gauteng Local Division Annual Performance Plan 2020/2021.

CHAIRPERSON: Do you want to give them exhibit numbers, Mr Gwala?

ADV GWALA: May they be named as B1? That would be the Annual Operational Plan, EXHIBIT SB1, SB standing from Shameela Batohi.

10 The Gauteng Local Division Annual Performance Plan may it be named as B2? The third document which I have placed before you, Chairperson and Commissioners, is the Annual Operational Plan 2023/2024 and may be named SB3.

CHAIRPERSON: What we only have, Performance Agreement here.

ADV GWALA: I was going to mention the Performance Agreement. It could be that the documents that are before the Commissioners are not, there could be documents that are missing.

CHAIRPERSON: Yes.

20 COMMISSIONER KGOMO: I do not know, I do have them, even the Annual Operational Plan 2023/2024, I have it.

ADV GWALA: Is this the one you are referring to? Is it not this one.

CHAIRPERSON: Yes, I do not have this one. No, I have got this one.

FEMALE SPEAKER: You have got this one.

CHAIRPERSON: Yes.

ADV GWALA: Do the Commissioners have the document?

CHAIRPERSON: I do not have the document.

ADV GWALA: We apologise for this, Commissioner.

CHAIRPERSON: Ja, I do not have.

ADV GWALA: Commissioners, what we propose to do is to hand up ours.

CHAIRPERSON: Yes.

ADV GWALA: We will work on the electronic version.

CHAIRPERSON: Yes.

10 ADV GWALA: Okay. Can I check if the Commissioners have got the, all the Commissioners have got the Performance Agreement for Deputy National Director Public Prosecutions? It is a small bundle, it is a small document.

CHAIRPERSON: Yes.

COMMISSIONER KGOMO: Yes.

ADV GWALA: May that be marked SB4? Then Commissioners, there is a letter from the Foundation for Human Rights which we will deal with as a last aspect, if it is before the Commissioners, it is dated 29 January 2026.

20 CHAIRPERSON: It is not before us.

COMMISSIONER KGOMO: Ja, I think I have two. So do not worry.

COMMISSIONER GABRIEL: Thank you.

CHAIRPERSON: Yes? That will be SB?

ADV GWALA: 5. Thank you, thank you, Chairperson and Commissioners. May I proceed?

CHAIRPERSON: Yes, you may proceed.

ADV GWALA: Thank you. Advocate Batohi, because of your evidence you referred to ... (intervenes)

ADV MOROKA: Excuse me, Chairperson, I think there is a bit of confusion. With your leave, if Mr Gwala can repeat the ... (intervenes)

ADV GWALA: The annexures?

ADV MOROKA: Yes.

ADV GWALA: I can, Chairperson. It is a document which is written
10 National Prosecuting Service Annual Operational Plan 2025/2026.
That is SB1. Then there is Gauteng Local Division, Annual
Performance Plan 2020/2021, that one is SB2. Then there is the
Annual Operational Plan 2023/2024, that will be SB3. Then the
Performance Agreement for Deputy Director, for Deputy National
Director Public Prosecutions that will be SB4. Lastly the letter from
the Foundation for Human Rights dated 29 January 2029 will be
... (intervenes)

CHAIRPERSON: 2026.

ADV GWALA: My apologies, Commissioner, Chairperson. 2026. It
20 will be SB5. The document that will start with, logically it will be SB1,
because that is how we have sequenced the documents.
Advocate Batohi, have you got the Annual Operational Plan
2025/2026, the National Prosecution Service?

ADV BATOHI: Yes, I do have that.

ADV GWALA: And that document we have marked SB1.

ADV BATOHI: Yes, that is correct.

ADV GWALA: Can you identify that document? What is it?

ADV BATOHI: This is the Annual Operational Plan of the National Prosecution Service, which is one of the units in the NPA, which is headed up by Deputy National Director of Public Prosecutions and this is the business unit that deals with all prosecutions across the country, except for those of course now in the IDAC, and so this is the Operational Plan at a national level of the National Prosecution Service for the year 2025/2026.

10 ADV GWALA: Would there have been such documents for other financial years?

ADV BATOHI: Yes, that is correct, there would be one for every financial year.

ADV GWALA: Okay.

ADV BATOHI: Yes. Sorry, go ahead.

ADV GWALA: But in page 31, Commissioner, have you found the page, Advocate Batohi?

ADV BATOHI: Yes I am there, thank you.

20 ADV GWALA: In Roman figure 4, can you take us through that paragraph?

ADV BATOHI: Yes. This section of the document is part of the situation analyses aspect of this document, the environment and so it deals with just a few very short brief descriptions of the TRC component and what it is meant to do.

ADV GWALA: All right. Can you go to page 50 then and explain the

last comment there?

ADV BATOHI: Page 50 on this Annual Operational Plan, this is the section that unpacks the various programs and the indicators, targets, et cetera, and also the activities of the various aspects of the work of the NPS and on page 50 at the bottom it deals with effective prosecutions conducted and then under that the TRC matters and it sets out various activities. Should I read that into the record?

ADV GWALA: Yes, madam.

ADV GWALA:

10 "To prioritise and deal with recommendations of the TRC as per the seven volumes of the report, thoroughly screen and identify matters that require referral to DPCI and relevant DPP divisions, maintain a register where all referrals are processed, including those with a decision taken, ensure relevant divisions have the dedicated capacity to deal specifically with TRC matters, regular and constructive monitoring of progress within divisions, coordinators to manage and monitor strict timeframes and turnaround times to ensure quality

20 and timeous decisions to enhance proper service delivery, increase NPA, DPCI accountability sessions, including the compilation of case plans with investigating officers.

Challenges to be identified with solutions, increase in media coverage on TRC matters. Training

and skills transfer, increase efforts to prioritise, expedite training and development, including finalisation of the proposal to deal with TRC matters. Develop and facilitate joint training initiatives with other law enforcement agencies to address, amongst others, recommendations in commercial crimes.

10 Ensure training in specialised prosecutions, provide proper guidance to prosecutors, investigators and DPCI members. Sharing of precedence, indictments, legal opinions, case law, heads of argument, interlocutory applications, et cetera. Victims, families, role-players, increase efforts to engage with families, victims, to collectively drive with families and victims and restore credibility in the NPA.

20 Ensure regular consultation with and update families and victims regularly. Increase efforts to engage with other governmental and non-governmental organisations to assess important documentation in their possession pertaining to the TRC, effective collaboration with other stakeholders.”

ADV GWALA: So this would have been your business plan for the year 2025/2026.

ADV BATOHI: Yes, that is correct, for the National Prosecution Service, that business unit.

ADV GWALA: Yes and you say, do you confirm that in respect of

other years there would be such a plan.

ADV BATOHI: Yes, that is correct.

ADV GWALA: We can put that document aside, Commissioners. The next document that I would like us to deal with is SB2, the Gauteng Local Division Annual Performance Plan 2020/2021. Have you got that document before you?

ADV BATOHI: I do, counsel.

ADV GWALA: Would you please take us, explain what that document is?

10 ADV BATOHI: So after the plans, the operational plans, like the one, the example that I just dealt with just now, SB1, I finalised that the National Office, in the divisions they would then prepare their own divisional Annual Performance Plans and this Gauteng Local Division one is an example, but there would be one like this for each of the divisions across the country, there are now 10 divisions.

ADV GWALA: And for each financial year?

ADV BATOHI: And for each financial year, that is correct.

ADV GWALA: Yes.

20 ADV BATOHI: If you note, this is for the Annual Performance Plan for 2020/2021, so this is very early in my term and at page 25 to which you have referred me you would note that one of the indicators in this plan under the part C on page 24, which refers to program outputs, the various performance indicators that start from page 24 at paragraph 3.2 and annual targets and on page 25 the second line from the top under the section output indicator, the role output

indicator, you will see the percentage of TRC reviews concluded.

Now at this you will see baseline, baseline, because at this stage, at the very early stage we were doing a review of all the TRC matters and trying to understand exactly what was in our space so that we could have a baseline and then in the years that follow we would be able to then have a proper target with regard to have understanding what the baseline is.

10 So this shows that from the very start we were beginning to properly manage and try to understand and review and deal with TRC matters.

ADV GWALA: And the details of that, how the TRC matters were handled, will be covered by Advocate Singh.

