

**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 Yanela Ntloko- NPA representative  
Adv KD Moroka (SC) – DoJ representative  
Adv Tlotlego Tsagae (DoJ representative)  
Adv Motlalepule Rantho (for SAPS)  
Adv Bridgette Nthambeleni (for Adv Jiba)  
Adv Varney (SC) – The Calata Group  
Adv D Pillay – The Calata Group  
Mr Siphon Tlhaole – The Calata Group  
Ms A Thakor – The Calata Group  
Adv Gerrie Nel SC (for AfriForum)

**22 APRIL 2026**

**DAY 35**

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PROCEEDINGS ON 22 APRIL 2026

CHAIRPERSON: Good morning.

ADV SEMENYA: Good morning, Chair and Commissioners. Today we have Adv Ledwaba who is going to be giving his evidence and my learned colleague, Nalane, will be dealing with that aspect of his evidence.

CHAIRPERSON: Thank you.

ADV NALANE: It is Mr Ledwaba, not advocate, just small correction, but that would become apparent later.

10 CHAIRPERSON: It is Mr Ledwaba?

ADV NALANE: Mr Ledwaba.

CHAIRPERSON: Yes. Mr Ledwaba, are you going to give your evidence under oath or affirmation?

MR LEDWABA: Under oath, Chairperson.

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

MR LEDWABA: So help me God.

MALALA GEOPHREY LEDWABA: duly sworn states

20 CHAIRPERSON: Thank you.

EXAMINATION BY ADV NALANE: Mr Ledwaba, you have a bundle before you which has a statement or affidavit that you deposed to. Do you have that?

MR LEDWABA: I confirm.

ADV NALANE: The affidavit appears on page 1696 paginated.

Confirm that?

MR LEDWABA: I confirm that.

ADV NALANE: If you turn to page 1722, there is a signature that appears there.

MR LEDWABA: I see it, Chairperson.

ADV NALANE: Whose is that?

MR LEDWABA: It is mine.

ADV NALANE: Do you therefore confirm the contents of this affidavit?

10 MR LEDWABA: I do.

ADV NALANE: And you stand by the contents?

MR LEDWABA: I do. Correct.

ADV NALANE: Before we start with the contents of the affidavit statement, do you have any corrections to make in the statement?

MR LEDWABA: Correct, Chairperson. We have few corrections.

ADV NALANE: Yes, at paragraph 1.

MR LEDWABA: In paragraph 1 the word "Gamashashne" is missing one alphabet. It is A after the H to read Gamashashane.

ADV NALANE: So it should read G-a-m-a-s-h-a-s-h-a-n-e.

20 MR LEDWABA: Correct.

ADV NALANE: And then if you turn to paragraph 6.

MR LEDWABA: From 5.2.

ADV NALANE: 5.2, any correction there?

MR LEDWABA: In the second sentence under 5.2 it is typed "Directorate of Special Investigation". That "investigation" is

incorrect. It should be replaced with the word "operations",  
Directorate of Special Operations.

ADV NALANE: DSO.

MR LEDWABA: DSO.

ADV NALANE: The next correction?

MR LEDWABA: The next correction is in paragraph 6, first sentence. The degree of B.luris says "University of the North". "The North" is incorrect. It should be "South Africa, Unisa".

ADV NALANE: So it should read "University of South Africa".

10 MR LEDWABA: Indeed, correct.

ADV NALANE: Next correction that you want to make?

MR LEDWABA: In paragraph 7.

ADV NALANE: Paragraph 7.

MR LEDWABA: Fourth sentence or fourth line: "involved in the administration of estates". We are adding the word "deceased estates".

ADV NALANE: Deceased estates.

MR LEDWABA: Correct.

ADV NALANE: Thank you; the next on page 1709.

20 MR LEDWABA: 17?

ADV NALANE: Paragraph 49.

MR LEDWABA: 09?

ADV NALANE: Yes, paragraph 49.

MR LEDWABA: We missed paragraph 39.

ADV NALANE: Okay, 39.

MR LEDWABA: Yes.

ADV NALANE: Okay, let us go there.

MR LEDWABA: Paragraph 39 starts with the words “special” which is incorrect. It should read “specified”.

ADV NALANE: Thank you; the next one?

MR LEDWABA: Paragraph 49 indeed.

ADV NALANE: How do you want to correct that?

MR LEDWABA: The second last sentence: “Therefore, TRC cases, only two matters”. The word “McCarthy” there should be replaced by  
10 “Ngcuka”, “Adv Ngcuka”.

ADV NALANE: Thank you. Yes, the next one?

MR LEDWABA: Paragraph 56.

ADV NALANE: 56.

MR LEDWABA: Last sentence: “transferring the two researchers”. We are adding the word “two TRC researchers”.

ADV NALANE: Thank you.

MR LEDWABA: Paragraph 66.

ADV NALANE: Yes.

MR LEDWABA: First word “the” should be replaced with the word  
20 “their”.

ADV NALANE: Thank you. Next?

MR LEDWABA: Paragraph 89, fourth sentence, end of that fourth sentence, it reads currently: “DSO authorised projects in the PCLU”. The word “PCLU” should be substituted with “SNPU”.

ADV NALANE: SNPU.

MR LEDWABA: Correct.

COMMISSIONER GABRIEL: Sorry, Mr Nalane, I missed that paragraph.

MR LEDWABA: Paragraph 89.

COMMISSIONER GABRIEL: 89. Thank you.

MR LEDWABA: The fourth line starting with “complex DSO authorised projects in the PCLU”. That word “PCLU” is substituted with “SNPU”.

COMMISSIONER GABRIEL: Thank you.

10 MR LEDWABA: Thank you, Commissioner. I think that is it.

ADV NALANE: That is it. Thank you. It is common cause that you have been served with a Rule 33 notice. Correct?

MR LEDWABA: Correct.

ADV NALANE: And you have been asked to come and help this commission by giving information within your knowledge which can help the commission to look at the terms of reference.

MR LEDWABA: Correct.

ADV NALANE: You are aware of the terms of reference?

MR LEDWABA: I am aware.

20 ADV NALANE: In summary, the commission is asked to investigate and establish whether there were any attempts to interfere with or stop the investigation or prosecution of TRC cases by the South African Police Service or the National Prosecuting Authority.

MR LEDWABA: I confirm that.

ADV NALANE: Now, we want to deal firstly with you, your identity,

your person, your experience and background. That would be at paragraph 6 of your affidavit, page 1698. Are you there?

MR LEDWABA: I confirm that.

ADV NALANE: But before then in paragraph 5, you just provide a structure of your affidavit, what topics you want to cover, which would be apparent as [indistinct].

MR LEDWABA: I confirm that.

ADV NALANE: Yes, let us start with your educational and professional background; and this is covered from page 6, paragraph  
10 6 to 19, if you can just summarise your background. If you need to read any portion of your affidavit, please feel free to do that.

MR LEDWABA: I think it will be easier if I just read it.

ADV NALANE: Go ahead.

MR LEDWABA: Thank you.

ADV NALANE: Yes, and if you want to explain or expand further, you can do that.

MR LEDWABA: Thank you very much. Paragraph 6 says:

20 "I hold a B.luris degree from the University of Unisa which I obtained in 1989 and an LLB degree from the University of the North obtained in 1992. I also hold an LLB degree in Law of Contract from the University of Pretoria obtained in 1997 and a Masters in Business Leadership degree obtained in 2003 from the University of South Africa."

ADV NALANE: And in paragraph 7 you deal with your work history, beginning with your time in the Department of Justice as a clerk, Department of Justice of the then Homeland of Lebowa. Correct?

MR LEDWABA: Correct, yes.

ADV NALANE: Go ahead and deal with that.

MR LEDWABA: I can summarise to say I joined the department in 85, 1985 as an administration clerk and the Department of Justice then was an all-inclusive department running finance, home affairs, almost all the departments, were all-inclusive in the department, 10 which allowed me to be involved in a number of divisions at that office: administration of deceased estates, maintenance, claims, registration and licensing of cars, learner's and driver's licence, payment of the Lebowa Government tax, registration of birth and death certificate, issuing of passports, IDs and travelling documents and even including administration of the UIF, Unemployment Insurance Fund.

From 87 I was then, became a clerk of the court and court interpreter and I also had a year stint as a sheriff of the court which was then called 'messenger of the court'. After graduating with the 20 first degree B.luris, I was appointed as a prosecutor at the Lebowakgomo Magistrate Court, later transferred to Magistrate Mankweng in 1991. The main aim was to complete my LLB degree at the University of the North, which I then did and completed in 1992 and remained stationed at the Mankweng Magistrate Court.

1993 I was transferred and promoted to regional court

prosecutor in Polokwane Regional Court, then Pietersburg. And it reads in paragraph 11 that I was the first black prosecutor in the regional court then. I remained there until December 1994. I was admitted as an Advocate of the High Court in October 1994, Pretoria, 1994.

In 1995 I was appointed as a junior state advocate within the then Attorney-General's office in Pretoria, which is now called Director of Public Prosecution. In 1997 I was promoted to a next rank, being senior state advocate at the same office and in 2000  
10 promoted again to be a Deputy Director of Public Prosecution still in Pretoria reporting to the then Attorney-General Dr D'Oliveira.

ADV NALANE: So with 14, it is common cause that the Attorney-General's office was converted when the National Prosecuting Authority was past 1998,

MR LEDWABA: Correct. Prior to 98 there were, I can call them provincial attorney-generals. I think there were five then. And after the promulgation of Act 32 of 1998, that rank or position was abolished and replaced by Director of Public Prosecution which were then headed by National Director of Public Prosecution, who was  
20 then Mr Bulelani Ngcuka.

ADV NALANE: Line 15.

MR LEDWABA:

“In 2001, I was then transferred to the Directorate of Special Operations, which is colloquially known as the DSO and/or ‘the Scorpions’. I retained my

position and rank as a Deputy Director of Public Prosecution and I joined Adv Sonn and Adv McCarthy at the DSO. The two as the Head of the DSO were reporting to Mr Ngcuka as the NDPP.”

On my arrival, paragraph 16, I was assigned to lead the Head of the Organised Crime Desk, a position I occupied until February 2003, because on 1 March 2003 I was appointed as an investigative director, which was referred also as the Head of Operation and also  
10 Deputy Head of the DSO, second in charge. Adv McCarthy was then promoted to be the Head of the DSO after Adv Sonn left the DSO. I occupied this position until my resignation in December 2004.

ADV NALANE: Then 17 you deal with your progression in your career.

MR LEDWABA: In 2005, after leaving the NPA shortly, I began serving my pupillage at the Johannesburg Society of Advocates, JSA. And towards the end of January 2005, Adv Pikoli invited me to withdraw my resignation that I just submitted; and I agreed.

ADV NALANE: What was Adv Pikoli’s position at the time?

20 MR LEDWABA: He replaced after Mr Ngcuka resigned in 2004. I think Adv Ramaite acted for some while and Mr Pikoli was formally appointed by the president as the national director in end of January 2005.

After he asked me, I agreed and I rejoined the DSO in February 2005, occupying the same position as the investigating

director in the DSO, a position I occupied until I finally resigned on 30 June 2005, after which period I rejoined the JSA and continued with my pupillage programme. I did my pupillage at the Duma Nokwe Group; and after completion, I was to join them. However, I need to add here; it is not contained in the statement, Chairperson and Commissioners.

Immediately on passing the examination, I was arrested on 13 October 2006 from allegation arising from my then position in the DSO. The trial started in 2008 and only completed in 2018. There  
10 were a number of charges. Some were withdrawn. Some I was acquitted in terms of 174 and I was convicted on six counts. Prior to, I was convicted on 5 February 2014. And paragraph 19 I highlight that I was struck off the roll of advocates in October 2014 because of that conviction, but prior to my sentence. I was only sentenced in July 2015.

And in 19 we add that I was subsequently acquitted of all the charges by the High Court on an appeal where the two judges even making serious adverse criticism against prosecutors who handled my trial and expressly finding that the facts never established a  
20 commission of any offence.

ADV NALANE: And currently, what are you doing?

MR LEDWABA: I am currently self-employed. Chairperson, I see we had typed and we forgot to amend it when we did the correction.

ADV NALANE: So 20 must read: "I am currently self-employed".

MR LEDWABA: Self-employed, correct.

ADV NALANE: The next topic we deal with is the structure of the National Prosecuting Authority and the Directorate of Special Operations from paragraph 21 onwards. Before we delve into the detail, do you want to explain why you want to deal with the structure of the NPA at the time when [indistinct]? Why is it important?

MR LEDWABA: I think as to assist the commission to have a fair and a proper understanding of how the DSO firstly on their mandate and how they operated in relation to the other unit of the NPA as well as the South African Police Service and in particular the topic at  
10 hand, how the TRC were handled then or ultimately left the DSO.

ADV NALANE: So in 21 you then deal with the Directorate of Special Operations, the DSO.

MR LEDWABA: Correct.

ADV NALANE: Read that and explain it.

MR LEDWABA: It reads:

20 “The DSO, commonly known as the Scorpions, was a specialised unit within the NPA formed by the South African Parliament in 1998. It was tasked with investigating and prosecuting what they refer to as high-level and priority crimes, including financial crimes, organised crimes and corruption. It was an independent and multidisciplinary unit with a unique methodology with combined investigation, forensic intelligence and finally prosecution.”

ADV NALANE: So if I may pause there. What you are saying is that this was a specialised unit. Correct?

MR LEDWABA: Correct.

ADV NALANE: You say it dealt with high-level and priority crimes.

MR LEDWABA: I confirm.

ADV NALANE: And also organised crime; so in other words, high level, very serious crimes.

MR LEDWABA: That was the intention of the legislature and it is so in the act itself.

10 ADV NALANE: Thank you. You may proceed.

MR LEDWABA: Paragraph 22:

“The NPA then was headed by Adv Ngcuka who had four Deputy National Director of Public Prosecutions who reported to him.”

We name the four divisions, as the first one being the National Prosecutions Services, NPS, which was responsible for the day-to-day prosecution of cases in the district, regional and high courts; and this was headed then by Adv Jan Henning. The second division was the Asset Forfeiture Unit which was headed by Adv Willie Hofmeyr.

20 The third division dealt with all the specialised divisions within the NPA. At that time that is where the Priority Crimes Litigation Unit referred to in abbreviation as PCLU, the Specialised Commercial Crimes Unit, SCCU in abbreviation as well as the Sexual Offences and Community Affairs Unit, called SOCA then, which the third unit was headed by Dr Silas Ramaite SC. The fourth division was ours,

the DSO, which was headed by Adv McCarthy.

ADV NALANE: And then in 23?

COMMISSIONER KGOMO: You are speaking softly, Mr Nalane.

Can you speak up, please?

ADV NALANE: Mr Ledwaba, in 23.

MR LEDWABA: 23 we are saying the DSO operated along a model of four desks which existed when I joined. The first desk was the Financial Crime Desk. That is how it was referred. The second one: the Public Corruption Desk. The third was the Racketeering and  
10 Prevention of Organised Crime Desk; and the fourth was the Organised Crime Desk, which I then headed prior to my elevation.

ADV NALANE: If you can go back briefly to paragraph 22 where you talk about the specialised divisions. I do not know if you deal with the [indistinct] about what each division was doing, but the Priority Crime Litigation Unit, you expand some or do you want to deal with it here?

MR LEDWABA: I think we highlight the proclamation that created it and we call a mandate somewhere later in the affidavit.

ADV NALANE: And then 24.

MR LEDWABA: 24 is just to highlight that the DSO operated on a  
20 so-called proactive troika methodology type of investigation. This then meant a complete integration of investigators and prosecutors being assigned on each project. Sometimes there would be accountants and/or other experts where needed; that would be assigned to a specific project on each of the DSO-authorized projects.

ADV NALANE: Then paragraph 25 deal with the period in March 2003.

MR LEDWABA: Yes, I confirm that I was appointed then as the Deputy of the Head of the DSO. In terms of the act, it was called investigative director and/or head of operations, being overall in charge of all the investigations and prosecutions in the DSO. The DSO then had investigation and prosecutors in the region. We had regional offices in Gauteng, Western Cape, Eastern Cape, KwaZulu-Natal and Free State. Those were the regional or provincial offices.

10 In 26 we highlight that at head office we had also subdivisions; the first one being Crime Analysis Division, CAD. The second one that has been mentioned in this commission, being the National Projects, Special National Projects Unit, SNPU.

ADV NALANE: If you may pause there. Can you explain just briefly what the function of the SNP was? Do you want to leave it for later?

MR LEDWABA: I can do it now. The SNPU initially was sort of a specialised project based in the office of the national director. And when I joined the DSO or shortly after my appointment, it was decided to move it from the national director and allocate it within the  
20 DSO, because they were then investigating DSO-authorized projects and they were appointed as special investigators within the DSO. They came along carrying few TRC cases which were then lumped together with them in that unit. So they had two divisions – TRC cases and genuine DSO type of authorised investigation or projects.

ADV NALANE: I know we will come to the... I just wanted to just

have an overview of what it does, but you know we will deal with the case that we are dealing with at a particular time.

MR LEDWABA: I confirm.

ADV NALANE: Paragraph 26 you say, if you continue.

MR LEDWABA: There were also ad hoc projects divisions, one being called Crime Intelligence Collection Unit, which worked hand in hand with the SNPU. Then we had the normal HR, Human Resource Division and the Training Departments. In 27 again that is where I highlighted how the SNPU came into being. It was initially located in  
10 the NDPP's office. That is where I met Chris, Adv Chris Macadam as then he was located in the NDPP's office with whom I dealt with on some TRC cases. And the last sentence says the SNPU later formed part of the DSO and they were all reporting to me.

ADV NALANE: And then 28?

MR LEDWABA: Just under 27 in paragraph, on page 1723, Chairperson.

ADV NALANE: Page 1723.

MR LEDWABA: Yes. We have an annexure, which shows the identification of SNPU and CICU, CICU, Crime Intelligence Collection  
20 Unit, as they were working together and identifying cases as existed in that unit by 2003. The first group says "SNPU TRC files".

ADV NALANE: But before you go there, in other words, you are saying the unit CCU and SNP had files existing you were dealing with at the time.

MR LEDWABA: In 2003.

ADV NALANE: 2003.

MR LEDWABA: And they were grouped into two; the genuine. I am going to say the genuine DSO-authorized projects under the National Projects Office and the second group was the SNPU TRC files that they came along from Mr Ngcuka's office.

ADV NALANE: I know you deal with the projects office later.

MR LEDWABA: Yes.

ADV NALANE: But that is what you referred. You said, when you say generally authorized projects, this would be authorized in terms  
10 of legislation.

MR LEDWABA: Correct.

ADV NALANE: And then SNPU TRC files?

MR LEDWABA: They brought them along from the National Director's office. And because Adv Macadam was then stationed in the SNPU, he managed to run those investigations maybe for two or three months in the DSO.

ADV NALANE: These are the TRC offices.

MR LEDWABA: The TRC type cases, files.

ADV NALANE: And that would have been part of the creation of the  
20 PCLU.

MR LEDWABA: That was prior to the creation of the PCLU.

ADV NALANE: And as we know, the PCLU was assigned partly. Part of what their functions; they were assigned TRC cases as priority crimes.

MR LEDWABA: I think, so that we follow, it is March 2003. SNPU is

located from the NDPP's office to the DSO. April there is an additional proclamation by the president creating the PCLU with a specific mandate. And in May, Mr Ngcuka decided and it was approved by the NPA EXCO to identify the TRC cases as... the right word was 'specific offences' and that they are going to be located not anymore in the DSO, but within the PCLU. The initial proclamation of the PCLU did not include TRC cases.

ADV NALANE: We will come back to that in a bit more detail, but in paragraph 29 you deal with the turf war between the DSO and SAPS.

10 MR LEDWABA: I confirm, Chairperson.

ADV NALANE: Why do you think it is important for you to deal with that topic?

MR LEDWABA: It is important as later on or it has already been evidenced that there has been what we called a turf war between DSO then and SAPS on the core mandate of each of the two units, but later relevantly as to who between the two was supposed to do TRC investigations.

ADV NALANE: And at that time you were not in SAPS.

MR LEDWABA: No, I was never in the SAPS.

20 ADV NALANE: You were in the DSO.

MR LEDWABA: I was in the DSO in the NPA.

ADV NALANE: And the question will be: who must investigate cases that came up later, particularly the TRC cases for these purposes?

MR LEDWABA: Correct, because everything started after, in paragraph 28, after the President Mbeki handed in the report in

March 2003 and he made the speech on 15 April 2003 that the handling of TRC cases was handed over to the NPA.

ADV NALANE: And that is how you locate the turf wars between DSO and SAPS.

MR LEDWABA: Also, correct.

ADV NALANE: Then you deal with this matter again in paragraph 29. Can you expand on that; paragraph 29?

MR LEDWABA: I think the commissioner then was the late Mr Jackie Selebi. He wrote to the National Director, Mr Ngcuka, that  
10 there has been a complaint. That is how it started; a complaint that DSO has downgraded their mandate. Instead of focusing on these high complex cases, we were now doing a run-of-the-mill type of cases for quick wins and running to the TVs and taking the work away from SAPS. This then resulted in meetings and we ended up signing sort of service level agreements where we agreed that DSO or Scorpions will focus on its core mandate, as it was then defined in the legislation and let the SAPS also focus on their core mandate with their relevant type of cases.

ADV NALANE: Paragraph 29, the next sentence. You say:

20 "I was even part of management meetings."

Just read that out.

MR LEDWABA: That is what I just mentioned that between the two units, there were many management meetings where we ended up agreeing on the way forward and signing service level agreements; each focusing on their core mandate.

ADV NALANE: And in paragraph 30 you emphasise that your understanding of the mandate of DSO was to investigate complex high-profile matters of financial crimes, corruption and organised crime.

MR LEDWABA: That is correct, as defined in the act. It was not that the DSO or Mr Ngcuka, the NPA, created the mandate, but it was defined in the legislation.

ADV NALANE: And then in paragraph 31.

MR LEDWABA: In line with what we agreed with the SAPS, even  
10 prior to my taking of office, we created an intake of cases where there was a project management office which received and registered all referred DSO matters, which were initially for consideration, approval or refusal.

ADV NALANE: So this would ensure that you deal as DSO with matters that are within the mandate of the DSO.

MR LEDWABA: Correct.

ADV NALANE: Then 32?

MR LEDWABA: For the project management office will first assess if  
20 it falls within those four desks or core mandate. As before, there were deputies running each of the desks. They will then refer that file to the desk who will assess the matter and then refer it to me for approval or not. And each file was then referenced with its unique file number.

ADV NALANE: So in other words, you would have the final say of where to direct the particular matter.

MR LEDWABA: Correct.

ADV NALANE: You will say this is a commercial crime. It must go to the financial desk.

MR LEDWABA: Correct.

ADV NALANE: This is a sexual crime. It must go to the relevant desk.

MR LEDWABA: You mention sexual. We did not do sexual; high financial crimes or corruption or organised crime.

ADV NALANE: Okay, thank you. And then from paragraph 33 you  
10 deal with your position as Head of Operations of the DSO from 2003 to 2005.

MR LEDWABA: Correct.

ADV NALANE: Can you explain that?

MR LEDWABA: I point out that I was appointed as the Head of Operation/Investigative Director of the DSO from 1 March 2003 until 30 June 2005.

ADV NALANE: If you just pause; when you say 'head of operations', what did that entail?

MR LEDWABA: The legislation identified the position as an  
20 investigative director and because of the position applying to the person being the head of operations, the title just follow, but it is not in the act. And it ran also, the person occupying that rank was the second in charge of the Scorpion Deputy Head of the... so I ran three ranks in one.

ADV NALANE: Yes, you may proceed with paragraph 33.

MR LEDWABA: I read it further. I say:

“I deem it necessary to refer the Commission to the applicable legislation regulating the parameters of my functions then. This is to enable the Commission to locate the misguided allegations made by the Calata Group and Adv Ackermann SC and Macadam that I stopped the investigation and prosecution of TRC cases. Understanding my role within the confines of the law, will provide much needed clarity to the Commission, Commissioners and Chairperson.”

10

ADV NALANE: Yes, and 34?

MR LEDWABA:

“My position as Head of Operations was regulated by the NPA Act, 32 of 1998. The NPA Act gives effect to section 179 of the Constitution. At all material times, I was obliged to carry out my functions in line with the Constitution, the NPA Act and the existing NPA policies. Overarchingly, I was to act independently and without fear or favour.”

20

ADV NALANE: 35?

MR LEDWABA: We highlight that the position of the Head of Operation was introduced in the NPA Act through an amendment of the Act in 2000. And for purpose of the record, we will cite in full the

section 7; firstly, the section 2 on page 1705 where section 1 says:

“The principal act is hereby amended (a) by the insertion after the definition of ‘director’ of the following definitions: Directorate of Special Operations means the Directorate of Special Operations established by section 7(1)(a). ‘Head of Investigating Directorate’ means the Deputy National Director referred to in section 7(3)(a) or an Investigating Director referred to in section 10 7(3)(b), as the cases may be.”

If I may clarify, Chairperson; the first one being the Deputy National Director being referred there would be Mr McCarthy or Adv McCarthy as the Head of the investigating Directorate, the head of the DSO. And the second one, the investigating director then was myself.

ADV NALANE: So you were investigating director.

MR LEDWABA: Correct.

“The ‘investigating director’ means a Director of Public Prosecutions appointed under section 13 to the Directorate of Special Operations or as the 20 head of an investigating director established in terms of section 7(1A).”

This essentially meant that the rank of special investigative director was equivalent to a Director of Public Prosecution on a provincial level.

ADV NALANE: Okay, thus far it says ‘investigative director’ means

the Director of Public Prosecutions.

MR LEDWABA: Yes, the ranks were the same.

ADV NALANE: Yes, you may proceed.

MR LEDWABA: In paragraph 36 we quoted the then section 7 as it existed and in particular subsection (1A) which reads as follows:

10                   “There is hereby established in the Office of the  
National Director an investigating directorate to  
be known as the Directorate of Special  
Operations, DSO, to investigate and carry out any  
functions incidental to investigations -  
(a) relating to serious, high-profile or complex  
corruption, commercial or financial crimes and  
organised crime.”

This is the core mandate as it was defined for the DSO then,  
Chairperson and Commissioners.

20                   “(i) Also matters referred to the investigating  
director by the national director in terms of  
section 28(1)(b); or  
(II) Referred to the investigating director in terms  
of section 28(1)(a) or 28(13).”

ADV NALANE: I know we will come to this later. I would explain, but  
just to explain it further. So 1A(a) says this deals with the  
investigating director.

MR LEDWABA: Correct.

ADV NALANE: He may investigate matters relating to serious, high-

profile, complex corruption or commercial financial crimes and organised crimes. That is the function of the investigating director.

MR LEDWABA: And to our understanding then, this was the core mandate of the DSO and nothing else.

ADV NALANE: And then (i), which you just read; the national director may also refer matters.

MR LEDWABA: Correct. There was a provision in the NPA Act under 28(1)(b) which gave the national director overriding powers on type of cases you direct the special director or the investigative  
10 director to investigate, even though they did not strictly fall within the mandate of the DSO.

ADV NALANE: You may proceed.

MR LEDWABA: Under the Roman figure, the other in page 1706 relate to the legislative parameters of the mandate, being the Prevention of Combating of Corrupt Activities of Act 2004, 12 of 2004 as well as the Prevention of Organised Crime Act, 121 of 1998.

COMMISSIONER GABRIEL: And what were the additional related statutory offences or categories of statutory offences?

MR LEDWABA: These are the two that I mentioned under (b)(i) and  
20 (b)(ii).

COMMISSIONER GABRIEL: Is it limited to just those two?

MR LEDWABA: At the time, correct.

COMMISSIONER GABRIEL: At that time?

MR LEDWABA: Correct.

ADV NALANE: You may proceed, 37.

MR LEDWABA: As the head of the operation or investigating director, I was the only person who could authorise an investigation in the whole country in terms of section 28(1)(a) and 28(13) of the NPA Act.

ADV NALANE: Just explain that.

MR LEDWABA: I think if we read first 28(1)(a) as well as 28 in paragraph 13, then I can explain.

ADV NALANE: Proceed.

MR LEDWABA: The subsections are then referred to in full under  
10 paragraph 38, Chairperson. The first one being 28(1)(a) which reads  
as follows:

“If the investigative director has reason to suspect that a specified offence has been or is being committed or that an attempt has been made or is being made to commit such an offence, he or she may conduct an investigation.”

And the word “may” is highlighted and I will explain. The next one is section 28(1)(b) which says:

20 “If the national director refers a matter in relation to the alleged commission of a specified offence to the investigative director, the investigating director shall conduct an investigation or a preparatory investigation as referred to in subsection 13 on the matter.”