ADV BATOHI: That is correct, the operational detail.

ADV GWALA: Ja. Commissioners, you can put aside that document and now go to SB3 and in particular we will take page 16 there, but may you please identify that document first?

20 ADV BATOHI: Yes Commissioners, this is now another Annual Performance Plan, similar to SB2 which was for the Gauteng Local Division for the year 2020 and 2021. This one, SB3, is for the Northern Cape Division, as noted at the bottom of the covering page for the year 2023/2024.

ADV GWALA: Yes. Can you take us to page 16?

ADV BATOHI: At page 16 of this document, and again this is an example of a document that would have been prepared every year in each of the divisions, at page 16 the issue of TRC matters is dealt

with under the section headed on page 15, effective prosecutions conducted, TRC matters and then various activities are set out in bullet point.

ADV GWALA: Yes.

ADV BATOHI: Maintain a register of all referrals to the division, fully capacitate divisions to ensure that the prosecutors deal specifically with TRC matters, regular and constructive monitoring of progress within divisions, coordinator to manage and monitor strict Tato's friends and turnaround times to ensure quality and timeous decisions
10 to enhance proper service, it should be delivery.

Increased NPA, DPCI accountability sessions, including a compilation of case plans with investigating officers. Challenges to be identified with solutions, increase media coverage, finalise tailored contracts to specific TRC prosecutors. Victims, families, role-players, increase efforts to engage families and victims to collectively drive with families and victims to restore credibility in the NPA, to ensure regular consultation with families and victims regularly, increase efforts to engage with other government and non-governmental departments, it should be organisations, to assess important
20 documentation in their possession pertaining to TRC. Effective collaboration with other stakeholders. So this is similar to the Gauteng Local Division, but this was carried through every year in all of the divisions.

ADV GWALA: Ja, and there is also a Performance Agreement for the Deputy National Director of Public Prosecutions, which is SB4, SB4.

For what financial year is that Performance Agreement?

ADV BATOHI: This is, it is for the year 2023/2024. I had requested the agreement from the office, they unfortunately sent the unsigned version, it is a draft. I would imagine the signed one would be very close to this and we can get that if it is required.

ADV GWALA: But what performance ... (intervenes)

ADV BATOHI: Sorry, it is for the Deputy National Director of Public Prosecutions, Advocate de Kock, and I as his supervisor, this would have been signed because him and me every year.

10 ADV GWALA: Yes. What does it provide insofar as the TRC cases are concerned?

ADV BATOHI: In page 5 it states oversight of TRC matters, monitor the progress of TRC cases, decisions on prosecutions, closure or reopening of inquests, monitor capacity to deal with cases, improve the MPTT, it is the Missing Persons Task Team, and I will just explain that in a minute.

Move MPTT from PCLU to the TRC component specifically, ensure, review NPA measures adopted to deal with and prosecute TRC matters. That is by Advocate Ntsebeza SC.

20 So the Missing Persons Task Team was sitting outside of this TRC component and their function essentially was to trace and recover the remains of victims of Apartheid era atrocities, both within South Africa as well as outside its borders and to return the remains and dignified ceremony to families and victims.

So here there it simply makes reference to move the MPTT

to this component so that they can work more closely together to enhance coordination, efficiency, et cetera.

ADV GWALA: Yes. The sum total then of these documents would be that the NPA has got a plan, set out a plan to deal with the TRC cases.

ADV BATOHI: So the sum total of, yes that is correct, Chairperson, in fact from the very strategic level, from the NPS level, moving down through the divisions to the Performance Contract of the Deputy National Director that he signs with me, it will also be reflected in the
10 Performance Contracts of those that would be signed between the Deputy National Director as Advocate de Kock was at the time, and the DPPs below him and then cascaded down to prosecutors.

So it shows that right from a higher strategic level down to the operations we were ensuring that TRC matters got the necessary attention.

ADV GWALA: In your view, were the stakeholders that were serving insofar as the TRC cases are concerned satisfied with the plans that you have set up?

ADV BATOHI: I know that there were certain concerns about the
20 decentralised model that were raised by the, in particular the Foundation for Human Rights. We had various discussions, in fact conversations about it. There is one reference to a meeting in my affidavit, but there were various conversations.

I am aware that the Foundation was not, well I do not want to, I am sure they would be able to put things more correctly, but my

understanding is that they were not satisfied with the model that the NPA had adopted and they would have preferred an investigative directorate model similar to the lines of an IDAC, for example, with an Investigating Director, but that said, what I can say is that the model, I am very satisfied that the model we implemented is in fact a good model in the sense that it resides within the DPP's offices.

There are relevant resources that are allocated, there is a national coordinator with strategic higher level oversight and that if you look at, and Advocate Singh will come through and give a lot of operational detail tomorrow, you will be able to see all of the progress that has been made on a whole lot of cases with regard to the stages of the investigations, with regard to decisions whether to hold inquests, to reopen many inquests, to prosecute in some cases.

I accept that the numbers of prosecutions, we would have wanted more prosecutions, but she will explain in detail, that is Advocate Singh, the challenges that you have and at the end of the day as prosecutors we can only take decisions to prosecute when we are satisfied that the evidence meets the standard that is required to enrol. We cannot prosecute, no matter how much we want to hold people accountable like the families, a decision to prosecute can only be taken if we meet the required evidentiary standard and Advocate Singh will testify a lot about that in all the cases that she has handled, but I am satisfied that a lot of progress has been made with this model, you know whether the families are completely satisfied I cannot say, but we have been really trying our best to make sure that

the families get a level of closure and that there is justice, understanding as well that these are old cases.

Victims are dying, suspects are dying, an accused person died in the Rodrigues matter and the longer the time period, the less chances there are to actually have prosecutions, but we can only work with what we have and we have really been trying hard to get these cases to court, working with the DPCI that investigates the matter, but I do know that Doctor Kimmie has indicated a level of satisfaction with what we have tried to do in the years, in the past six
10 or seven years.

ADV GWALA: Perhaps let us take you to SB5 then, would you read that into the record?

ADV BATOHI: Yes, counsel. So this is a letter that I was not aware of until consultation on Tuesday last week and Advocate Shabnam Singh asked if I was aware of this letter and I said I was not, because as you would note it is dated 29 January 2026, so that is two days before I left office. It is a letter that is written by Doctor Z Kimmie and it is addressed to me.

ADV GWALA: From which organisation?

20 ADV BATOHI: From the Foundation for Human Rights. It is addressed to me as the then National Director. It says:

"Dear Advocate Batohi (incorrectly spelt). On behalf of the Foundation for Human Rights I would like to thank you for your many years of service as the National Director of Public Prosecutions, NDPP.

While we have at times differed in our views on how the TRC cases should be handled, or in our assessment of the progress in resolving those cases, we have greatly valued you and your team's openness to engagements, your willingness to listen to our concerns and proposals and your efforts to identify possible parts forward.

10 After many of little to no progress, your team approached the issue of the TRC cases with an admirable degree of seriousness, taking the unprecedented step of making public commitments to pursuing these matters. This commitment translated into substantial changes in the NPA.

20 Throughout our interactions you have consistently engaged with us in a professional, sensitive and transparent matter, an approach which is greatly appreciated, while for many victims and their families meaningful legal remedies have come too late, we nonetheless recognise and value your efforts to advance accountability and justice in a challenging and complex environment. We wish you every success in your future endeavours."

ADV GWALA: Thank you.

ADV BATOHI: And I wish to say to Doctor Kimmie I am sorry you did not get a response to it, but we certainly appreciate his appreciation

for the work of the NPA in trying to bring justice to victims of TRC atrocities.

ADV GWALA: Yes and Advocate Batohi, we will deal with another subject, you have heard about the evidence of Mr Ganda who says he wrote a letter to your office regarding the matter of ... (intervenes)

CHAIRPERSON: It is Mr Ganda.

ADV GWALA: Did I say ... (intervenes)

CHAIRPERSON: You said miss.

ADV GWALA: I apologise.

10 CHAIRPERSON: Yes?

ADV GWALA: It is Mr Ganda, he sent a letter to your office regarding the matter of (indistinct) Gabe. Are you aware of that, and what is your comment? Perhaps let us put the question firstly. What did you, how do you deal with that matter?