We included section 28(2)(d) which reads:

“If the investigative director, at any time during the conduct of an investigation, is of the opinion that evidence has been disclosed of the commission of an offence which is not being investigated by the investigating director concerned, he or she must without delay inform the National Commissioner of the SAPS of the particulars of such case.”

10 And the last one is section 28(13).

“If the investigating director considers it necessary to hear evidence in order to enable him or her to determine if there are reasonable grounds to conduct an investigation in terms of section 28(1)(a), the investigating director may hold a preparatory investigation.”

ADV NALANE: You are going to go back to 37 to explain.

MR LEDWABA: Correct.

ADV NALANE: You wanted to read 28(1)(a), 28(1)(b) ...[intervenes]

20 MR LEDWABA: In terms of ...[intervenes]

ADV NALANE: And how they relate.

MR LEDWABA: Yes, the overriding power to the investigative director is in terms of 28(1)(a) and he is fettered with a discretion. He considers a matter that must strictly fall within those four type of mandated offences. And the word “may” then says he has got a

discretion to approve or decline such a request. And once he is authorised, it is a DSO investigation and we call them projects. Under (b) the word is “shall”.

So it says once a matter is referred to the national director, apart from us, and he considers it deems to be investigated by the DSO, he had the powers in terms of that subsection to refer a matter, even though he did not fall within the confines of the mandate. He then directs it to the DSO and the head of the directorate. There is no option. The wording says “shall”. It was sort of a directive  
10 compulsory; shall then conduct that investigation.

And under (d), 2(d) also says those type of cases not falling under DSO “must” be referred to SAPS. And that is our understanding of the legislation.

ADV NALANE: So you had a discretion that if the national, like I said, you must investigate and at your discretion.

MR LEDWABA: I did not have. I was compelled to do that.

ADV NALANE: You may proceed.

MR LEDWABA: Under 39 we highlight that specified offences. If we go back to 28(1)(a), the preceding paragraph 38, it says “specified  
20 offences”, which are then... that is the only type of offences that the DSO could investigate. And then in 39 they are then defined within the act as to what are specified offences and it read that:

“Any matter which in the opinion of the head of an investigating director falls within the range of matters as contemplated in section 7(1).”

We highlighted that 7(1) read that offences related to serious, high-profile or complex; one: corruption; two: serious, high-profile or complex commercial or financial crime; three: serious or high-profile or complex organised crime cases; and lastly, those relating to racketeering and the prevention of organised crime. So these were the four core mandates of the DSO then.

ADV NALANE: And then paragraph 40?

MR LEDWABA: As I mentioned earlier on, Mr Ngcuka as the NDPP saw it fit in April 2003 to declare all TRC cases as priority crimes and  
10 place them within the newly established unit called Priority Crimes Litigation Unit; abbreviated as PCLU.

The PCLU was established in terms of a presidential proclamation in March 2003 and it was responsible for certain identified also priority crimes that were defined in the proclamation. If we can take to paragraph 43; that is where the type of priority crimes identified in the proclamation for the creation of the PCLU then are identified; and it says in paragraph 43:

20 “The PCLU was mandated ‘to direct investigation and prosecution’ in relation to various priority crimes, including, as identified in the proclamation, serious national priority crimes, such as terrorism, sabotage, high treason, sedition and international crimes.”

COMMISSIONER GABRIEL: Earlier you said that Mr Ngcuka had also said that these TRC cases were specific offences. What did you

mean by that?

MR LEDWABA: Initially they were not. They were not identified, if we follow the mandate or legislative mandate of the DSO. They are not included there. We are not covered, but they came along and they are located in the DSO. PCLU is created with this mandate, also not covering the TRC cases. He then decides in order for them to fall within the PCLU proclamation, to identify them as defined in the act as priority crimes.

COMMISSIONER GABRIEL: Priority crimes.

10 MR LEDWABA: And then he upscaled them from ordinary cases to priority crimes and now they formally fall within that proclamation.

COMMISSIONER GABRIEL: Thank you.

ADV NALANE: And then while you are there, just the reporting lines, just to get back. There is PCLU. There is DSO.

MR LEDWABA: Correct.

ADV NALANE: And they all fall under the NPA.

MR LEDWABA: Yes. When we did the four divisions, subdivisions in an earlier paragraph, I highlighted that Dr Ramaite was in charge of all these specialised new units. All of them were new in 2003. The  
20 SCCU, the SOCA and now the new PCLU; they were then reporting directly to Dr Ramaite and the DSO was separate from them reporting to Adv McCarthy and the two together with the other two were then reporting to Mr Ngcuka.

ADV NALANE: You were...

MR LEDWABA: On paragraph 42.

ADV NALANE: 42, yes, but just ...[intervenes]

MR LEDWABA: Sorry, under 41 I am saying, we say it was the decision of the NDPP, obviously communicated it to NPA EXCO management. It was endorsed and it became an official NPA policy that now TRC cases from that day are now located within the PCLU.

ADV NALANE: And as you testified earlier, they were in the SNPU at some point.

MR LEDWABA: Correct. Correct.

ADV NALANE: They then went to DSO, and DSO transferred to  
10 PCLU.

MR LEDWABA: If we now follow this new policy.

ADV NALANE: The new policy.

MR LEDWABA: Correct.

ADV NALANE: Ja, you may proceed.

MR LEDWABA: And it is highlighted in paragraph 42.

ADV NALANE: Yes, just read that for the record.

MR LEDWABA: We are saying:

20                   “Following upon this new policy, it was agreed  
                    that all TRC cases that were located within the  
                    SNPU of the DSO had to be transferred to the  
                    new PCLU.”

And that is around March, April 2003.

“As indicated, the PCLU reported directly to Dr  
Silas Ramaite. The DSO was therefore not  
responsible for the investigation and prosecution

of TRC cases since the inception of the policy.”

I have already dealt with paragraph 43, Chairperson and Commissioners, but under 44 we highlight that the PCLU was therefore clothed with both investigative and prosecutorial powers from that proclamation that created it. The challenge, however, that I have to mention, Chairperson was that no specific investigators were employed or assigned to the PCLU from its inception.

ADV NALANE: So if you may pause there. In paragraph 43 you summarise the proclamation.

10 MR LEDWABA: Correct.

ADV NALANE: And which said:

“The PCLU is mandated to direct investigations and prosecutions.”

- So both investigations and prosecutions.

MR LEDWABA: As highlighted in the proclamation, correct.

ADV NALANE: But you say in practise they did not have any investigator.

MR LEDWABA: At inception during my time there, there were never, they never appointed or assigned investigators to PCLU.

20 ADV NALANE: Thank you, you may proceed.

MR LEDWABA: In 48, 45, paragraph 45.

ADV NALANE: Why was that sought? If there is a proclamation, it specifically says you will be assigned, you will do investigations; why will they not assign investigators? Do you know?

MR LEDWABA: I will say that was above my pay grade. I do not

know.

ADV NALANE: Okay. You may proceed.

MR LEDWABA: In paragraph 45 we say, maybe to answer that.

“It was the understanding of the NPA EXCO Management meetings where Dr Ramaite was in attendance that the investigation of the PCLU would be done by South African Police Services in accordance with the constitutional mandate of the South African Police Services.”

10 ADV NALANE: And you were part of NPA EXCO Management?

MR LEDWABA: Correct.

ADV NALANE: And that is your understanding as well.

MR LEDWABA: Correct.

ADV NALANE: You may proceed.

MR LEDWABA: 46.

20 “The Calata Group in their papers alleged that when the PCLU, through Advocates Macadam and Ackermann, approached Commissioner de Beer, who was the Divisional Commissioner of the South African Police, Mr de Beer advised them that the NDPP, being Adv Bulelani Ngcuka, must approach President Mbeki for a decision on who should investigate the TRC cases between the DSO and SAPS.”

ADV NALANE: I think if you may pause there. Chair, I realise it is

one minute before tea.

CHAIRPERSON: Yes.

ADV NALANE: If we may pause here.

CHAIRPERSON: Yes. This might be an appropriate time to adjourn for tea. We will reconvene at quarter past 11.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Thank you, Mr Nalane?

ADV NALANE: Thank you. Thank you. Mr Ledwaba, you were just  
10 dealing with paragraph 46 and you're about to deal with paragraph  
47.

MR LEDWABA: I confirm.

ADV NALANE: Yes. Can you read 47 and then comment?

MR LEDWABA: In paragraph 47:

47 In his testimony before this Commission, Commissioner,  
Chairperson, Commissioners, Advocate Ngcuka said there was  
following what Mr de Beer advised Advocate Macadam and  
Ackerman for him to approach or for him to approach the President.  
He said there was no need for him to approach the President as all  
20 TRC cases under the mandate of the PSLU were understood to be  
investigated by SAPS, South African Police Services.

ADV NALANE: I think just to put a bit of context, De Beer was  
Divisional Commissioner of South African Police.?

MR LEDWABA: Correct.

ADV NALANE: And as we read from the papers and some of the

events we have had, Advocate Macadam and Advocate Ackerman SC, said they approached SAPS.

MR LEDWABA: In August 2003.

ADV NALANE: And there they were encountering difficulties with getting the cases investigated.

MR LEDWABA: Correct.

ADV NALANE: And when they asked De Beer to assign investigators, he wrote back to them and said as far as he understood, the PCLU was the one assigned to investigate TRC cases.

MR LEDWABA: No. I think his letter read that according to him, the President says NPA cases, TRC cases must be under NPA and his understanding was that DSO would then investigate the TRC cases as those police, most of those police that dealt with them have moved or been appointed as investigators within the DSO. That was his understanding.

ADV NALANE: And then he said if you need the mandate to be changed, go to the President.

MR LEDWABA: If you need clarity, he is saying I think along the lines that SAPS will only get involved once the President has clarified or instructed them.

ADV NALANE: And so the impression is that SAPS refused to investigate the TRC cases?

MR LEDWABA: I am not in a position to answer for them.

ADV NALANE: That is fine. You can proceed then.

MR LEDWABA: In 48, I say:

48 All PCLU cases then were investigated by SAPS and none since that proclamation were ever declared or investigated as a DSO project. I am highlighting a few cases that I am aware of that were dealt with by PCLU and investigated by SAPS. The first one is in 48,

48.1 Referred to as the State versus Geisser & Wisser. This was a matter investigated by SAPS and managed by, I have to correct that and it must read PCLU and not SNPU. I missed that when we did corrections. It involved nuclear weapons-grade uranium  
10 enrichment with a plant to Libya. The SAPS arrested the directors of Kirsch Engineering, PTY Ltd, and the matter was prosecuted by PCLU in Pretoria High Court.

48.2 The second one is under 48.2, Referred to as State versus Asher Karn. I'm not sure how to pronounce that surname, K-a-r-n. This matter was also investigated by SAPS in Cape Town and managed by the PCLU. The investigation dealt with import of nuclear devices to South Africa, then.

48.3 Refers to other Foreign Military Assistance cases such as the then arrest of South African citizens in, first group in Zimbabwe,  
20 another group in Equatorial Guinea, which were all investigated by SAPS, South African Police Service, and prosecuted by PCLU.

ADV NALANE: What are you making in 48, is that all PCLU cases were handled by SAPS?

MR LEDWABA: Correct.

ADV NALANE: .

MR LEDWABA: You say none were ever declared or investigated as a DSO project.

MR LEDWABA: Correct. Which would have entailed that DSO investigators are assigned to them, but they none were ever dealt with within the NPA Act.

ADV NALANE: Yes.

MR LEDWABA: The proclamation for them was separate, and the proclamation and legislation for DSO was separate.

ADV NALANE: I see. And 49?

10 MR LEDWABA:

49 Was saying in line with that new NPA policy of declaring TRC cases and transferring them to PSLU, and their mandate to investigate priority crime, then including TRC cases. The head of the DSO being Advocate McCarthy confirmed that all TRC cases that were within the DSO, that is now in 2003, Chairperson, were to be transferred and formally handed over to the PCLU. This occurred at the same time when I signed my performance contract with Advocate McCarthy.

20 Therefore, the TRC cases, save only the two matters that Advocate Ngcuka insisted that I, as head of DSO, must attend to them, were further not included in my performance indicators to be measured for purpose of my employment contract. I am simply saying when I signed my performance contract, TRC matters were not part of that because they were transferred to PCLU, and they did not form part of the mandate of the DSO. They were not covered under

my assessment or performance contract.

ADV NALANE: And then at 50?

MR LEDWABA:

50 In line with what we had just discussed, I requested the Project Management Office, which was headed by Chief Investigating Officer Mr Jonker, Kasper Jonker, to provide us, the DSO management, with an audit of all matters that had been investigated and dealt with by the SNPU then. Mr Jonker prepared the audit, and I attached that audit as Annexure MGL1, as the list of all cases that  
10 prevailed in the SNPU then.

ADV NALANE: What I suggest we do, the list is quite long, but just highlight the heading, unless it is necessary to read each and every project.

MR LEDWABA: I think maybe just the heading and say it is 51.1 to 51.10 and then the next heading, because it is the long list.

ADV NALANE: The way it is necessary, to highlight specific cases which you think might make a point, one has to do that.

MR LEDWABA: Correct. Thank you. In sub-paragraph 51.1, we identified those that are referred to as genuine DSO-authorized  
20 projects that were under the CICU and SNPU projects.

ADV NALANE: In other words, there are 10.

MR LEDWABA: This would have gone through the Project Management Office and assigned. Yes, and authorised in terms of 28(1)(a), all of these 10 projects. I do not think they are not relevant for purpose, I do not have to read them, Chairperson.

51.2 Is the relevant ones which are headed as SNPU TRC cases. We have listed, according to Annexure MGL1 in page 1723, 14 of such TRC, as they were called TRC cases, that existed in the SNPU then.

ADV NALANE: And then 51.3 is the list of closed cases, those files.

MR LEDWABA: Yes, they are. We also highlighted those files that were closed according to the Project Management. I think only one there is relevant for purpose of the memo referenced by Mr Leask and attached to the papers.

10 ADV NALANE: And just, you know, if you cast your eye through the list of the TRC cases which you were involved in posting and handling on page 1711, are you aware if any one of those cases were prosecuted?

MR LEDWABA: If you mean then, I do not think any of these were prosecuted then.

ADV NALANE: At the time.

MR LEDWABA: At the time, but I have been following the proceedings of this Commission and I hear that subsequently after I left or even now, some are only being attended to as late as 2024 and  
20 2025.

ADV NALANE: This is what we have learned through following the proceedings of the Commission.

MR LEDWABA: Correct.

ADV NALANE: And then if you turn to page 1712, page 52.

MR LEDWABA: Paragraph 52.?

ADV NALANE: Yes, paragraph 52, yes.

MR LEDWABA:

52. In line with my understanding of the NPA policy, I formally and officially transferred all TRC cases that were within the SNPU of the DSO, to the PCLU.

ADV NALANE: And paragraph 53?

MR LEDWABA:

53 On 15 July 2003, after I had taken the decision to transfer the cases to, TRC cases, to the PCLU, I issued two memoranda.  
10 One addressed to the then head of SNPU, Advocate Tongwane, Obe Tongwane, and another to the Chief Investigating Officer within the DSO, Mr Andrew Leask, who has already testified before this Commission. I have been unable to locate the one that I addressed to Advocate Tongwane, but the one that I addressed to Mr Leask is annexed hereto as Annexure MGL2. And I know it has been also attached to the Calata papers.

54 In 54, we quoted the memo in full, and if I may read the content thereto.

ADV NALANE: Is it important to read them, the content?

20 MR LEDWABA: Sorry?

ADV NALANE: Why do you want to read the whole of it, except?

MR LEDWABA: I think this is the number of my evidence. I have been accused that based on this memo, I, on behalf of the DSO or on behalf of whoever, I took the decision to stop TRC cases being investigated or prosecuted and/or stopped DSO investigators from

being involved. And the authority of that notion is being used referencing this memorandum.

ADV NALANE: Go ahead.

MR LEDWABA: The memorandum is MGL2, which is in page... (intervenes).

CHAIRPERSON: 1724.

MR LEDWABA: 1724. Thank you, Commissioner. The memorandum is referred to, headed as an internal memorandum, which I addressed to CIO Leask, and as I said, he already testified  
10 before this, and It is from myself, and the date is 15 July 2003. The subject is SNPU Investigations.

1. I say:

“Due to the recent creation of the PCLU, it has become necessary to redefine the mandate and operation of the SNPU as follows.

(i) Identify TRC cases. And I quote,

“I have decided that South African Police Services must take over the investigation of all such cases currently handled by you.”

20 And by you, Chairperson, I mean the SNPU.

“Your files should be closed off and all materials given to the PCLU. It must also be given the storeroom currently being used.”

That is to amplify here the TRC will slot in a separate storeroom there, and because we are moving them to PSLU and

SNPU, that is not you make use of it for their core projects. We said they must transfer that storeroom with all its containers to PCLU.

ADV NALANE: So was the SNPU and PCLU whatever in the same building?

MR LEDWABA: Correct. We were all in the VGM building, at Head Office.

ADV NALANE: Yes, proceed?

MR LEDWABA: "Notwithstanding the above decision, Adv Tongwane must finalise what was called Black Cats and Winnie Mandela cases.

10 "And I amplify that this is due to the fact that the national director of public prosecution has requested a speedy finalisation of the two matters and this must be done before 30 July 2003."

The TRC was stored in a separate storeroom there. And because we are moving them to PSLU and SNPU does not make use of it for their core projects, we said they must transfer that storeroom with all its containers to PCLU.

ADV NALANE: So are the SNPU and PCLU in the same building?

20 MR LEDWABA: Correct. We were all in the VGM building, head office.

Just to explain here, Mr Ngcuka, when he transferred or took decision that TRC cases are now transferred, he used 28.1b that we authorise these two, and the two remained as DSO investigators and prosecutors. Mr Tongwane was the head of the SNPU and is a prosecutor dealing with all matters in the SNPU. So he was tasked

together with his team to finalise these two matters of TRC-related by  
30 July 2003. I continue,

“It may be necessary for,”

This is I am now addressing to Mr Leask, I say:

“It may be necessary for your SNPU investigators  
to introduce certain witnesses with whom they  
have dealt to the South African Police  
investigators.”

ADV NALANE: Mr Ledwaba, you read the sentence “I have also  
10 transferred the two researchers.”

MR LEDWABA: Sorry, I missed that, after July 2003. It reads:

“I have also transferred the two TRC researchers  
to the PCLU.”

I highlighted earlier on, but here it is in black and white that,  
as Mr Macadam testified, the DSO then had employed two TRC  
researchers. Their core mandate was to deal with TRC cases. So  
when the TRC cases are moved out of the DSO to PCLU, they also  
moved along with the TRC cases to go and assist Mr Ackerman and  
his team.

20 “It may be necessary for your investigators,”

Now this is the SNPU investigators or DSO investigators,

“To introduce certain witnesses with whom they  
have dealt to the SAPS investigators and you are  
accordingly authorised to conduct the necessary  
handovers”

So to amplify again, we just did not say, that is your baby TRC cases, we assisted. We transferred the cases to them, we give them manpower, we give them storeroom, we give them all the tools that we had in the DSO, they went along with the TRC cases or the files. So they had all the backing and support from the DSO.

ADV NALANE: You testified earlier that as far as you knew, all PCLU cases were investigated by the SAPS.

MR LEDWABA: That is correct. And that is how I highlighted there that the first sentence, SAPS must take over the investigation of all  
10 TRC cases currently handled by the SNPU.

ADV NALANE: That is in the opening line.

MR LEDWABA: Correct.

ADV NALANE: Proceed?

MR LEDWABA: In Roman figure (ii) to (v), we identified four projects. The first one being Operation Sunflower.

ADV NALANE: Before you proceed, this is not TRC cases now, Operation Sunflower.

MR LEDWABA: A few years ago, I think Sunflower is identified in the annexure. I think it dealt with, if I am allowed to quickly look at...

20 CHAIRPERSON: Yes, what is the relevance of you referring it to the other matters that are dealt with in the internal memorandum? That is Operation Sunflower and Operation Black Widow.

MR LEDWABA: Is to show that it was clear to us then that these are now Mr Ackerman's babies and are to be investigated by SAPS.

CHAIRPERSON: But how relevant are these in relation to the inquiry

we are conducting?

MR LEDWABA: I think the only one that is maybe relevant is the final caption, which was then handled personally by Mr Ackerman himself and the foreign mercenaries that were identified in their proclamation that we transferred formally to them, Roman figure (iv) and (v)5.

ADV NALANE: But the point is that TRC case, which we deal with in Roman figure (i), you made sure they are transferred.

MR LEDWABA: Correct.

10 ADV NALANE: And that you deal with, you quoted the memo in paragraph 54, in the title.

MR LEDWABA: Correct.

ADV NALANE: You can go to paragraph 55 now.

MR LEDWABA:

55 It is clear from this memorandum that neither myself as head of operation nor the DSO stopped the investigation and prosecution of TRC cases. Instead, I merely complied with the NPA policy at the time and transferred all the TRC cases to the PCLU.

20 56 it is also evident from the above memo that I was concerned that the PCLU be assisted with a proper handover. I even went further in my assistance to the PCLU by transferring the two TRC researchers who were located within the DSO and who had been dealing with the TRC cases, amongst other matters, to the PCLU. This was to ensure that they continue with full assistance.

57 I also made it very clear to Mr Leask that his handover must assist the PCLU by ensuring that the DSO investigators who

were charged with the investigation of TRC cases introduce witnesses they dealt with to the SAPS investigators who were to take over the TRC cases in their assistance with the investigation of TRC cases.

This is just to say we just did not dump everything on them but we were prepared to offer them assistance and do a proper handover, even introducing witnesses to them.

ADV NALANE: And then the next topic is what the headings say. The Calata group have mischaracterised my instructions to  
10 Adv Tongwane and Mr Leask in the memoranda of 15 July 2003 as a decision to stop the investigation of TRC cases.

MR LEDWABA: Correct.

ADV NALANE: You deal with that under the relevant paragraph 58 up to 60?

MR LEDWABA: I confirm.

ADV NALANE: Yes. In summary, what are you saying there?

MR LEDWABA:

59 On reading the Calata founding affidavit, especially the one of Mr Lukhanyo Calata, he seems to have made a statement in 59,  
20 that, reading from that memorandum I quoted, he comes to the conclusion that that meant a decision to stop all TRC investigation and he characterised that as a remarkable, and I quote him, as a remarkable decision by the DSO to stop the investigation of TRC cases.

MR LEDWABA: You are quoting from paragraph 59?

MR LEDWABA: 59, Correct

ADV NALANE: . Yes. And how do you conclude?

MR LEDWABA:

60 In 60, I say neither myself nor the DSO stopped the investigation of TRC cases. My memorandum to Mr Leask as Chief Investigating Officer within the DSO contained a decision which I took in line with the proclamation and the declaration made by the then NDPP Mr Ngcuka that all TRC cases were priority crimes now falling within the PCLU.

10 ADV NALANE: So you're just carrying out your functions?

MR LEDWABA: And the trans-formal transfer from DSO to TRC, it was not my own making but an NPA decision.

ADV NALANE: Thank you. You then deal with requests by the PCLU's advocates, Ackerman SC and Macadam, for DSO assistance.

MR LEDWABA: Correct. As we initially said that the proclamation gives them investigative, it gives the PCLU investigative and prosecutorial mandate, but they do not have investigators. Mr Macadam with his pre-occupation being in the DSO left in May 2003 and joined the PCLU.

20 61 In May 2003, he now advocate Macadam in his capacity as Deputy Director in the PCLU filed applications in my then office requesting that I declare certain TRC cases as projects and as he used the terminology under Section 28(1)(a) of the NPA Act in order for the TRC cases to be investigated by the DSO.

And I confirm that he did file, I think, four applications then.

62 This request fell outside the authority I held as the Head of Investigations under the NPA Act as fully detailed in the preceding paragraphs. I then advise Advocate Macadam of my position as determined in the NPA Act and that I could not assist him. However, even at that stage, I pointed out to him that Section 28(1)(b) of the NPA Act was applicable and advised him that it may be prudent for him to approach the NDPP with his request. Advocate Macadam was of the view that my interpretation of the NPA Act was wrong and he was unwilling to heed my advice at that stage, now referring to the  
10 first encounter in May 2003.

ADV NALANE: So here, they are asking you to authorise an assigned biscuit also?

MR LEDWABA: In terms of Section 28, (1)(a), which we agreed earlier on, it deals with the co-mandate of those four legs which TRC cases, strictly speaking, cannot fall under any of those.

ADV NALANE: It has been transferred to the PCLU.

MR LEDWABA: It has been formally transferred to the PCLU.

ADV NALANE: Yes, proceed?

MR LEDWABA: So, I do not close him off. I still advise to him that  
20 rather resort to Section 28(1)(b) and approach the NDPP. He will decide whether, in his opinion, as they are already specified offences, he can then direct in terms of that subsection and instruct the DSO to investigate them. He did not agree with me then. He believed that I was wrong.

ADV NALANE: And this was the first of his, you say in May 2003.

MR LEDWABA: That is the first official encounter I had with him as a PCLU person on TRC cases.

ADV NALANE: And then 63?

63           Again, on about 15 July 2003, at the request of the two, Advocate Ackerman and Macadam, we held a meeting in my office. The two of them requested me again to assist the PCLU with investigation of TRC cases, using the legislative process of declaring certain matters as projects in terms of the NPA Act. Again, they were using Section 28(1)(a) as their tool to have them authorised as  
10 projects.

64           I advised them again that I was unable to assist them under 28(1)(a).

ADV NALANE: Then 65?

65           I noted that Advocate Macadam and his affidavit filed with this Commission described this meeting I had with them in July as being unpleasant. In my view, the meeting was not unpleasant. I merely communicated that I would not authorise those applications under 28(1)(a). Advocate Macadam was unhappy that I declined his request. And I point out that even in that meeting, I again  
20 emphasised to them that their best avenue would be to invoke 28(1)(b), which they must first approach the NDPP as an option for them as the PCLU.

66           They were obviously not happy with my, I call it, advice then to them. And in 66, I say that unhappiness over my decision and interpretation of the NPA Act is grounded in the context of my

professional journey within the NPA. Both Advocate Macadam and Ackerman SC were much senior to me when I joined the Attorney General's Office in 1995. I mentioned that Advocate Ackerman was already a deputy DPP then and I was just a junior state advocate and was way above my level of seniority in 1995.

Advocate Macadam was also senior to me then. In 2003, however, I became their senior. And it appeared to me that both Ackerman SC and Macadam were not willing to accept advice from someone who they still clearly regarded as their junior. And maybe  
10 that is why Mr Macadam ended up describing our meeting as unpleasant.

68 I say it is unfortunate that both of them, Advocate Ackerman SC and Macadam, did not follow my advice as early as May, July, and July 2003. However, in December 2003, it appears to me that the penny finally dropped and they did exactly what I have been saying to them and they approached the NDPP, Mr Ngcuka, in terms of the correct subsection being 28(1)(b), as I had been advising them since May 2003, July 2003 and I will also show that I did the same in November 2003. Only then, in December, they followed my  
20 advice.

ADV NALANE: Then the next topic you deal with is the Notice in terms of 3.3, which has brought you to this Commission.

MR LEDWABA: Correct.

ADV NALANE: You deal with that in paragraphs 69 and what?

MR LEDWABA: Correct. The notice is attached to the bundle so we

do not have to go into detail, but you comment on what you understood that you have been accused of or blamed, either wrong or rightly of.

MR LEDWABA: I confirm in those following paragraphs, 69 to the end.

ADV NALANE: I think 69 is, you do not have to do that for it is common cause.

MR LEDWABA: I'll start at 71.

ADV NALANE: Yes.

10 71 It is incorrect to say that the DSO at any stage would not investigate and a court would not investigate TRC cases. This I read from the Calata papers. As indicated in the preceding paragraphs, I informed Advocates Ackerman SC and Macadam that I, as the head of the operation, was unable to authorise the investigation of TRC cases in terms of Section 28(1)(a) of the NPA Act, but did not stop there. I implored them to rather resort to the provisions of Section 28(1)(b). They were simply not prepared to accept my advice at that stage. Sanity finally prevailed and they followed this advice and approached the NDPP after almost six months, only in December  
20 2003.

72 In paragraph 72, I deal with my third encounter with the two of them as PCLEO approaching DSO to obtain assistance in investigators. If the Commission remembers, after our July episode, they do not agree with me. They decide to go to SAPS. They approach Commissioner De Beer in August or somewhere in August.

He writes them that letter in August 2003 and we have already highlighted where SAPS says, oh no, we can't help you, go to the President. I do not know whether they did inform Mr Ngcuka, but Mr Ngcuka testified that he would not have approached the President. They then, in November, decide to revert back to the DSO. Now that is what I call the third encounter. It is highlighted in 72.

On 11 November 2003, I received a memorandum from Advocate Ackermann SC. In this memorandum, Advocate Ackermann stated, amongst other things, that, and I quote, On 3  
10 November 2003, he is directing this to me,

“On 3 November 2003, you informed me that you would assign the declaration in terms of Section 28(1)(b) and would appoint SSI De Lange to conduct the necessary investigation.”