ADV BATOHI: Well, firstly I cannot recall receiving the e-mail, but what I can say is that the matter received attention. The e-mail was responded to and Advocate Shabnam Singh, because this is an operational matter, what normally happens when the National Director receives lots, receives, a National Director receives lots of e-
20 mails from lots of people and what I would do normally is that I would forward that e-mail to the relevant Deputy National Director whose portfolio it relates to and ask them to give the matter the attention and also they would respond to the representor.

In this case there were responses. Advocate Singh has deposed to a supplementary affidavit in this matter that sets out what

transpired after that and she will be able to testify about it, but the matter was attended to.

ADV GWALA: Thank you. I think I am done with you. Is there any comment you wish to make before I leave you?

ADV BATOHI: No, thank you Chairperson.

ADV GWALA: Chairperson and Commissioners, that would be the evidence for this witness.

CHAIRPERSON: Thank you, Mr Gwala. Ms Moroka?

ADV MOROKA: No questions, Chair.

10 CHAIRPERSON: Thank you. Ms Rikhotso?

ADV RIKHOTSO: I have none, thank you Chair.

CHAIRPERSON: Yes. Ms de Vos?

ADV RIKHOTSO: Thank you Chair, no questions.

CHAIRPERSON: Mr Propy?

ADV PROPHY: No questions, Chair.

CHAIRPERSON: Your microphone is not on.

ADV PROPHY: Thank you Chair, no questions.

CHAIRPERSON: Thank you. Mr Varney?

20 ADV VARNEY: Chair, we do have follow-up questions, we estimate we will need about 30 to 40 minutes.

CHAIRPERSON: 30 To 40 minutes?

ADV VARNEY: Indeed.

CHAIRPERSON: Yes. Are we adjourning now for lunch or should we take him? Let us take him, nè? Should we adjourn or take him? Let us take him, let us take him. Let us take his clarificatory

questions. Yes, we will afford you an opportunity to put your clarificatory questions before we adjourn for lunch.

ADV VARNEY: Thank you Chair, I am indebted. Advocate Batohi, just as Doctor Kimmie expressed his gratitude for your open door policy I wish to do the same and to place on record that you were always open to discussion, even when we had some fundamental disagreements. We appreciated the fact that you were always willing to call and see us, to engage on matters seriously.

ADV BATOHI: Thank you.

10 ADV VARNEY: I am happy that you placed on record that we actually have a long relationship, going back to the mid-1990s and as you mentioned to the Commission, we served together on an investigation into Hit Squad.

ADV BATOHI: Yes.

ADV VARNEY: You were in the Investigation Task Team and I was in the Investigation Task Board overseeing that particular unit and Commissioners, I want to placed on record that Advocate Batohi did stellar work in preparing dockets for prosecution, in particular in relation to Hit Squad, allegations of Hit Squads within the KwaZulu
20 Police. Sadly at Pretoria, as you will recall, the then Attorney-General decided not to take that case forward.

ADV BATOHI: Yes, I recall very well.

ADV VARNEY: I will be sneaky and placed on record that we have resubmitted that docket to the DPP's office, (indistinct) in Pietermaritzburg, we are waiting for our response, it has been about

two years now, but I am not going to bother you with that.

ADV BATOHI: I was not aware that that had been done. I would have asked for report on it.

ADV VARNEY: If we can turn to the period 2000 to 2009, you mentioned in your evidence-in-chief that although you were DPP in KZN, you did not deal with TRC matters for the reason that the PCLU was seized with all those cases.

Now in fact that particular period is of great interest to this Commission and it is the submission of the families that the period of the 2000, particularly from 2003 towards the end of that decade was the period of the most intense political interference and I just want to make it clear, and you are already aware of this that we of course are not suggesting or claiming that any political interference took place during your tenure. I am not suggesting that you collaborated or subjected, or succumbed to any political interference, we need to make that clear.

We will be making the submissions that the period 2000 to 2009 and then over years going up to around 2017, that the impact of the neglect arising from the interference, that that lingered into your period, so even though there was no political interference that we are aware of during your tenure, your ability to take on the cases and pursue them expeditiously were impacted by what happened before. Would you agree with that contention?

ADV BATOHI: Well, what I can say is that the delay in dealing with these matters expeditiously definitely impacted on the ability to

properly investigate and prosecute these matters. In the prosecution of any matter delays create challenges and if these matters, given that they were already old matters in the 2000s, that you know if they had been dealt with earlier the possibility of, you know more success would have been there, but we have, because of the time factor and what has happened over the years, it has indeed seriously hampered the ability to prosecute these matters, investigate and prosecute them.

ADV VARNEY: And if we turn to the next period, which was roughly
10 from 2010 to 2019 when you assumed office, so in your evidence-in-chief you mentioned that on the 9th, in October 2009 that is when you left for the Office of the Prosecutor at the International Criminal Court and so of course you would not be familiar with what took place between late 2009 and 2019. Now I just want to put to you what happened in relation to the TRC cases, at least in terms of numbers.

According to our records between 2007 and around 2016 there was not a single prosecution or inquest of any TRC matter, that is a period of close to 10 years, and in 2016 when an indictment was issued in the Nokuthula Simelane matter, that only came about
20 because Thembi Simelane went to court to compel a decision and then ultimately the then NDPP decided to pursue that case and in 2017 we saw the historic team Timol inquest. Now I should say that the family, the Timol family had to place the NPA on terms, had to issue a letter of demand to get that inquest going.

So what is your response to the fact that in those years there

was almost no activity, and the little that happened had to be compelled in a sense?

ADV GWALA: Chairperson and Commissioners, I am well aware that the scope for objection is very limited in these proceedings, but on record the witness has told the Commission that for the period 2000 and to about 2019 when she assumed the position she cannot make any comment in that regard, because she is not aware of what was happening and former NDPPs have been brought to the Commission to deal with such matters as they arose during their period of
10 functioning, I am a bit uncomfortable therefore requiring this witness to deal with a period that one, she has no personal knowledge of, two, has been accounted or will be accounted to by the relevant NDPPs. We just want to place that on record. I do not know what the Commissioners, the Chairperson and the Commissioners may wish to do.

CHAIRPERSON: Yes.

ADV GWALA: But it serves no purpose. It ever borders cross-examination for my view, because one is, it is something that is not arising from what the witness has said, so you cannot clarify that
20 which does not arise from evidence that she has given, that is our view.

CHAIRPERSON: Mr Varney?

ADV VARNEY: Yes, we take note of my learned friend's concerns. Our response, Chair, is that it is the evidence of Advocate Batohi that she was not in the country at that time and she cannot comment on

what transpired and I am not asking her to do so. I am simply asking for her reaction as a former NDPP who inherited that situation, to get her reaction to the fact that for a period of close to 10 years there was almost no activity and the only activity that happened was through an application to compel to court.

CHAIRPERSON: What does the question seek to clarify, given what she has testified to?

ADV GWALA: And if I may add ... (intervenes)

CHAIRPERSON: I am very worried about your line of clarificatory
10 questions that you have put to the witness so far.

ADV VARNEY: Okay Chair, in that case I do not want to raise concerns further, I am going to ... (intervenes)

COMMISSIONER KGOMO: Sorry, before you can respond, you see people sometimes forget that clarificatory is elucidatory and this is a very point that the Chair is making. What does it seek to elucidate? You see. So you can respond to that.

ADV VARNEY: Yes Commissioner, I take the criticism and I am going to move on. I think the ... (intervenes)

CHAIRPERSON: Yes, you may do so, Mr Varney.

20 ADV VARNEY: The witness has already indicated that not much transpired before she assumed office.

CHAIRPERSON: Yes.

ADV VARNEY: So I will move on, thank you. I have to struggle with my notes. I have been writing with my left hand it is almost eligible, but let us ... (intervenes)

CHAIRPERSON: But please try and be (indistinct).

ADV VARNEY: Yes, except it is almost like a dog's breakfast, I have to decipher my own handwriting. Advocate Batohi, in your evidence-in-chief as well as in your statement you make a few references to the Rodrigues case, so for example at paragraph 52 you state the judgment referred to political interference having materially affected the ability of the NPA to properly deal with the TRC cases in that the resources had been necessary to conduct proper investigations were not forthcoming. Now I am assuming, Advocate Batohi that you
10 accepted the judgment as issued by the court and subsequently by the NPA and indeed it was the position of the NPA not to dispute the facts of political interference that were put before the court in Rodrigues.