So he is confirming that I had a chat or a meeting with him on 3 November 2003 in our third encounter, where I again confirmed to him that once you obtain an approval from the NDPP in terms of 28(1)(b) I would gladly approve. I have no option, it is an instruction.

I would approve the matters as DSO projects and will  
20 assign the preferred SSI main special senior investigator, the identified De Lange, and I agreed that once you do that, I have no option, I'll do that. And this is what he confirms.

ADV NALANE: Then 73?

73 I am saying, however, he is completely misrepresenting my advice to him. He gives it to, as if I had already agreed, that bring the

matters to me, I'll authorise them under 28(1)(b), but that is not so. I explained to him, he knows how 28,(1)(b) operates, I have been telling him, but I say there it refers to the authority of the National Director. He gives him only the National Director that prerogative to supersede the mandate of the DSO, and I was not the NDPP, it is common cause.

What I conveyed to him on the third was that he must approach the NDPP under that subsection and if the National Director approve his request, I would then approve the project and appoint SSI  
10 De Lange from the DSO, probably with others, to conduct the necessary investigation. Just to strengthen, to say, I told him 28(1)(b) is available, I will accede and comply with 28(1)(b), provided it comes correctly from the National Director. Only him can instruct with that word shall, to the investigating director. Again, on that day, he did not do.

74 I expressly pointed out to Ackerman that I have been advising the two of them all along, to first approach the National Director, as he was the only one in terms of the Act to issue a directive in terms of 28(1)(b). Now, this is the third time I am telling  
20 them. Then he left.

75 On about 10 November 2003, Advocate Macadams submitted four TRC matters for consideration in terms of, now they left 28(1)(a), they're using the correct subsection 28(1)(b) and he also referred to 28(13) stating of the NPA Act. This included the instruction that Senior Special Investigator De Lange be designated

as the investigator to deal with the four matters.

76 I informed in my office, Advocate Macadams, that the application he had forwarded to me then was again not in compliance with the prescript of 28(1)(b). I again explained to both of them that I was unable to authorise the four matters, up until they'd followed the prescripts of the letter of the law by approaching Mr Ngcuka. If he agrees with them, he would then issue a directive and then we will then authorise. That is all I said to them.

77 I say, I never oscillated in my advice to them, to the PCA. I  
10 advised them to first approach the National Director, which was the correct route, who would then issue the required directive and instruct me or instruct the DSO to declare those TRC cases under the DSO legislation and assign DSO investigators. That was the only way it could be done.

ADV NALANE: In 78, 79 and 81, we can refer to MGLM 5, which is on pages 1745 and 1746. You can do that by reference to.

MR LEDWABA: Yes.

78 Under 78, just to remind the Commission, May 2003, I tell  
Mr Macadam, he was alone, that go to the NDPP, use 28(1)(b). He  
20 does not agree with me. July, they are two. Macadam and Advocate Ackerman SC. I again, they still relied on 28(1)(a). I again tell them or told them, please use 28(1)(b). You either sign as the NDPP or you approach the correct NDPP who, after consideration, then decides to authorise them and instruct the DSO to do. They do not do it. We come to November, same script, same results. They do not

do it.

Now, under 70, paragraph 78, I say now it is common cause that the PCLU finally accepted my advice and directed their applications correctly to the NDPP on 8 December 2003. Then NDPP approved their request and duly signed the directive instructing me as the DSO to authorise the matters in terms of 28(1)(b), only on 24 February 2004.

In support, I attach as an extra MGL4 for the relevant directive that was signed by the NDPP on 24 February 2004. The  
10 memo, as Advocate Nalana has said, as he has said, is in page 1745.  
ADV NALANE: If you may turn to that page, of course, you repeat in paragraph 79, but just stick to that. What does it say? Investigation into?

MR LEDWABA: The memo is originating from ONTOP, Office of the Head, Priority Crimes Litigation Unit Headquarters. That is now Mr Ackerman's unit, PCLU. He refers it as an internal memo.

ADV NALANE: What it says to Head of Operations?

MR LEDWABA: It is forwarded to Head of Operations being Head of Operations, DSO. Head of Operations being myself. And It is  
20 purported to be from the, it is from the NDPP. It is dated 8 December 2003 and the heading is Investigation of TRC Cases by the DSO. I quote, he says:

“I have decided in terms of Section 28(1)(b) of Act 32 of 1998, that the following, I see there is a spelling, it says three cases, but they listed four, arising from the TRC being investigated by the

DSO. Under Roman figure 1, they identified kidnapping, assault and murder of the PEBCO 3. Roman figure 2, Murder of Brian Ngulunga.

CHAIRPERSON: Ngulunga.

MR LEDWABA: Thank you.

CHAIRPERSON: There must be a spelling mistake.

MR LEDWABA: I am reading it as it is, Commissioner. And I think the suspect, the main suspect was Van Rensburg on this one.

CHAIRPERSON: Yes.

MR LEDWABA: And Roman figure 3 would be the Murder of the  
10 Motherwell 4. And the last one, Roman figure 4, was the attempted  
murder of Reverend Frank Chikane. And Mr Ngcuka then signed this  
on 24 February 2004.

ADV NALANE: What did you then do? This is the memo?

MR LEDWABA: The memo comes to my office. Obviously through  
the project management. And we then authorised this as DSO  
projects. Issued the declarations. And because for every declaration  
by DSO, the head of operation must designate, meaning appoint and  
authorise investigators on each of this. And that is what we did. So  
when they left at that stage, they had four matters that were now  
20 properly authorised in context of DSO. And they were supposed to  
proceed with these matters with the investigators under the, within the  
DSO confines.

ADV NALANE:

It is a matter of record that the attempted murder of Reverend Frank  
Chikane matter was finalised in court ultimately.

MR LEDWABA: I followed that through the press, yes. I am aware of that. But only later.

MR LEDWABA: Only later?

MR LEDWABA: Only way later.

ADV NALANE: What do you mean only way later?

MR LEDWABA: This was authorised to them in 2004. So from February 2004, they were then tasked to proceed. And I just can't remember when it was finalised in court, but not close to 2004.

ADV NALANE: And what about the other three? PEBCO 3, Brian  
10 Nxulunga, Motherwell 4?

MR LEDWABA: To my best understanding, these were also recently, only attended to recently. Not in 2004, 2005. Even though they were authorised to them then.

ADV NALANE: And you learned this from following the proceedings of the...

MR LEDWABA: Following the proceedings and the testimony, I think, of Advocate Singh and Advocate Mhaga.

ADV NALANE: You have dealt with Paragraph 79. We may then go to 80.

20 MR LEDWABA:

80 In 80, I am saying now that PCLU, being alive and appreciative of how 28(1)(b) should be invoked, as I have been telling them since May the previous year, they formally adopted the same procedure and submitted a further application to the NDPP in terms of 28(1)(b). And I highlight this in Paragraph 81, which is the

submission they made on 26 February 2004, requesting Mr Ngcuka to authorise two further matters in terms of that subsection 28(1)(b).

The directive is filed as Annexure MGL5.

ADV NALANE: This is on page 1482. I think that is it.

MR LEDWABA: Just to correct the page, 1482 was the initial page probably where this was filed in another bundle. But for our part, It is 1746.

ADV NALANE: It should be 1746.

MR LEDWABA: It is there on top, 1746, page 1746.

10 ADV NALANE: Oh, you're right. It appears that it is. Just take the Commission through this.

MR LEDWABA: The memo is issued under the Office of the National Director of Public Prosecution heading. But on the right, it shows that it is from the Priority Crimes Litigation Unit, being Advocate Akerman's unit. And It is addressed to Advocate MG Ledwaba, Head of Operations, being issued from the NDPP. It is dated 26 February 2004, and the reference number of two TRC matters, 25(02) and 18(02) TRC. Heading is a Referral of TRC cases to the DSO in terms of Section 28(1)(b) of Act 32 of 1998.

20 Mr Ngcuka says:

"I have decided to refer the following matter to the DSO for investigation in terms of section 28(1)(b) of Act 32 of 1998. Crimes of Murder, Attempted Murder and Conspiracy or Incitement to Commit Murder committed in an organised fashion by

Letlapa Mphahlele, with reference to the APLA attacks on the St James Church and Heidelberg Tavern situated in Cape Town.”

He signs it and titled National Director of Public Prosecution. So I know he signed this on 26 February because it was submitted to our office on the same day.

ADV NALANE: And what did you do with that instruction? Which is 82?

MR LEDWABA:

10 82 The legislation says I shall. I have no discretion once it comes under that sanction. I complied with the instruction of Mr Ngcuka and I authorised the two matters as properly DSO projects and DSO investigators were then assigned to assist in these matters.

ADV NALANE: And then paragraph 83, what do you say there?

MR LEDWABA:

83 I said it is inexplicable and confounding to me why the PSCLU, now being aware that they have a tool, 28(1)(b), which they have been refusing to follow, only resorted and used it only on the six matters, the four on 24 February and the two on 26 February, leaving  
20 out the rest of possibly ripe matters that they could have similarly approached Mr Ngcuka. He would have authorised them under 28(1)(b) and I would have been obligated to authorise them as DSO investigators.

ADV NALANE: And then paragraph 84?

MR LEDWABA:

84 Reading from the papers, I noted that Advocate Macadam contends in paragraph 39 of his affidavits that I, as being Ledwaba, failed to respond to Advocate Ackerman's memorandum of 10 November 2003.

ADV NALANE: November.

MR LEDWABA: 10 November 2003, my apology. I disagree with Advocate Macadam's contention. To show that I disagree, I say it is common cause that I engaged with Advocate Ackerman on his memorandum to me on the 10th of November, and Advocate  
10 Ackerman, as he confirms our engagement, and states, if I have to quote his word, he says, after he approached me, talking to me, I was unmoved by his plea. So Mr Macadam is probably mistaken.

ADV NALANE: And what was this meeting or the memorandum all about?

MR LEDWABA: That was now the third encounter where they approached the DSO to assist them.

ADV NALANE: To assist about the DSO appointing investigators?

MR LEDWABA: Authorising the TRC projects as DSO projects and assigning, designating and assigning investigators to them.

20 ADV NALANE: Then 86?

MR LEDWABA:

86 I say it is significantly incorrect that I was unmoved and tone deaf to the TRC cases. It is I who advised the two of them, Advocate Ackerman SC and Advocate Macadam since May 2003, to adopt Section 28(1)(b) of the Act and to ensure that DSO

investigators would be appointed and designated to assist them in those matters.

ADV NALANE: And 87?

87 I further note that Macadam states in paragraph 40 of his affidavit that, and I quote him, he says:

“On 8 December 2003, NDPP Ngcuka, acting in terms of Section 28(1)(b), instructed the Ledwaba to have four TRC cases specified and referred to be investigated by the DSO.”

10 I say he is obviously incorrect in this regard because it is clearly incorrect. The NDPP only directed and instructed the DSO, not on 8 December as he claims, but on 24 February first time and again on 24 February. And not on 8 December as he says.

ADV NALANE: And 88 you deal with the six, or you deal with appointment of senior investigators to assist the PCL?

MR LEDWABA:

88 Yes, I think when Advocate Macadam testified, he also mentioned this aspect. That in their quest to investigate TRC cases, PSLU, being him and Advocate Ackerman, approached the NDPP  
20 and NPA senior management and made a request that six DSO investigators be seconded to the PCLU unit. I say I am also aware that this request was not acceded to by the National Director, Mr Ngcuka and his team, in particular then being Dr Ramaite and Advocate McCarthy. I am aware of that.

ADV NALANE: As we testified earlier, the PCL was created by

declaration, by proclamation, but they did not have investigators.

MR LEDWABA: Correct.

ADV NALANE: So here it looks like they were asking for investigators to be assigned to them.

MR LEDWABA: Correct. I think that was around just before they approached SAPS in August 2003.

ADV NALANE: And you say that request was not acceded to?

MR LEDWABA: Correct.

ADV NALANE: Yes, you deal with 89, you deal with that issue again?

10 MR LEDWABA:

89 I am simply confirming to the Commission that I can confirm that the overriding factor in refusing this request, they mentioned specifically six, because they know SNPU employed six investigators. So the request was refused because the available capacity of investigators within the DSU. They picked six because SNPU had only had six investigators then.

20 So if these investigators by then were settled with the investigation of the highly complex DSO genuine authorised projects that we identified in that Annexure. So if this request had been acceded to, nobody would have been remaining in the SNPU to deal with those projects and would have had to close the SNPU. So that is essentially why that request was declined.

ADV NALANE: And you say SNPU was dealing with serious cases?

MR LEDWABA: Correct. At national projects, those that we identified as national projects with the aim of quick wins. Those were identified

that they can be finalised quickly and DSO can then celebrate on those successes. The regions had long and complex cases that took some time. That was the main purpose of the SNPU.

ADV NALANE: And then paragraph 90.

MR LEDWABA:

90           The Calata affidavit states that the DSO persisted in its refusal to appoint investigators, as did the SAPS. This is what is in the papers. It is alleged in those papers that according to Macadam, the refusal by the DSO to provide investigators effectively brought an  
10           end to the investigation and prosecution of TRC cases.

ADV NALANE: Can I ask your answer to that?

MR LEDWABA:

91           I am simply saying in paragraph 91 that this is an incorrect representation of the context within which the DSO and the PCLU interacted, regarding the investigation and prosecution of TRC cases. I think I have already highlighted what happened in the preceding paragraphs.

91           In 92, I say the DSO authorised, notwithstanding what Mr Macadam says, it is common cause in 92 that the DSO authorised  
20           investigation of at least a total of six TRC matters as directed by the National Director in 2004. And this was by their request. So for him to say there was an effective bringing to an end of investigation, I am shocked.

93           In my view, PCLU had no impediments from pursuing any new investigation of TRC-related cases, I meant to say, utilising

Section 28(1)(b), by simply approaching the NDPP. And if you are happy, you would then direct and approve it, instruct the DSO to do and will do like we did with the six.

ADV NALANE: You explain here in 94?

MR LEDWABA:

94 The last application they made, the last application of the PCLU made in 2003 was on 8 December 2003.

ADV NALANE: And if you may pause there, the application was granted.

10 MR LEDWABA: Correct. As we said, under 1745, the memo by the NDPP was authorised. He approved it on 24 February on only four matters that was identified, and he instructed the DSO to further authorise two other matters two days later, 26 February 2004. So in total, they decided to apply for only six, and these were approved.

ADV NALANE: And could they have applied for more?