ADV BATOHI: That is correct, I mean we accepted the court judgment.

ADV VARNEY: Yes, and just to confirm, the position of the NPA at the time was not to dispute that political interference and the affidavit filed before that court by the NPA confirmed that in the earlier years it had been subject to political interference.

20 ADV BATOHI: Yes, that was the affidavit of Advocate Pikoli, if I recall correctly, and others maybe.

ADV VARNEY: Yes. In fact it was Advocate Pretorius filing the affidavit, but making reference to the affidavits of Mr Pikoli, MacAdam and Ackerman.

ADV BATOHI: Yes, thank you.

ADV VARNEY: Ja. Am I correct in saying that the position of the NPA, at least until you left office, has not changed?

ADV BATOHI: That is correct.

ADV VARNEY: Ja. Now you also mentioned that prior to you assuming office the NPA had been, I think the words you used were hollowed out and had been the subject of State Capture and deeply compromised. You also made reference to the Zondo Commission.

ADV BATOHI: Yes.

ADV VARNEY: And I think you said that the Zondo Commission was
10 seized with this matter, but unfortunately because of time-constraints it did not get to make any recommendations. I confirm that, that the matter was placed before the Zondo Commission. Would you agree that the Zondo Commission must have taken the view that there was something to investigate, given that it took up the matter?

ADV BATOHI: Well, I think it is a reasonable inference to be drawn from the fact that there was a, there were resources that were allocated to dealing with the position of the NPA and with regard to State Capture, I am aware of evidence leaders or counsel from the Zondo Commission taking statements from various NPA staff
20 members who deposed to affidavits regarding what transpired in the NPA at that time, so I think it would be a reasonable inference that they were of the view that there was something that needed to be investigated.

ADV VARNEY: Thank you. Commissioners, we have asked the Commission formally to see what records from the

Zondo Commission can be obtained and so far I do not think that anything has been recovered as yet.

CHAIRPERSON: Yes.

ADV VARNEY: Advocate Batohi, you mentioned in your evidence-in-chief that the PCLU, certainly by the time you arrived in office, was not adequately resourced and you made the point that it was not just the TRC cases that it had to deal with, it had to deal with terrorism matters, nuclear proliferation and other priority crimes. Would it have made a difference if the PCLU at that time had been confined
10 especially to the TRC cases, would they have made more progress in your view?

ADV BATOHI: I am not sure, because I am still of the view that the capacity at the National Office was insufficient. I do not have the numbers before me at the moment, but I think that the decentralisation model that resulted in capacity, enhancing capacity in the regions and then having a dedicated police DPCI, that is Hawks investigative capacity and prosecutors, I think Shabnam, Advocate Singh tomorrow will demonstrate what progress they were able to do, but I am not sure if I understand your question correctly, I
20 may not be answering it.

ADV VARNEY: Yes, let me cut to the chase. You have made it clear in response to questions put to you by your counsel that, certainly from the side of the Foundation and the families, there were some differences in approach to the cases. The NPA decided on decentralisation and the Foundation and the families had misgivings

and they would have preferred a specialised approach where you had a specialised unit only dealing with the TRC cases, so that is the premise for my question.

If the PCLU or another unit was only dealing with the TRC cases and not distracted by terrorism matters and other things, would they have made some progress?

ADV BATOHI: I think to answer your question, any dedicated capacity will make a difference if they are dealing only with a particular crime type and with the necessary resources and even
10 though the, so in essence whether it was a PCLU and us removing everything else, I am not sure whether that model alone, with everything concentrated at National Office, would have made as much progress as the current model which is still, which is in fact the, you have mentioned the word specialised approach, it is in fact, those prosecutors and investigators that are dealing with this are really specialised in dealing with TRC matters only.

I am sure that if you take a prosecutor out from the normal court and get them to deal with these cases they will need to get some additional training, et cetera, to know how to deal with cases
20 where you are dealing with archive matters, really trying to, and you know having that approach to families, and so I think that whether it is in the PCLU or whether it is a structure within the PCLU as we created this specialised component, but I hasten to add that it was actually reporting to the Deputy National Director directly as well.

Rodney de Kock at the time, and he passed away just last

year, was actively involved together with Trish Matska and the Deputy. She was the Special DPP at the NPS that I mentioned. So to answer your question more crisply, I suppose, any unit, any dedicated, well capacitated unit that is dealing exclusively with a crime type will definitely make more progress as opposed to a unit that has different mandates and you know, ja.

ADV VARNEY: Yes, and on that we agree with you. You mentioned Rodney de Kock who has sadly passed away last year, he was the Head of the National Prosecution Service.

10 ADV BATOHI: That is correct.

ADV VARNEY: So in fact he was in charge, I suppose, all prosecutions carried out in South Africa.

ADV BATOHI: That is correct, as a Deputy National Director.

ADV VARNEY: Yes.

ADV BATOHI: He was, yes.

ADV VARNEY: And the TRC component reported directly to him.

ADV BATOHI: We will... Sorry, sorry.

ADV VARNEY: Yes, but would you agree that Advocate de Kock as Head of the NPS and overseeing issues relating to all prosecutions
20 would only have limited time to deal with class of cases, not the TRC cases?

ADV BATOHI: So just to explain that, even though he as a Deputy National Director has a very broad mandate, and that is how organisations work, you know those at the higher levels have a lot more on their plate, but in this case we had Advocate Matska that we

actually also appointed as a Special DPP in addition to the Head of the PCLU, to give additional oversight into the TRC matters specifically and then when we appointed the coordinator, Advocate Singh, she was, and Advocate Varney would recall the reason, one of the reasons why I appointed her was that the families, and I think Advocate Varney himself had a lot of confidence in Advocate Singh when she was in the DPP office in Johannesburg and in some of the cases that she was dealing, so she was already seized with TRC cases and she was dealing with a number of them in court and I

10 actually said that it is because of her knowledge and understanding and expertise that she should be coordinating at the national level and so she was there coordinating all of the operations reporting to Advocate Matska and she reporting to Advocate de Kock, but the point I make about Advocate de Kock is that he had very clear directions from me that the TRC, because of its high priority in the NPA he needed to himself get involved in it to make sure that he gives the necessary attention to it, given its high priority nature.

ADV VARNEY: Thank you. I can confirm that we did make a specific request for the appointment of Advocate Singh, I might have made

20 the request myself.

ADV BATOHI: Possibly.

ADV VARNEY: And yes, we did have confidence in him because of the work in the Agget Timol and Haffjee cases. Now the component that Advocate Singh came to coordinate, the TRC component, am I right in saying that the main function was perhaps coordination and

facilitation, but it did not have any authority to institute prosecutions or issue directions to the DPPs and local prosecutors?

ADV BATOHI: So that is correct, because the legal framework of the NPA is that the DPPs have the legal authority to take decisions to prosecute, so she may not have had that legal authority, but her function in fact was to coordinate all the activities across the country, to share experiences, to deal with the training and to engage with DPPs.

I am well aware that many DPPs, when they had challenges
10 or when they needed to take decisions, would consult with her and you know, take the decisions in the matter. So even though the DPPs had the legal authority, the way the model worked is that Advocate Singh had a lot of authority, although not legal, but *de facto*, to engage with the DPPs and for example if she was not happy with the decision that a DPP had taken in a matter she would have escalated that matter to Advocate de Kock or to me and we could have asked for a review of the matter, but I can confidently say that in all the decisions that have been taken I am not aware of any
20 decision that a DPP has taken that Advocate Singh would have had a different view on.

ADV VARNEY: Right, but you are aware that the families and the Foundation have criticised the component because of that issue, that it is seen as a (indistinct) body, it does not have its own powers.

ADV BATOHI: They did, I am aware that the families have certainly criticised the model, but I do not think that there is a problem with that

model and when you look at the work that Advocate Singh will come and demonstrate tomorrow that has been done because of this model, that I think that it has been, as I said, I have you have a dedicated capacity with resources then this work can be done and that is exactly what we put in place in the NPA and you know, just to explain that you know, it does not necessarily mean that if you have an ID that you will have, you know and if it is not properly resourced it can be seriously problematic as we experienced with the ID before it became an IDAC, because you rely on other stakeholders to actually
10 capacitate an ID, which there were serious problems with.

So I think what this model had was specialisation, dedication, training and proper oversight and monitoring, which has resulted in the results that you will see, the Commissioners will note when Advocate Singh testifies.

ADV VARNEY: You mentioned that the decentralisation was transferring, the words you used, were non-core matters to the DPPs, it is also mentioned in your paragraph 18 of your statement.

ADV BATOHI: Yes.

ADV VARNEY: And that the TRC cases were part of the matters that
20 were decentralised to the DPP offices, but given that NDPP Ngcuka back in 2003 declared the TRC cases as priority crimes, could it not be argued that they were in fact core crimes or priority crimes?

CHAIRPERSON: Is that a clarificatory question, Mr Varney?

ADV VARNEY: Chair, I am ... (intervenes)

CHAIRPERSON: Persuade me.

ADV VARNEY: Chair, I am not going to persuade you.

CHAIRPERSON: Yes.

ADV VARNEY: I am going to move on before I test your patience.

CHAIRPERSON: Yes, thank you.

ADV VARNEY: Now Advocate Batohi, you mentioned various workshop you had and one picked my memory because I attended it, the workshop in October 2019 which was held in Pretoria and that was to look at the possibility of pursuing international crimes such as crimes against humanity through custom international law. You make
10 mention of it in paragraph 33.

I am pleased to advise the Commission that there has been at least one successful matter that has emerged and perhaps that workshop was the genesis (indistinct) crimes against humanity charges of Apartheid and murder in the (indistinct) case. Do you accept that that case is an example of where families and civil society collaborate with prosecutors and achieving results?

ADV BATOHI: Yes, certainly. I mean the entire, I have to give credit to civil society for pushing the issue of customary international law and prosecuting certain Apartheid-era crimes as international crimes,
20 crimes against humanity in particular. So I really valued the input that civil society gave us in those early engagements where there were academics that had written on this and it really assisted the NPA to start considering this matter seriously and with my background, having come from the International Criminal Court where that is what we prosecuted, it resonated with me to look at how we could be

innovative in South Africa and prosecute certain Apartheid-era crimes as crimes against humanity and so the work done by civil society at the time was very, very helpful and useful.

I recall at the time that they had provided opinions on the matter. There was a different view in my office about the possibility of pursuing this, but I was of the view that I agreed with civil society view on this and that we could prosecute these matters. I did not think that the one matter was the right case to take, you know the Commissioners will know particularly the Judge that, you know bad
10 facts make bad law sometimes and when you are testing new law you need to make sure that you have the right case that you are taking to really create good, strong *juris prudencia* and so I was wanting, I in principal agreed with it and was wanting the right case to be taken. Hopefully the (indistinct) will demonstrate that that is in fact the case.

ADV VARNEY: Yes, it is currently on appeal, but we hope that it is the right case. So you mentioned a few minutes back that the results speak for themselves and we are going to hear from Advocate Singh tomorrow on that score and you also made reference to the results of the new decentralised approach, it looks like it is at paragraph 26 of
20 your statement.

Certainly when it comes to inquests I think I must agree with you, I think inquests are important because it assists the families to get to grips with what happened. So I understand about 10 inquests have been completed since you took office, which I think is a good record and for the record, I was involved in six of them.

ADV BATOHI: Correct, yes.

ADV VARNEY: I am a fan of inquests, but would you agree, Advocate Batohi, that as useful and important as they are they are not really justice? They do not result in convictions and justice per se?

ADV BATOHI: I agree. It is a form of closure and as you say, you know families getting to know what happened, but at the end of the day it is, you know those that are responsible for atrocities, if they are not prosecuted then it is for the, and I mean in this particular case, I
10 do not want to say something generally, because generally you have different forms of restorative justice and victims generally may not think prosecutions is the best form of justice, you know, but in these particular cases, the TRC related matters, I think it would have been the case that prosecutions would have been, if we were able to prosecute it would certainly be first prize, so to speak.

ADV VARNEY: Ja, and turning to the first prize and focusing just on your tenure, so that would be around February 2019 to January of this year, so we are looking at a period of approximately seven years.

ADV BATOHI: Yes.

20 ADV VARNEY: According to the records which we have gleamed from the NPA report, when it comes to cases enrolled or prosecutions launched we are looking at around six cases.

ADV BATOHI: Yes.

ADV VARNEY: When it comes to convictions we are looking at two cases in which a total of four persons have been convicted. So from

the perspective of the families, and as you say from their perspective that is first prize as in justice.

ADV BATOHI: Yes.

ADV VARNEY: That they would suggest that that is not a good record. What would your response be?

ADV BATOHI: I would have to agree, I mean it is a small number of cases that have been prosecuted, but one has to look why we are not able to prosecute them and Advocate Singh will give extreme detail about the challenges in ensuring successful prosecutions in these
10 matters and as I said, we can only prosecute when the evidence meets the standard required for enrolment.

If we do not have that, no matter how much we want justice and prosecutions, we cannot prosecute and that is the reality of where we are in this period and I am not holding my breath that there will be many prosecutions even into the future, but I certainly hope there will be. There will be more in the future in terms of my successes, for the victims I hope there will be, but it is so many years after the fact and with all the challenges that Advocate Singh can speak about, that is the reality we are facing.

20 ADV VARNEY: Yes, and I think we would be in agreement with you and I think in your evidence this morning you made reference to the fact that witnesses, suspects, potential accused are dying off. Will that be the main reason why there would be so few going forward?

ADV BATOHI: I cannot say it is the main reason. I think Advocate Singh would be able to better say, because she is deeply involved in

the operations, but I cannot say whether it is the main reason. My inclination would be that it is one of the reasons definitely, but whether it is the main one, I do not know.

ADV VARNEY: Yes. Well, it was certainly the reason why the families wanted to see urgency in the cases, because suspects and witnesses were dying at a regular rate and they have set out, certainly in the Calata affidavit, that is bundle 1 of the Calata group papers Commissioners, that in respect of quite a few matters during your tenure, including the cases of Neil Agget and Haffjee and Haron,
10 they had to issue letters of demand, placing the NPA on terms to get action in those cases.

ADV BATOHI: The fact that letters of demand may have been issued does not mean that there was not any work that was happening. There was a lot of work happening and I can fully understand with families wanting these matters to progress quickly. As a National Director I wanted them to progress quickly too, for the very reason that we are the people's lawyers. We actually, in as much as the families have their own legal representatives, as prosecutors we represent the victims of criminal and the families in these matters are
20 actually people that, we are the ones that, they are our clients so to speak, whether represented or not, and we want to bring closure and justice for them.

So even though they are represented by lawyers, they should not be seen as the clients of the NPA, ones that we must actually serve and bring justice to. So you know, and we get lots of

letters from various complainants and interested parties that are not happy about progress and that it would make demands. It does not mean that the fact that a demand was issued that nothing was happening.

So I really want to make that clear, is that there was a lot, and Advocate Singh will testify to what was happening, but I can understand the frustrations of families in the sense that things are not moving quickly and that is totally understandable.

10 So it should not be seen that it is only because of these letters of demand that the NPA was spurred into action. We have it as part of our strategic priorities, we have been doing a lot of work in this term to deal with the cases and they still, for various reasons, cannot be progressed in some instances faster than they have been, so that is understandable, but you know it does not mean that nothing was happening in the NPA.

ADV VARNEY: Yes, thank you. Just for completeness I should have mentioned in that list, I was remiss in not mentioning the Cradock 4 case, you will recall that in July of 2021 the Cradock 4 families went to court to seek an order compelling the NPA to make a decision, but
20 unless you want to talk about that case we can move on.

ADV BATOHI: No, I am aware of that.

ADV VARNEY: Yes.

ADV BATOHI: And that matter is in the Eastern Cape and the DPP had taken a long time to take a decision in that matter, I agree with that and perhaps Advocate Singh can come and explain what some

of the technical and operational challenges were, but you know the DPP has to be satisfied at the end of the day and it is the responsibility of the DPP to take the issues. He ultimately made a decision that there will be an inquest held and that matter is proceeding at the moment.

ADV VARNEY: You make reference to Special Director Trish Matzke, you said she was asked to assist with strategic oversight. Am I right in saying that her role with the TRC cases was not a fulltime role and that she also had other responsibilities?