MR LEDWABA: Nothing stopped them. Well, I cannot really talk on their behalf, but from my perspective, they had at least, according to their audit, more than 40 cases then that were alive. And they decided to focus only on the six, which we now know were only  
20 finalised long after. Long, I mean long after 2004.

ADV NALANE: And then, what do you say in 95?

MR LEDWABA:

95 I wish to stress to the Commission that the DSO never stopped or refused to investigate TRC cases. It is clear we handed over, cooperated, and gave them even advice on how best for them

to deal. They disregarded that and only accepted in December when this could have been done as early as May. So to say the DSO stopped or refused is not correct.

ADV NALANE: Before you conclude, there is one matter that I want your views on.

COMMISSIONER KGOMO: Just speak up, Mr Nalane.

ADV NALANE: Before you conclude, I just want to ask one question which you may not be able to comment on, but you will inform us. You mentioned in your affidavit that in 2003, former President Mbeki  
10 made a speech in Parliament accepting the final TRC report.  
Correct?

MR LEDWABA: Correct.

ADV NALANE: And you were dealing with the DSO, and you also say that at some point, the TRC cases were made public crimes.  
Correct?

MR LEDWABA: Correct.

ADV NALANE: And it is known from public records and records of TRC cases, TRC reports, that what was envisaged was that the TRC process had run its course. And so those who did not apply, they  
20 applied, and those who were refused amnesty, they were supposed to be pursued by the NPA.

MR LEDWABA: I confirm that.

ADV NALANE: Now, do you, have you any comment about, there is

a lot of people who do not apply for amnesty, and this was what President Mbeki's highlighted in his speech in 2003. There is a huge group of people who do not apply for amnesty. Are you able to comment if any of those who did not apply were pursued, prosecution and investigation-wise?

MR LEDWABA: I am unable to properly answer that, because I only dealt with these matters, and the rest I know there were dockets all over the DPP provincial offices. I think they counted well over 400. As to whether they finally prosecuted them, I cannot say.

10 ADV NALANE: You did the conclusion paragraph 96.

MR LEDWABA: Correct.

ADV NALANE: Just read that into record.

MR LEDWABA: In conclusion Chairperson:

"I deny emphatically that I as Ledwaba or the DSO stopped or interfered with the investigation or prosecution of TRC cases. We offered support from the beginning in May, April, May. We engaged with them. Ultimately we gave them the tools in form of declarations in 2004 for them to proceed."

20 ADV NALANE: Is there anything else that you, I am going to ask you that you wish to bring to attention of the Commission to assist with this mandate?

MR LEDWABA: If I remember Chairperson there was one item which is not here and I thought I should respond to it. When Mr Ngcuka was testified in this proceedings and was cross-examined a memo of Mr

Leask and the remarks of Mr Calata of to say:

"The NPA or the DSO stopped the investigation and this stance was remarkable. Mr Ngcuka seems to have accepted that as a correct situation and he said being shown this memorandum he was not aware of the decision Ledwaba took."

So seemingly he agreed that that memo entailed that the DSO stopped the investigation which is this memo and I am saying he was also without reading the memo not strictly correct. The memo  
10 does not in any way say the DSO stopped. He then says to show that he did not agree with this wrong decision he set aside, he reviewed and set aside, if I can use that word, that policy and approved those requests. Strictly speaking he never reviewed the memo of July.

Projects were then handed to him in December and February in terms of the correct legislation and he approved them only instructing them. The two are not related.

ADV NALANE: And so the point I want to emphasise is that he exercised his powers in terms of the applicable section of the legislation.

20 MR LEDWABA: Correct.

ADV NALANE: 28(1)(b).

MR LEDWABA: Without reviewing my so-called earlier decision which is not even in existence.

ADV NALANE: And as you had said, you had advised the PCLU people to use the correct legislation.

MR LEDWABA: At least three times.

ADV NALANE: At least three times.

MR LEDWABA: Which they finally did in December and Mr Ngcuka complied and approved them in February 2004. 24th and 26th February 2004.

ADV NALANE: And he was not reviewing any decision that you had taken?

MR LEDWABA: No. I mean the memos are here. That is sign there is no mention of an earlier decision being reviewed under 1745 and  
10 1746. It is straightforward. He is being given six matters to consider. He feels happy that they can be dealt under 28(1)(b) and he directs that they be dealt with accordingly and we authorise the projects.

ADV NALANE: Chair, that is all the questions for the witness.

CHAIRPERSON: Thank you, Mr Nalane. Let me start with Ms Ntloko.

Any questions for clarification?

ADV NTLOKO: Thank you, Chair. We have a few questions. It is afternoon, Mr Ledwaba.

MR LEDWABA: Afternoon, Council.

20 ADV NTLOKO: Just a few clarification questions. I in this proceeding act for the National Prosecuting Authority. To just put your mind at ease if that helps at all.

COMMISSIONER KGOMO: Do not swallow your words.

ADV NTLOKO: I am trying to find the document where I put these so I did not want that on the record. If we can just go to your statement

at paragraph 92. There you indicate that:

"The DSO authorised the investigation of six TRC matters as directed by the NDPP in 2004."

Can you then confirm for us if the DSO did in fact conduct those investigations?

MR LEDWABA: The overall management of the project still remained with Mr Ackerman and Mr Macadam. The DSO investigators, Mr Leask is here, from this unit were then assigned and designated on each of those four. As to whether Mr Macadam and Mr Ackerman did  
10 follow up and did the investigation was no longer my baby and I do not know.

ADV NTLOKO: Thank you, we will follow up with him. And then in paragraph 93 you state that:

"In your view the PCLU had no impediments from pursuing any investigation utilising Section 28(1)(b) processes by applying to the NDPP."

MR LEDWABA: I confirm that.

ADV NTLOKO: Can you just, on that very, on those very paragraphs, and you say the same thing in fact with paragraph 61. Can you  
20 explain the distinction between Section 21A and Section 21(b) as you understood it at the time and how they operate?

MR LEDWABA: I think in paragraph 36 and 37 we show that firstly under 28(1)(a):

"The Head of Operation is limited to specified offences under that section. There is discretion to authorise or

decline a project."

And if we go back, define what is specified offence in paragraph 36, which is defined under 7(a):

"As relating to serious high profile or complex corruption cases, high profile or complex commercial cases or financial crimes."

And the third one being:

"High profile and complex organised crime cases."

And the last one being:

10 "Racketeering and poker prevention of organised."

So those four, once they are brought to the Investigating Director through the intake criteria, you can then authorise them or decline them as the Head of Operation as DSO projects automatically designating investigators to them. The DSO in terms of investigators did not operate like SAPS, South African Police. On each project, it is not like DSO investigators can just come in and assist. There had to be a special designation in terms of the legislation to identify that under project A, Mr Nel and this, sorry, the Head of Gauteng and this investigators identified and this prosecutor will deal with this one.

20 Otherwise, he would not or she would not have powers under the NPA Act.

28(1)(b) it is read on page 1706, and I think we have read that. It says:

"If the National Director refers a matter in relation to alleged commission of specified offence to the

Investigating Director, the Investigating Director shall conduct an investigation or a PI as referred to in subsection 13 on the matter."

So to my understanding and those that I worked with at the time, the mandate covers the four legs. However, the National Director is given super powers in terms of that subsection to go beyond the mandate of the DSO. But even then, he must specify what type of offences he is now forcing the DSO to do because it says, "Shall". And if we read his declaration under 1745 and 1746, he  
10 mentioned what type of specified offence. The Roman figure one under 1745, he says:

"Kidnapping, assault, and murder."

So that is the specified offence he mentions. The second one, he says:

"Murder or attempted murder of Reverend Chikane."

That is the difference. So without him authorising or issuing a directive under 28(1)(b), those matters that do not fall within the co-mandate of the DSO would never have been authorised. Otherwise, the people could have challenged that authorisation in court and the  
20 whole authorisation might have been declared unlawful and wasted DSO time.

ADV NTLOKO: And then just to deal with the advice that you indicate in various places in your affidavit between May and November 2003 that you gave to Ackerman SC and Macadam. Did your position on this advice ever change?

MR LEDWABA: Never. We know finally it was accepted and six matters were done according to that advice.

ADV NTLOKO: And then in your affidavit, you indicate that Ackerman SC and Macadam had a difficulty accepting that you are now their senior. Was this a recurring occurrence or was it a once-off issue in relation to this particular aspect where you had informed them to make an application to the NDPP?

MR LEDWABA: I think in terms of relationship, once I was promoted to this level, most of my then senior were not happy. And there was  
10 this friction and when they had to deal directly with me now as their boss, it became apparent that there was this friction that they were unable to comprehend or accept that now I am their boss. And I am even giving them advice which they thought it was incorrect.

ADV NTLOKO: And then just on that advice, was there ever a time where you thought that maybe they might have misinterpreted your advice or they did not understand the advice that you were giving?

MR LEDWABA: No. Even in the last meeting in November, I told them that I am now tired. I cannot explain the same thing to you people. And I think we left on not such good terms then.

20 ADV NTLOKO: And then one last question. In paragraph 83 of your affidavit, you indicate:

"It is inexplicable and confounding to me why the PCLU only utilised the Section 28(1)(b) process only in respect of six matters, leaving out the rest of possibly ripe matters that could have been similarly authorised by the

NDPP."

Sorry to say that is the last question. In fact, there is two questions under that. What other possibly ripe matters were there in your understanding at the time, apart from the six?

MR LEDWABA: Firstly, if you look at the annexure MGL 1 on page 1723, they inherited at least 14 matters and they identified them. The first one, I do not have to read them, the Commission sources. But all the 14 include the six that they ultimately applied. All the six have been investigators. Already being investigated in the DSO by Mr  
10 Macadam Mr Leask and them. And they inherited them. At least they had 14 ripe matters, but I know they had 44 matters at their disposal on their own audit then. But they picked only the six and nobody can explain why. That is all I am saying in that paragraph.

ADV NTLOKO: And then, truly, the last question. When you refer to the PCLU, are you referring to the unit as a whole, or are you referring, and this is in paragraph 83 and other paragraphs where you say:

"I gave advice to the PCLU, I do not understand why the PCLU did not do a particular thing."

20 Are you referring to the unit, or are you referring to specific individuals in the unit?

MR LEDWABA: I think that I am referring to the individuals that I interacted with, mainly being Mr Macadam or Advocate Macadam, Advocate Ackerman, and I think in 2008, 2003, there were only three or four in that unit. Advocate Tory Pretorius joined them later.

Advocate Sean Abrahams joined them later, and I think one or two. But they were not really role players in my interaction with the PCLU, only the two. Dr Tory Pretorius, I think I engaged him only once, but not in relation to the three encounters I am referring to.

ADV NTLOKO: Thank you. That would be all our questions.

CHAIRPERSON: Thank you, Ms Ntloko. Ms Nthabeleni.

ADV NTHABELENI: Thank you, Chair. I have no clarification questions.

CHAIRPERSON: Thank you. Ms Moroka?

10 ADV MOROKA: No questions for clarification, Chair.

CHAIRPERSON: Ms Rantho?

ADV RANTHO: Good morning, Commissioners. I do have a few questions. There is always an issue, Chairperson, with my mic.

COMMISSIONER KGOMO: You are talking to yourself.

ADV RANTHO: My sincere apologies, Commissioners. This is really never intentional. There is always an issue with my mic every time I have to address the Commissioners. Good afternoon, Mr Ledwaba.

MR LEDWABA: Good afternoon, Councillor Rantho.

20 ADV RANTHO: My questions are directed at your testimony so far as the SAPS has consented. I represent the South African Police Service.

COMMISSIONER GABRIEL: Ms Rantho, it is very hard to hear you.

CHAIRPERSON: Please repeat yourself.

ADV RANTHO: I simply wanted to inform Mr Ledwaba that my questions would be in relation to the SAPS, which is the client I

represent in this Commission, Mr Ledwaba. Firstly, in your testimony, you spoke of the turf that you found taking place when you took over as the head of the DSO. Remember that between the SAPS and... (intervenes)

COMMISSIONER KGOMO: Turf or what?

ADV RANTHO: Whatever they called, there were issues. Thank you, Commissioner Kgomo. And your evidence before the Commission is that at some point you had to come up with a service level agreement.

10 MR LEDWABA: Correct.

ADV RANTHO: And that was intended to regulate or define or demarcate exactly as to those cases that would be investigated by the SAPS and those that would be investigated by the DSO, right?

MR LEDWABA: As per their respective mandates, correct.

ADV RANTHO: And then just for my own understanding, the service level agreement, SLA, only related to those cases that were not TRC cases, is it not?

MR LEDWABA: Ja.

ADV RANTHO: In other words, it was unrelated to that.

20 MR LEDWABA: TRC were not mentioned or included in those discussions at that time or included in the SLAs that we entered into.

ADV RANTHO: And from your knowledge and your engagement as part of the NP management as you testified, was there ever any SLA in that regard in so far as that which the SAPS had to do and the PCLU in so far as the TRC cases were concerned?

MR LEDWABA: I really stayed far away from the TRC because of our relationship and I do not want to even comment on what they did.

ADV RANTHO: But at some point, you did investigate the TRC related matters, remember? The ones that were directed in terms of Section 28(1)(b).

MR LEDWABA: Only in 2004 and the six matters.

ADV RANTHO: Ja.

MR LEDWABA: Correct.

ADV RANTHO: Yes, yes. But I wanted to understand if you were  
10 aware if there was any SLA that was in existence.

MR LEDWABA: In my time until I left, no, I am not aware.

ADV RANTHO: You also testified that in so far as you remember or you knew, all TRC cases were investigated, were at all times investigated by the SAPS. Remember your testimony in that regard?

MR LEDWABA: No, I am not saying I was aware. I am saying the understanding was that TRC, from the speech of Mr Mbeki, that the prosecution would be NPA and investigation would be SAPS. That is what I am saying was my understanding and the NPA understanding.

ADV RANTHO: It was your understanding.

20 MR LEDWABA: Correct.

ADV RANTHO: If maybe so, I need clarity in relation to the memo that you addressed to Advocate Leask. I think it is MGL 5 or 2.

MR LEDWABA: Two.

ADV RANTHO: It is two.

MR LEDWABA: MGL 2.

ADV RANTHO: Yes. Paragraph one of the memo, specifically where you say:

"The need arose that the mandate of the DSO be redefined."

If I may, perhaps, my sincere apologies Commissioner. I just want to go specifically to MGL2. Thank you, Commissioners. If I may assist Mr Ledwaba it is a memorandum dated 15 July 2003 and specifically, yes, it spoke to SNPU. I think that is where my confusion was coming from. Paragraph one says:

10 "Due to the recent creation of the PCLU, it has become necessary to redefine the mandate and operations of the SNPU as follows."