10 ADV BATOHI: That is correct, that is correct.

ADV VARNEY: Ja. Then in your evidence-in-chief this morning you made reference to a document that highlighted, amongst other matters, the review of the decision prosecutes not to prosecute Els and sons and as you mentioned there was another suspect by the name as Dedelicks, but he died in the interim process.

Now according to our records the review was lodged with your office in June of 2020 and then ultimately in July of 2023 the decision was made to reverse the original decision not to prosecute. By that stage, as you mentioned in your evidence, key witnesses like

20 Saliem Essop had become ill and was no longer willing to testify, so those cases did not proceed. Would you agree that a review taking three years is somewhat problematic for the families, the Timol family in particular?

ADV BATOHI: As I mentioned, Advocate Leon Veenemans deposed to an affidavit that is an annexure to Advocate Singh's affidavit that

sets out the entire process and why it took that long. I think we must factor in that we, from 2020 to 2023, about a year was usurped by Covid and, but I accept these are, you can look at reviews in your office, but if you look at that document, Leon Veenemans, it sets out the process and why the review took that long and I think that there is sufficient reason and explanation given about...

I agree, generally a review should not take three years, to answer your question directly, but there were various issues relating to, if I remember correctly, having read Leon's affidavit, Advocate Veenemans, relating to the witness statements, relating to, if I recall correctly legal representation, because the review process requires a National Director to get, to allow interested parties to be able to make submissions as well and in this case the interested parties would be the potential suspects or accused and I understand that there was a challenge with legal representation, with getting there.

So there was a whole lot of reasons why, but I think I am not in the best position to deal with that. Advocate Singh can deal with it in a better way tomorrow, giving the necessary details.

CHAIRPERSON: Mr Varney, I think we have gone past the time you indicated you would take for your clarificatory questions.

ADV VARNEY: Chairperson, I am almost at the end.

CHAIRPERSON: Yes.

ADV VARNEY: With your indulgence, perhaps just three or four more questions, but I undertaken not to be much longer.

CHAIRPERSON: Thank you.

ADV VARNEY: You mentioned at paragraph 47 of your statement that in October 2024 you made something of a breakthrough, because for the first time you were able to secure permanent posts for the prosecutors recruited to deal with the TRC cases. I think you mentioned there were 19 permanent posts you were able to secure.

ADV BATOHI: Yes.

ADV VARNEY: And that prior to that, I think, they had all been on short-term contract.

10 ADV BATOHI: That is correct, ja.

ADV VARNEY: But it did take you several years to get to that point, you know, four or five years. Did that not point to something of a weakness to the decentralised approach? Because you probably would not have had that problem if it was a truly specialised unit.

ADV BATOHI: I do not agree. Have you worked in government, Advocate Varney?

ADV VARNEY: I am pleased to advise that I have not.

20 ADV BATOHI: Then you will have a better understanding of especially creation of permanent posts. Generally there are structures and you have your structures set out. When you want to create permanent posts it takes a long process, also bearing in mind we had Covid in-between, so I think it was quite, you know we were, it also recognised, the fact that we got these permanent posts, it recognised that the Executive actually, because then ultimately it is the Executive that will sign off on the new structures, agreed that the

TRC was important enough to create 19 posts dedicated for this function, so I think that was a really good thing.

ADV VARNEY: Thank you. In your evidence-in-chief and your statement you make reference to the opinion of Advocate Ntsebeza SC and I do not want to dwell on it too much, because my learned friend has already led you on much of what his opinion said, but can I just point you to what Ntsebeza ended up reporting on the question of political interference?

I lost my notes on that one, but I do recall roughly what you
10 reported. Here it is. In his opinion on the question of political interference he said the NPA and the PCLU were swayed from their constitutional statutory duties in relation to the TRC cases and to be clear, he is talking about the period before you assumed office. He concluded that his inquiry could not investigate the interference, given the narrow ambit of his terms of reference and his lack of an
investigative arm.

He recommended that a Commission of Inquiry is the only
sensible way forward in order to get to the bottom of why the TRC
cases were never investigated or prosecuted with zeal. He said such
20 a Commission must investigate the extent and rationale behind the interference and should look into the roles of multiple state entities, as well as implicated individuals and then he made a few other recommendations around the powers of subpoena and alike. What was your response to those specific recommendations?

ADV BATOHI: So a setting up of a Commission of Inquiry is an

executive function and for that reason I engaged with the Minister, as I state I think from paragraph 57. I had several meetings with the Minister, not only about TRC. The Minister and I met, we tried to meet on a monthly basis when we could and there were various things on the agenda and of course this would have been one of the things at the time and so you know, because it is an executive function I was trying to understand what the executive position on this would be and then I testified about what happened and the various opinions and then we appointed senior counsel Ntsebeza to do the
10 work that I have testified about.

ADV VARNEY: So you agreed with his recommendation that a Commission was needed to investigate the political interference.

ADV BATOHI: Well, it is the only way that, I mean this Commission is now dealing with it, but it is, given the sensitivities, the time, I think it is perhaps the best way to deal with something like this.

ADV VARNEY: And did you approach the Minister and or the President in relation to the setting up of a Commission?

ADV BATOHI: I did not speak to the President about this matter. The Minister and I had discussions about it and at the end of the day
20 it was his decision.

ADV VARNEY: Yes, but you are aware of course that this Commission is only here because the families went to court in January last year and that is part of the relief that they were seeking.

ADV BATOHI: I am aware, yes.

ADV VARNEY: You were posed a very interesting question by my

learned friend about what would you have done as NDPP if during your term of office pressure or interference had been imposed on you, and you mentioned that you would have a conversation with the Executive member or members in question, you would offer them advice and if need be, you would warn them about the possibility of a prosecution. I dare say we would agree with you on that kind of response. Are you aware that Mr Pikoli, when he was NDPP, took similar steps? He did raise his concerns, he put it in writing and he did seek, he did have meetings with the Minister and he sought
10 further meetings.

ADV BATOHI: I am not aware. Except what is in public, I have been reading about and I am not really aware, he has not spoken to me about it.

CHAIRPERSON: Mr Varney?

ADV VARNEY: Yes.

CHAIRPERSON: You are testing my patience.

ADV VARNEY: Madam Chair, that is the last thing I wish to do and indeed Madam Chair, that is my final question.

CHAIRPERSON: Thank you. We will take a lunch adjournment and
20 reconvene at 14:40. We are adjourned.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Ms Nthambeleni, any clarification or questions?

ADV NTHAMBELENI: Thank you, Chair. No questions.

CHAIRPERSON: Yes. Ms Ntshizana?

ADV NTSHIZANA: Thank you, Chair. No clarifying questions.

CHAIRPERSON: Thank you. Mr Semenya?

ADV SEMENYA: Chair, before we do, I have been requested by Ms Moroka to record that she will not be with us for the afternoon session. As to the questions from our side, Mr Nalane will be putting those to the witness, Chair.

CHAIRPERSON: Yes, we have noted Ms Moroka's absence. Mr Nalane?

10 ADV NALANE: Thank you. Thank you, Chair. Ms Batohi, good afternoon.

ADV BATOHI: Good afternoon.

ADV NALANE: First, I must congratulate you on completing your stint as...

ADV BATOHI: Thank you.

ADV NALANE: you serve the Nation for that many years. Thank you very much. The record of the prosecution of TRC cases has been described by the Calata Group in the affidavit as dismal. You would have seen that description.

ADV BATOHI: I accept it.

20 ADV NALANE: And before I proceed, there is a document, which we want to hand in, Chair. The documents, the copies would have been placed before the Commissioners. It is Internal Question Paper, National Assembly Number 05-2025.

CHAIRPERSON: Yes.

ADV NALANE: And perhaps we can mark it.

CHAIRPERSON: What number should we allocate?

COMMISSIONER KGOMO: Should it be SB6.

ADV NALANE: Yeah, it is SB6. Thank you. Ms Batohi, I have put before you this document as well. It is questions that were asked in Parliament to the Minister and I am sure we have not... I think this is for record purposes, because the records are clear. What this, as I understand it, is that the Minister of Justice and Constitutional Development was asked questions about the record of prosecution of TRC cases and in the second page that is the reply, and if I

10 understand it, it says:

"That progress on prosecutions has been made since 2003. A total of nine PCLU-recorded prosecutions were noted between 2003 and 2017."

I am reliably informed by Mr Varney that some of those dates are not necessarily from 2003. For instance, *S v Barnard* was in June 1998 and Eugene de Kock October 1996 and pertinent to the question post-2003, *S v Gideon Nieuwoudt* would have been 2004 and the next one, *S v Aron Tyani* 2005, *S v Eugene Terblanche* 2003 and *S v*

20 *Blani* 2005. But what it illustrates is that at least known prosecutions from 2003 would have been about four or five, according to this record. You agree?

ADV BATOHI: Yes.

ADV NALANE: And successful prosecutions since September 2021, which will include your term, are recorded as two. *S v Wesley*

Madonsela and *S v Marais*. Would that be correct?

ADV BATOHI: At the time of this response to the parliamentary question, I am not sure what the current status is, but my recollection is that it is probably one or two more.

ADV NALANE: One or two more.

ADV BATOHI: Yeah.

ADV NALANE: Yeah. But I think the point is, as you have agreed earlier, the record does not speak well about what we did as a country from 2003 up to now and I know you would have taken over the
10 leadership of the NPA at some point in time, and I am not blaming you, or no one can blame. I am just saying, this is a broad picture that it tells us as a nation how far we have gone.

And as I understand it, your affidavit, when you came into leadership, you decided to make three key interventions, which you summarised in your affidavit at paragraph 8, page 4 of your affidavit. And, of course, one realised even from your affidavit and your evidence that you were acutely aware of the importance of progressing the TRC matters and as I understand it, this is part of your mandate that you thought, these are the things that you need to
20 achieve while you are in office.

ADV BATOHI: Correct.

ADV NALANE: Yes. And one of the things that you did was to... one of the interventions, which you did, as you recollect in paragraph 8.1:

"Developing mechanisms of focus on and
better manage TRC matters."

And you also detailed the intervention that you made to increase the number of prosecutions and the number of investigators. Correct?

ADV BATOHI: [No audible reply].

ADV NALANE: I see you are nodding your head.

ADV BATOHI: Yes, that is correct.

ADV NALANE: Thank you.

ADV BATOHI: Sorry for the record.

ADV NALANE: Yes, thank you very much. Mm-hmm. And what we have heard so far, we are have not making judgments, but there is a
10 recurring theme in the explanation why there has been such delay in the prosecutions. One of the recurring themes is that there were no investigators. And I am sure when you took over these cases and investigated, would that have been one of the reasons that you would have come across as contributing to the delay in the prosecutions?

ADV BATOHI: Yes, that is correct.

ADV NALANE: And that explains why you would hire more investigators and collaborate with the DPCI to avail more investigators.

ADV BATOHI: Yes, we did not hire them. The DPCI would hire them
20 because the investigative capacity was within the DPCI, prosecution capacity of the NPA and they were working together.

ADV NALANE: But you increased your collaboration with the DPCI.

ADV BATOHI: Yes.

ADV NALANE: Because one of the themes as well is that while the PCLU was in charge of the national program of investigations, there

seems to have been non-cooperation of sorts between SAPS and PCLU as well as the DSOS it was put, as it was then, and the PCLU.

Is that what you found as well?

ADV BATOHI: I am not aware of that.

ADV NALANE: But acutely you said in order to bridge the gap between investigations and prosecutions, you have to cooperate more closely with the DPCI.

ADV BATOHI: Absolutely.

ADV NALANE: And that led to the increase in the numbers.

10 ADV BATOHI: Yes, resourcing.

ADV NALANE: But the record, you say, two or three, even with those resources, why has the records, the numbers, not increased dramatically or at least considerably with the resources that have been thrown behind the program?

ADV BATOHI: I had explained earlier the challenges with prosecuting these cases. Should I repeat that, Chairperson?

CHAIRPERSON: Yes, you may.

20 ADV BATOHI: Thank you. There were various challenges, Counsel, with regard to the age of the... and Advocate Singh will expedite, I will elaborate on this, but broadly challenges relating to the age of these cases. They were extremely old. Related to witnesses being available or not available. Challenges with reconstructing scenes and trying to determine trajectories of bullets, *et cetera*. Long after, normally when murders are investigated, you know, a police officer will be at the scene and you would have all of this done at the scene.

There was also, we were dealing with a situation, which is what I did not mention earlier, Chairperson, is that there were clear attempts to conceal evidence or to destroy evidence by those that were involved in these murders. So, with docket numbers that had disappeared. So, with all of these complications, it is extremely difficult to investigate these cases that are extremely old.

Witnesses' ability to recollect events also becomes less as time moves on. So, as I mentioned earlier, I certainly hope there will be more prosecutions, but these challenges remain, but we have
10 been training the investigators, prosecutors, to be able to deal with some of the more specialised aspects of investigation and prosecution of these particular types of cases, but those are the key reasons why it is not simply a resourcing issue. If it was simply a resourcing issue, then I agree. We would have moved a lot faster, but it is not simply a resourcing issue.

ADV NALANE: Thank you for that answer. What we have also had is the numbers of cases and they differ from one source to another. That is the TRC cases, and I see in your affidavit you deal with the numbers as you call them. For instance, at paragraph 45, you deal
20 with additional investigations between May and October 2022, thus bringing the total to 129 matters under investigation.

ADV BATOHI: Sorry, counsel, which paragraph? 45?

ADV NALANE: Paragraph 45, the middle of that paragraph. "This had resulted in an additional...".

ADV BATOHI: Yes, yes.

ADV NALANE: What I want to clarify with you is that, the term TRC cases, it may sometimes mean different things to different people. When the NPA says we have additional 32 new investigations that have been opened in May, between May and October 1922, and let me explain to you the background to the question. We know the TRC would have finished its business at some point and made recommendations that those who do not apply for amnesty, perpetrators, should be pursued. That is one category of persons who would have to be pursued.

10 ADV BATOHI: Chairperson, I am not hearing very clearly.

ADV NALANE: Thank you.

ADV BATOHI: Sorry.

ADV NALANE: Let me bring it closer. Is it better now?

ADV BATOHI: Much better.

ADV NALANE: Oh, thank you, thank you. I am saying to you that the term TRC cases is used to describe many things, and at some point we will have to bring our heads around what those cases really mean. So that when you say 32 additional investigations between May and October thus bring the total to 129 matters. One of the
20 important things is to say, as we speak now, how many TRC cases are still outstanding? Of course, definitions will be very important.

So when you say new investigations, what exactly do you mean? Can you clarify TRC cases in relation to these additional cases?

ADV BATOHI: I am trying to understand. I am just reading the

context of paragraph 45.

ADV NALANE: Yes.

ADV BATOHI: So what paragraph 45 deals with is the position as at 25 November 2022 when the NP appeared before the Portfolio Committee and at that stage, because of the added capacity, 32 new investigations had been opened between May and October 2022. That means these investigations were, there were no investigations with regard to these matters prior to that date and that is bringing the number, the total number to 129 of matters under investigation at that
10 time.

So between May and October, there were 32 new investigations opened and then the total, as at our presentation date, was 129 matters under investigation, including the new ones that had been opened over that period.

ADV NALANE: When you identify them as TRC cases, will it be cases of people who should have applied but do not apply? Or is it victims? People have been identified as having been violated.

ADV BATOHI: It is both.

ADV NALANE: it is both.

20 ADV BATOHI: Yes. So it is one category of those who did not apply at all.

ADV BATOHI: Yes, that is correct.

ADV NALANE: And investigations would have been done?

ADV BATOHI: Or those that were denied, those that applied and were denied as well and then where victims come forward, families

come forward.

ADV NALANE: So as in 22, new cases were still being investigated and opened?

ADV BATOHI: Sorry, 32? 32 new cases were opened between May and October 2022.

ADV NALANE: But as you say, it includes at least two categories. Those who did not apply, were investigated, prosecuted and those who applied, would that include those who applied but denied amnesty?

10 ADV BATOHI: Yes, and where victims came forward or where we were aware of deaths in detention, for example. Even if nobody came forward, there were investigations that were opened.

ADV NALANE: All right. So that would fall under rubric TRC cases?

ADV BATOHI: Yes, and Advocate Singh would be able to give a lot more detail on this.

ADV NALANE: And one of the other milestones, which you set for yourself, was to enhance engagements with the relevant stakeholders, in particular families.

COMMISSIONER KGOMO: You must speak into the microphone.

20 ADV NALANE: Yes. One of the other milestones you set for yourself was to engage with the relevant stakeholders, in particular the families.