Well, Roman figure 1 specifically, you deal with the TRC cases.

MR LEDWABA: I confirm.

ADV RANTHO: Yes, and you specifically state that:

"You have decided that the SAPS must take over investigations of all such cases."

Do you remember that?

20 MR LEDWABA: I am reading it. Yes, I remember.

ADV RANTHO: Now, I am trying to understand if it is so in your evidence that all TRC cases have always been investigated by the SAPS, why would there be a need for such a decision, in a way, if it was so that, from what you knew, all TRC investigations were conducted by the SAPS?

MR LEDWABA: When I took over as the Head of Operations, there were these 14 cases that came along SNPU from Mr Ngcuka's office and were located in the DSO. Without being strictly speaking within the mandate. I think on the 14th of May, Mr Ngcuka decides that all TRC cases, now, whether they are in the DSO or in the provincial office, fall within the PCLU. The PCLU has an investigative and prosecutorial mandate, but no investigators. I am saying the understanding even then was that the constitutional mandate of normal murder cases, robbery and kidnapping would be SAPS.

10           And I think Mr Ngcuka, when he testified that there was no need for him to approach the President, because it was also his understanding that SAPS would do the investigations. So it is not only mine, but when I wrote this paragraph, it was just to formally record, for purposes of records, to Mr Leask and SNPU, that officially now, DSO is no longer going to be involved. We are transferring the TRC cases to the PCLU, which will then run with SAPS, like all other PCLU cases. That is all that it entails.

ADV RANTHO: Now, what is stated in paragraph 45 of your affidavit, in so far as the decision to refer to SAPS, our investigations for the  
20   SAPS. Paragraph 45, where you say:

"It was, however, the understanding is discussed in the NPA EXCO-management meetings, where Dr Ramaite was in attendance, that investigation of the PCLU case would be done by SAPS."

MR LEDWABA: Correct.

ADV RANTHO: And that was preceded by your statement that PCLU was clothed with both investigative and prosecutorial powers, remember that?

MR LEDWABA: Correct. That is what the proclamation says. They are now created. Only prosecutors are assigned to the PCLU and no investigators.

ADV RANTHO: And that is what I am trying to understand, if they were both clothed with powers to investigate and prosecute. And I am trying to juxtapose that with what you said earlier:

10            "That the SAPS were the only ones that were  
                 investigating the TRC cases."

                 And I am trying to understand, PCLU, investigation of TRC, where did it start, where did it stop? And SAPS, where did it start, where did it stop?

MR LEDWABA: To the best of my understanding, the PCLU was formed or proclaimed on 23 March 2003. With specific identified mandate. And I list them in 43. In May, Mr Ngcuka, in conjunction with NPA, decided to elevate TRC cases and identify them as priority crimes, so that he can then take them and put them within the  
20            proclamation of the PCLU. And from that day, they were all proclaimed as PCLU cases, who, according to the proclamation, they have both investigative and prosecutorial powers. But the reality is they do not have investigators appointed or even seconded to them. So there was a lacuna somewhere in terms of that placing of investigators in that legislation, without identifying or appointing

specific investigators.

ADV RANTHO: Okay, but you were aware of TRC cases being investigated by SAPS, as you said.

MR LEDWABA: Correct.

ADV RANTHO: And do you know who was overseeing the investigations?

MR LEDWABA: I do not.

ADV RANTHO: Was it someone from SAPS?

MR LEDWABA: Together with the DPPs, all the dockets that are  
10 managed by the DPPs were investigated by SAPS. As to whether they were all allocated under one Division, I would not know.

ADV RANTHO: But now, investigative powers of the PCLU, I am just a little bit confused. That the PCLU had powers to investigate, and I am trying to understand what investigations would that be. Or what those powers, what did they entail?

MR LEDWABA: In 43, we quoted what that proclamation says. It is not my making. The proclamation itself says:

"They were mandated to."

And it is highlighted:

20 "To direct investigations and prosecution."

That is all it says.

ADV RANTHO: Okay.

MR LEDWABA: So prosecutors in the NPA deal with prosecutors, and SAPS deal with investigation. That was the norm, and is still the norm.

ADV RANTHO: And the PCLU at that time, in particular Advocate Macadam, what was his role during these investigations then?

MR LEDWABA: You must cut off his position from May, when he was transferred from DSO to PCLU. So when he was in the DSO prior to this policy, he worked with TRC matters under the [indistinct] of DSO with DSO investigators. Once the policy kicked in, cases were transferred. He does not have powers under the NPA Act. But he can only work in terms of the proclamation where TRC matters now duly fall.

10 ADV RANTHO: And he reported to you prior to that?

MR LEDWABA: Yes.

ADV RANTHO: Prior to May 2003, is it not?

MR LEDWABA: Correct. At the time when he was in the SNPU, DSO, him, Mr Leask, and Mr Tungwane reported to me. And he took a decision that he is transferring from the DSO, after talking to Mr Ngcuka and move to the new big unit of the PCLU. And from then on, I think he reported to Ackerman, Advocate Ackerman, who reported to Dr Ramaite.

20 ADV RANTHO: And you cannot tell how he collaborated with the SAPS in so far as the investigations and the prosecution is concerned?

MR LEDWABA: I cannot.

ADV RANTHO: Okay, thank you. In your evidence, still in the paragraphs from 43 up to, say, paragraph 45, where you spoke of the understanding of the EXCO in so far as the SAPS was concerned,

specifically in paragraph 44 of your affidavit, you do indicate that, or rather you state that:

"There was a challenge that no specific investigators were employed or assigned to the PCLU from its inception."

Remember that?

MR LEDWABA: That is the lacuna I am referring to.

ADV RANTHO: And then you go to 45, that then your understanding is discussed in the NP EXCO Management were that, where Dr  
10 Ramaite was present. And the understanding was that such cases, or PCLU cases, would be done by the SAPS.

MR LEDWABA: I confirm that.

ADV RANTHO: So that is PCLU cases, but they are done by the SAPS. But be that as it may. My question then in relation to that is that, from your evidence, it would appear as though the issue of saying that, or the EXCO Management understanding or decision was intended to cure the lack of capacitation towards the PCLU, is it not?

In other words, the PCLU was established in terms of the proclamation. Unfortunately there were no investigators on the...  
20 (intervenes)

COMMISSIONER KGOMO: Are you putting into him, or do you want to clarify?

ADV RANTHO: I am repeating what he said, Commissioner Kgomo. It is simply what the witness said. In paragraph 44.

COMMISSIONER KGOMO: What do you want to clarify?

ADV RANTHO: What I am trying to get as clarified Commissioner Kgomo, is now, in so far as the PCLU was not properly capacitated, or was not at all, because the witness says from its inception, there were no investigators assigned to that. And my question now, for clarity, because the witness then proceeds to inform the Commission that in the NP EXCO meeting, a decision, or the understanding, whether it was a decision or understanding, but some sort of a decision, or an understanding, became that the SAPS would then have to deal with the PCLU cases.

10           So my question, I am saying based on his evidence, I am trying to find out from the witness, as to that whole thing, or paragraph 45, or the EXCO decision that SAPS would take over, was intended to cure that which he pointed out in paragraph 44, which is the fact that there were no investigators assigned. In other words, during the meeting, from the evidence, I am trying to check with the witness if my understanding is correct.

          Because if I follow his testimony, or his evidence, is that from inception, PCLU was never assigned any investigators. Then the witness says, "At some point, EXCO Management then said, such  
20 investigation could be done by the SAPS". And my question was, this was done to cure that which was a problem created by lack of assignment of investigators to the PCLU.

COMMISSIONER KGOMO: Yes. Mr Ledwaba, you follow that?

MR LEDWABA: I do follow, Commissioner.

COMMISSIONER KGOMO: Yes. Deal with it.

MR LEDWABA: My answer is, I am saying it is the NPA EXCO Management's position or understanding. Simply by reading the core mandate of prosecutors is to prosecute, the core mandate of police SAPS is to investigate. And that is the idea how the TRC cases were to be handled, and that is probably why Mr Ngcuka decided to move them out of the DSO, who were investigating these cases, and allocate them to a new unit that will focus on them, who were already dealing with matters within the PCLU context with SAPS. It follows that SAPS will then be on their constitutional mandate to carry the

10 rest of the investigation in support of PCLU. It might have been not identified in the proclamation, but it was common cause. Prosecutors prosecute NPA, SAPS investigates dockets.

ADV RANTHO: Okay. Perhaps just a follow-up on what Mr Ledwaba said. The common understanding from the proclamation, the proclamation was clear that the NPA would be the one to carry out that responsibility. I think it is common cause, as you also said. But then the decision of the EXCO, NPA EXCO Management, I am trying to understand. Because it would appear as though there was a common understanding among the NPA officials that the SAPS would

20 have to carry or execute that task of investigation? But the question now becomes, was this communicated to the SAPS? In other words, I am trying to understand, this understanding, was it common between NPA and SAPS? Was it ever communicated, or was it in consultation of some sort? Just to understand if you were on the same page with the SAPS in so far as that is concerned.

MR LEDWABA: To my best understanding, it was common cause. PCLU is mandated first in the proclamation on those identified cases of theirs. Before we peg in TRC. And we have shown in those few paragraphs that those cases that they [indistinct] terrorism, international crimes, cannot remember the rest, nuclear stuff, were investigated by SAPS and prosecuted by PCLU. So it was a common understanding. The fact that TRC cases now come to PCLU cannot change that situation. SAPS must just continue with them as they have been doing with PCLU. That is why I am saying it is a common  
10 understanding.

ADV RANTHO: But my question was, that common understanding prevailed within the NPA only, or was that a common understanding with SAPS as well?

MR LEDWABA: I cannot answer that.

ADV RANTHO: Okay. And then also, you spoke of a request made by Advocate Macadam for the DSO to appoint investigators, I think. And Ms Ntloko referred to a number of paragraphs, but there is also one specifically in paragraph 61 of your affidavit. And I just want to clarify if my understanding is correct that requests or applications that  
20 were made by PCLU for you to appoint investigators within the DSO was also intended to cure the issue of lack of appointments of investigators attached to the PCLU from inception, as you stated earlier. So in other words, these requests were also intended to deal with, and I do not want to say it was a failure by the NPA to capacitate PCLU, but in your statement you said, "From inception, no

investigators were ever assigned to that". And I am trying to understand your understanding if the request by Advocate Macadam was also intended to cure or deal with that issue or the problem that was created by lack of appointment of investigators to the PCLU.

MR LEDWABA: I do not want to speculate on Mr Macadam's part Council, Commissioner.

ADV RANTHO: Well, maybe then to move away from Mr Macadam, in what you said earlier to Ms Ntloko or in response to Ms Ntloko's questions, was the issue of you urging them or encouraging them to  
10 make use of Section 28(1)(b), remember? In other words, you would say, I would assist subject to you giving proper directive issued by the NDPP.

MR LEDWABA: That was the law.

ADV RANTHO: [Indistinct].

MR LEDWABA: That was the law.

ADV RANTHO: Well, it may well be but I am trying to understand that also was intended to assist with that lack of capacity that you said was never, I mean, has always been a problem from inception. In other words, it was also one of the methods that from your side you  
20 were using to say, because there were no investigators from inception assigned to PCLU, if you want me to assist, then let there be a proper directive issued in terms of Section 28(1)(b). Is that my understanding that, that is what was intended with you requesting that there must be a directive?

CHAIRPERSON: Yes or no, Mr Ledwaba?

MR LEDWABA: No.

ADV RANTHO: And then you also spoke of the decision, the same decision that is recorded in the MGL2. And I simply need clarity in terms of what you stated that:

"I have decided."

And I wanted to understand in terms of what you decided, where did you derive such powers to decide that those be transferred to the SAPS? And perhaps if I have to qualify why I am asking that question, I am asking it in light of the directives that were issued prior  
10 to that by the NDPP, Advocate Ngcuka. I think it must have been the one dated December, but I think he signed on the 24th of February, and then there was another one that was on the 26th of February 2004, where he directed that certain cases be investigated by the DSO.

Now going back to what I was asking you is that when you then came with the memo MGL2, to say "I have decided" and I am trying to understand in terms of what powers, and did you decide that those cases would have to be referred to the SAPS?

MR LEDWABA: If I heard correctly, Chairperson, Council is saying  
20 Mr Ngcuka's directive was issued prior to this memo. That is definitely not correct. The memo is in July 2003, and Mr Ngcuka comes later in 2004.

The power that, if I may answer a direct question, is I am saying in April, May of 2003, Mr Ngcuka and EXCO, came from him and EXCO, take a decision which becomes a policy that TRC cases, wherever

they are located, must now fall under PCLU. All I am simply doing is, even though I used the word I, but it was in my official capacity. I am implementing that policy, transferring in line with that policy TRC cases from DSO to PCLU. Later in 2004, Mr Ngcuka did approve under 28(1)(b).

ADV RANTHO: Okay. In a way, I think, yes, I may have missed the dates, I think I did the other way around, but the Calata Group is one of their complaints that this went to that decision that they do refer to you saying that cases be referred to the SAPS. But nonetheless,  
10 SAPS refused to take over in a way, and that is why my question was. I intended to find out as to whether you had the relevant powers to instruct as such, but I think you have since addressed my concern in relation to what was subsequently developed.

And then, sorry, Commissioners, I am almost on just one last more question. Paragraph 90 of your affidavit, Mr Ledwaba. Nine, zero. That is where you informed the Commission, you referred to the Calata affidavit where it stated that:

"The DSO persisted in its refusal to appoint investigators as did the SAPS."

20 Now, what seems to be at play, and I am trying to get your understanding, if it is also your understanding, at paragraph 90, there are two issues at play according to the Calata Group. One being SAPS refusal to investigate, and secondly, the DSO's refusal to appoint investigators. Would you agree? I do not know. I think it is that you understand, too? In terms of what you referred to them,

there are two issues at play there. In terms of what the Calata's are saying, they say, "DSO persisted in its refusal to appoint investigators as did the SAPS".

MR LEDWABA: I gather that is their view, yes.

ADV RANTHO: Yes. Now, from your evidence, I am trying to get clarity, because I am also now trying to understand from what you testified in response to what the Calata Group are saying. So in your evidence, I understand to say there are two issues that were at play. You did speak to the letter of Commissioner de Beer, although you  
10 did not really get into detail, but you recall referring to the letter of Commissioner de Beer, who said:

"The SAPS would not be inclined to take over or investigate unless the President clarified the role."