ADV BATOHI: That is correct.

ADV NALANE: And you would say there has been some measure of success or progress there?

ADV BATOHI: A lot of progress.

ADV NALANE: A lot of progress, because now victims know where to go and who to ask. You also mentioned the PCLU that now you have decentralised the prosecution of these cases. In other words, you have decentralised the PCLU, but you are now at different DPPs. Is that correct?

ADV BATOHI: That is correct.

ADV NALANE: The PCLU would have been much longer engaged in the TRC cases, at least since it was established in the 2000s, 2003
10 thereabouts. Do you agree?

ADV BATOHI: They were dealing with these matters for a long period that is correct.

ADV NALANE: And why did you take the cases from them, the PCLU?

ADV BATOHI: So as I explained in my evidence, there was no movement, clearly there was no movement on these matters at the time when I took office and there was a lot of the victims, families' victims, NGOs, concerned persons, and there was a lot of... they had contacted me as the new National Director. As I mentioned, I had as
20 early as 2019 meetings with various organisations. So there was a lot of dissatisfaction about the way in which these matters were being handled at the time and the progress with these matters.

So as an office, we considered what would be the best way to ensure that these matters get the necessary attention and because the PCLU had a very broad mandate and was also involved in other

crime types, like terrorism, proliferation, yeah, a whole lot of international crimes as well, we decided that we needed to create a dedicated capacity and also because the cases themselves emanated from the divisions.

So there would be murders, for example, committed in the Eastern Cape. There would be murders in KwaZulu-Natal. I think the key areas were Gauteng, Eastern Cape primarily, KZN and Gauteng. They were the main provinces where most of these cases emanated from, but of course there were also cases in other divisions.

10 And so we decided that in order to ensure that these cases get the proper attention, instead of having this small capacity that was clearly not moving with these cases, there was a lot of dissatisfaction. Let us look at how we could be more efficient. And so we created the decentralised model, which meant that we would then build capacity in the regions where the witnesses are, where very often the families are, and where investigators and prosecutors would be based to deal with specific cases in specific areas.

 And so that was the key reason was to expedite this and to create a dedicated capacity with capacity in the regions as well to
20 deal with the matters where the cases emanated from.

ADV NALANE: Thank you. We move now to your other priority, which you have set for yourself. It is summarised in 8.3.

"Addressing concerns about alleged political interference in the investigation and prosecution of TRC cases, as pronounced by

the courts, in relation to the Rodrigues matter."

You would recall that part of the terms of reference of this commission, if I may just read to you.

"The commission must, in relation to the period since 2003, enquire into, make findings, report on and make recommendations concerning the following guided by the constitution, relevant legislation, policies and guidelines.

10 1.1. Whether, why and what extent and by whom efforts or attempts were made to influence or pressure members of the South African Police Service or the National Prosecuting Authority to stop investigating or prosecuting the TRC cases."

We have heard your evidence. You say during your tenure there was no effort to influence or pressure you or at least the NPA, which you led to stop prosecuting, and investigating the cases.

ADV BATOHI: That is correct.

20 ADV NALANE: But surely when you took over as the NPA, well you would have access to records and information which would have predated your term of office, and as you say, one of the issues is the Rodrigues case where there was allegations that there were attempts or there were interventions which led to the delay in the prosecution and investigation of some of these cases.

So, standing where you are, are you able to, besides what you

have said to us, are you able to shed any light on this term of reference? You know, because the commission has to look at all the evidence. Are you able to add or shed any other light on this term of reference?

ADV BATOHI: I cannot because I was not aware. What is publicly available is what I know about it. We focused at the time on getting the, understanding, getting an audit done of the cases, getting the cases, you know, at the capacity together to investigate these matters, prosecute them and that was our focus. After Advocate
10 Ntsebeza's report, which did recommend a Commission of Inquiry, I testified about discussions with the Minister, and but there is nothing further that I can assist this commission with about what happened prior to my term. If there are any further documents, *et cetera*, I mean, all of the documents, I have made it very clear that the office must give this commission everything that is available in the NPA archives relating to what happened prior to my term.

ADV NALANE: No, thank you. Thank you very much for your assistance.

ADV BATOHI: Thank you.

20 ADV NALANE: Commissioner, those are the questions.

CHAIRPERSON: Thank you. Mr Gwala, is there any re-examination that you wish to conduct?

ADV GWALA: Chairperson, no, thank you very much.

CHAIRPERSON: Thank you.

COMMISSIONER GABRIEL: Advocate Batohi, you have quoted a

bit of the Rodrigues judgment in your affidavit at paragraph 53.

ADV BATOHI: Mm-hmm.

COMMISSIONER GABRIEL: Where it says, it is also for these reasons that the conduct of the relevant officials and others outside the NPA, paraphrasing, be brought to the attention of the National Director of Public Prosecutions for her consideration and in particular to consider whether any action in terms of Section 41(1) of the NPA Act is warranted.

ADV BATOHI: Mm-hmm.

10 COMMISSIONER GABRIEL: Now, the action you took was to obtain the Advocate Ntsebeza's report.

ADV BATOHI: That is correct.

COMMISSIONER GABRIEL: Beyond that, were there any other internal investigations that you conducted during your tenure to get to the bottom of this?

ADV BATOHI: No, there were no internal investigations conducted at the time. What we focused on was on setting up the capacity, capability to deal with the cases. Once we did that, we then got Advocate Ntsebeza to look at that and also, if you look at, I think I
20 deal with it somewhere in my affidavit, where in the mandate to counsel, Mr Ntsebeza, in page 59, which I elaborate on, if in the process of the review he had reason to believe that there is information that would amount to a violation of Section 41(1) of the NPA Act, such issues were to be escalated to take the matter forward. His conclusion was that there should be a Commission of

Inquiry into that aspect of it.

COMMISSIONER GABRIEL: Okay. But it was still two years later and only as a result of the litigation that this Commission of Inquiry was set up. So what I am trying to ascertain from you is, what else was done to give effect to what the court had basically brought to your attention?

ADV BATOHI: In my view, getting Advocate Ntsebeza to look at what had been done in the NPA up until that point, as well as giving him the possibility of looking into whether there were any
10 contraventions of Section 41(1), he indicated that the time and resources, I think it was resources, maybe time, did not allow him to do that and so he recommended that a Commission of Inquiry be set up.

As I indicated that this is an executive function and I had discussions with the Minister about it and, well, no, actually, let me make sure that I have my... it was after Advocate Ntsebeza's report and his recommendation, one of them was that there should be a Commission of Inquiry. I am just thinking about the Rodrigues judgment and then the Ntsebeza report. You know, that is a matter
20 that I discussed with the Minister and it was for the Minister and the executive to decide if they wanted to appoint a Commission of Inquiry at that point. But I did nothing further about it except to have discussions with the Minister concerning it.

COMMISSIONER GABRIEL: So there was not any internal investigation?

ADV BATOHI: That is correct. There was no internal investigations.

COMMISSIONER GABRIEL: Thank you. Thank you very much.

CHAIRPERSON: Advocate Batohi, we thank you for having made yourself available to come and give evidence before this commission, even though you are on retirement.

ADV BATOHI: Job never ends, Chairperson.

CHAIRPERSON: Yes.

ADV BATOHI: Well, I hope it ends soon.

CHAIRPERSON: You may be recalled for cross-examination if an
10 application is made in that regard, in which case you will have to be
available for such cross-examination, but for now, you are excused as
a witness, ma'am.

ADV BATOHI: Thank you. Thank you, Chairperson. Thank you,
Commissioners.

NO FURTHER QUESTIONS

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

INQUIRY ADJOURNS UNTIL 16 APRIL 2026

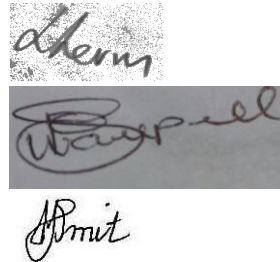
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JUDICIAL COMMISSION OF INQUIRY INTO TRC

FORUM OF ORIGIN : Inquiry
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L Lerm: Page 1-30
K Swanepoel: Page 31-97
M Smit: Page 98-113

TRANSCRIBERS :



The image shows three handwritten signatures stacked vertically. The top signature is 'L Lerm', the middle one is 'K Swanepoel', and the bottom one is 'M Smit'.

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