Do you remember that memo, or the letter of General de Beer?

MR LEDWABA: I do.

ADV RANTHO: Yes. So I am trying to understand that from your evidence that there are two issues at play here in response to what the Calata's are doing. There is an issue of the letter or reluctance,  
20 or perceived reluctance on the part of SAPS, subject to, of course, clarification, because the letter of General de Beer makes it clear that there is no unwillingness, but subject to the President clarifying that it must be them, not the NPA.

And then secondly, yours specifically, also from your evidence, I am trying to understand if I am correct that the DSO's

reluctance to act was not necessarily an issue of any influence, but rather the issue of you persisting that you would assist, provided that there was a proper directive issued in terms of Section 28(1)(b) of the NPA.

MR LEDWABA: Correct. We never refused to appoint investigators if it was done according to the right procedure and which was then later done.

ADV RANTHO: Meaning, whether it is SAPS, and I know that, I am mindful of the fact that you were not the author of General de Beer's  
10 Commissioner de Beer's letter, but you were aware of it. That the two issues from your evidence were not related to any political interference.

MR LEDWABA: I became aware of Mr de Beer's letter through this Commission.

ADV RANTHO: Yes, what I am saying is that either it is a lack of assistance or perceived lack of willingness to assist, either by the SAPS or the DSO. It had nothing to do with politics, but it was informed by SAPS talking to the proclamation that they said, it said "NPA", and then also DSO saying, "No, we can do it, but only in so far  
20 as the directive was properly issued by the NDPP, Section 28(1)(b)".

MR LEDWABA: It would be fair, Commissioner, to confine myself to DSO, and I can say yes.

ADV RANTHO: I accept that, yes.

CHAIRPERSON: Ms Rantho, I was made to understand that was your last question.

ADV RANTHO: Well, under that pressure, Chairperson, I suppose, I tried to run through some of the things, I thought Ms Ntloko dealt with them, that is why I was avoiding to deal with them, but be it as may. I see that the Chairperson is really pushing me to say that I am done.

CHAIRPERSON: Yes.

ADV RANTHO: But under those circumstances, I will end it there. Thank you so much, Commissioner.

CHAIRPERSON: Thank you. Thank you, Ms Rantho. I think this will be an appropriate time to adjourn for lunch and to convene at 14:05.

10 INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Nel, any clarificatory questions?

ADV NEL: Indeed. They will help me now. They just asked that I move that, so it is recorded. Mr Ledwaba, perhaps we should start with informing the Commissioners during your time as the Head of Operations of the DSO, who was the regional head of Gauteng office?

MR LEDWABA: Commissioner and Chairperson, unfortunately...  
(intervenes)

20 CHAIRPERSON: Speak closer to the mic Mr Ledwaba.

MR LEDWABA: Unfortunately, it was Mr Nel, the same person who is asking me now.

ADV NEL: Now, Mr Ledwaba... (intervenes)

CHAIRPERSON: He wants to put himself on record.

ADV NEL: It is more than an apology. Mr Ledwaba, your lines of

reporting, I understand your lines of reporting during that time to be, you were the Investigating Director, Head of Operations, and you reported to the Head of the DSO, Mr McCarthy.

MR LEDWABA: That is correct.

ADV NEL: Mr McCarthy was the Head of the DSO and also a Deputy National Director of Public Prosecution. Is that correct?

MR LEDWABA: That is correct.

ADV NEL: He then in turn reported directly to the National Director of Public Prosecution, Mr Ngcuka.

10 MR LEDWABA: That is correct.

ADV NEL: Now, the one aspect. I have got five aspects to deal with. The first aspect is perhaps CICU. Now, CICU was discussed in a commission in April 2005. CICU is the Crime Information Collection Unit. Is that correct?

MR LEDWABA: That was my understanding. It was sort of a misnomer, but we referred to it as Crime Information Collecting Unit. And some people referred it, I do not know what, to Crimes Intelligence Collection Unit. But the official name was Crimes Information Collecting Unit.

20 ADV NEL: Good. That is the one clarification issue. Then, in terms of the memorandum to Mr Leask, who was referred to as Advocate Leask, and I never viewed that as a compliment. But in terms of that memorandum of 2003, you drafted the memorandum in terms of a policy adopted in line with the PCLU proclamation. Is that correct?

MR LEDWABA: Correct.

ADV NEL: So you followed the policy?

MR LEDWABA: Correct.

ADV NEL: Now, this memorandum, for lack of a better description, caused some friction within the NPA between the PCLU and the DSO. That is how Mr McAdam, Mr Ackerman, and yourself. Some friction was caused. Is that correct?

MR LEDWABA: I would not define it to this memorandum.

ADV NEL: Good. But if you were wrong with your memorandum of, is it March 2003 or July 2003?

10 MR LEDWABA: 15 July 2003.

ADV NEL: If you were wrong with your instruction in your memorandum of 2003, that would mean that you misapplied a policy. Am I correct?

MR LEDWABA: That is correct.

ADV NEL: And that would have caused your superiors to act. Is that correct?

MR LEDWABA: Immediately correct.

ADV NEL: Now, did any of your superiors, Mr McCarthy or Mr Ngcuka, ever call you in, reprimanded you, or dealt with this?

20 MR LEDWABA: Never.

ADV NEL: Now, issue number two. When you advised Mr McAdam to follow the process prescribed in terms of Section 28(1)(b), although he thought you were wrong, do you know if he ever discussed it with your superiors?

MR LEDWABA: I know he discussed it at one stage with Advocate

McCarthy, who also supported my stance.

ADV NEL: Yes. So, although let us say he discussed it with your superiors, your superiors never reprimanded you for following the wrong process.

MR LEDWABA: Correct.

ADV NEL: Good.

MR LEDWABA: Or never even alluded that it was a correct process.

ADV NEL: Good. Then, issue number three. An application in terms of Section 28(1)(a), that was within the discretion of the Head of  
10 Operations, and that was you at the time.

MR LEDWABA: I confirm.

ADV NEL: But it is not an unfettered discretion.

MR LEDWABA: No, it is not.

ADV NEL: You could only issue a 28(1)(a) certificate if it fell within that four prescribed crime types, am I correct?

MR LEDWABA: I, correct.

ADV NEL: Good. Now, the TRC matters broadly would not have qualified as for the intake criteria of matters in the DSO, am I correct?

MR LEDWABA: You are correct, I confirm.

20 ADV NEL: So, if you authorised a matter in terms of 28(1)(a), that would have been illegal.

MR LEDWABA: Not only that now, there have been also probably taken to a disciplinary steps against me.

ADV NEL: So, it is not a fact that you were unwilling, but you were unable to authorise any of these investigations in terms of 28(1)(a).

MR LEDWABA: 1a, yes, I agree.

ADV NEL: Good. Then, also, in terms of 28(1)(a), any investigation authorised in terms of 28(1)(a), the Head of Operations will remain in control of that.

MR LEDWABA: I confirm. As the authoriser, it remains my responsibility as all investigators and prosecutors were reporting to me, and I am the lead investigator and lead prosecutor.

ADV NEL: So, also, you would have had to designate specific investigators and prosecutors to deal with a specific investigation.

10 MR LEDWABA: That is how it operated.

ADV NEL: And you were able to designate DSO investigators and prosecutors to deal with DSO investigations.

MR LEDWABA: Indeed.

ADV NEL: In terms of 28(1)(a).

MR LEDWABA: I confirm.

ADV NEL: Good. Now, in terms of 28(1)(b), you obliged to, because you were, for lack of a better word, instructed by the National Director to declare an investigation in terms of 28(1)(b).

MR LEDWABA: I confirm. I had no choice.

20 ADV NEL: Can I just ask you, Mr Ledwaba, was there a duty to report on those investigations that you authorised in terms of 28(1)(b)? Was there a duty to report to you about progress in those investigations?

MR LEDWABA: It was informal. Although it was authorised, it remained the baby of the National Director, because that was his

project, sort of to say. But because it is a DSO project in the DSO project management, we will follow on the progress, but they were not obliged really to come and report to me.

ADV NEL: But did you receive any formal report about progress in any of those six investigations that you declared?

MR LEDWABA: None whatsoever.

ADV NEL: Then, perhaps it is important to explain why a declaration of an investigation and designation of investigators was necessary. So, the investigators that worked for the DSO, they had no police powers, am I correct?

MR LEDWABA: That is correct, Commissioner.

ADV NEL: For them to have any powers of investigation and to collect evidence, they needed to be designated on an investigation?

MR LEDWABA: Specifically on each investigation identified investigators in terms of Section 28.

ADV NEL: So, that also means that only designated investigators could lawfully take part in an investigation of that particular investigation?

MR LEDWABA: I confirm that, Commissioner.

ADV NEL: So, the necessity to declare an investigation is to provide policing powers for the investigators to collate evidence?

MR LEDWABA: And the prosecutors, correct.

ADV NEL: Madam Chair, I said I have got five issues. I have dealt with the five issues.

CHAIRPERSON: Thank you. Thank you, Mr Nel. Mr Varney.

ADV VARNEY: Thank you, Chairperson. Ma'am Chairperson, I will make application to cross-examine Mr Ledwaba.

CHAIRPERSON: Yes, thank you.

COMMISSIONER GABRIEL: Mr Ledwaba, can you help me? You have given us, in paragraph 36 of your affidavit, Section 7 of the NPA Act. You started off by saying in paragraph 35:

"That the position of Head of Operations was introduced into the NPA Act through an amendment of the Act in 2000."

10 And I presume that the Section 7 comes from that 2000 Amendment Act.

MR LEDWABA: It was a struggle when I consulted with the evidence leaders, because when we first looked at the Act, it brings only the current one, which is IDEC. And we traced back and we tried to look for the one that created the scorpions, the original Section 7. And to the best of my memory, we related to that one.

COMMISSIONER GABRIEL: Okay.

MR LEDWABA: I have an old version of that Act, and unfortunately, I did not bring it. Now, when we were doing annexures, we can locate  
20 this exact one.

COMMISSIONER GABRIEL: Ja, that is exactly my problem. I cannot locate the Section 7. What the evidence leaders have given us is the actual Amendment Act 61 of 2000, and it is a different Section 7.

MR LEDWABA: I am aware of that.

COMMISSIONER GABRIEL: You are aware of that.

MR LEDWABA: Yes.

COMMISSIONER GABRIEL: So would you be able to give us the version of the Act that you have? It may be a later amendment.

MR LEDWABA: The one that is a copy that I had then, so it does not have this recent amendment. So that one is [indistinct].

COMMISSIONER GABRIEL: So it is a copy you had at the time that you were going through these debates with Advocate McAdam and... (intervenes)

MR LEDWABA: Indeed.

10 COMMISSIONER GABRIEL: Okay, I think it is important for us to see that.

MR LEDWABA: I promise that I will bring it and submit it to the evidence leaders.

COMMISSIONER GABRIEL: Okay, thank you.

MR LEDWABA: But Mr Nel is my witness on this.

COMMISSIONER GABRIEL: Well, if you do not deliver it, then we will hold Mr Nel accountable because it is not in the Amendment Act. Then just Section 28(1)(a) and 28(1)(b), which you very kindly brought to us on paragraph 38 of your affidavit. So as I understood it, 20 advocate, who was it now, Ackermann wanted you to sign certificates in terms of Section 28(1)(b).

MR LEDWABA: The first incident, the first encounter in May and July, they were still using 28(1)(a).

COMMISSIONER GABRIEL: Oh, they... (intervenes)

MR LEDWABA: And I corrected them to say.

COMMISSIONER GABRIEL: Right.

MR LEDWABA: To say this one will never be applicable to you guys. Rather resort to 28(1)(b).

COMMISSIONER GABRIEL: Okay. So then they wanted you to sign certificates in terms of Section 28(1)(b).

MR LEDWABA: In November.

COMMISSIONER GABRIEL: In November, which you could not do because you were not the National Director.

MR LEDWABA: Correct, and I told them, sign it. Then you are  
10 instructing me as the NDPP, then I can do, and he could not as they were not NDPP.

COMMISSIONER GABRIEL: And that is how the National Director subsequently signed those two certificates that you told us about.

MR LEDWABA: Indeed, Commissioner.

COMMISSIONER GABRIEL: Now, I have just looked at Section  
28(1)(a) and 28(1)(b), and please understand this is all new to us. Both refer to specified offences. So in the one, the Investigating Director has reason to suspect that a specified offence is committed. And in the second one, if the National Director refers to a matter also  
20 regarding a specified offence. Now, what is the difference? They relate to precisely the same definition.

MR LEDWABA: I differentiated the two to say that A1 is specifically specified offence in terms of that mandate of the DSO.

COMMISSIONER GABRIEL: Which is the definition that none of us can find.

MR LEDWABA: Of the four. Even the new one talks about organised crime of a high-level nature.

COMMISSIONER GABRIEL: You mean the new Act has since been repealed from this?

MR LEDWABA: Yes.

COMMISSIONER GABRIEL: Ja. The Amendment Act does not talk to it, which would have been applicable at that time.

MR LEDWABA: I agree.

COMMISSIONER GABRIEL: Okay. So if both refer to specified  
10 offence, I am trying to understand in my mind, what is the difference when the National Director sent you some TRC cases? Why could he you then use, presuming then that he had formed the view that these were specified offences? It is the only way he could have used his power in 28(1)(b).

MR LEDWABA: My understanding was these specified offences had to be identified per referred matter. Like those four he mentions, murder, kidnapping or attempted murder. That was specified. Not as defined in the NPA Act, but in terms of 28(1)(b).

COMMISSIONER GABRIEL: But as defined in the NPA Act, if we go  
20 to the amendment that brought this in, a specified offence means any matter falling between 7.1aa or 7.1bb. And in the Amendment Act, "aa" refers to criminal or unlawful activities committed in an organised fashion, or "bb" refers to other offences or categories determined by the President by proclamation in the Gazette.

MR LEDWABA: Which is totally different to our powers then.

COMMISSIONER GABRIEL: Ja, it is totally different.

MR LEDWABA: Yes.

COMMISSIONER GABRIEL: So you see my question is, what is the difference if the National Director had formed the view that these were specified offences as defined. Why then was it not open to you to form the same view that these were specified offences as defined in terms of 28(1)(a)?

MR LEDWABA: My answer again is how we interpreted our mandate in terms of that which is now not here. Limited to high complex  
10 financial crimes, high complex corruption, organised crime and racketeering and organised crime. We understood that we were limited only to that in terms of the high end part of those crimes.

COMMISSIONER GABRIEL: Because if you were limited, then the National Director would have been similarly limited.

MR LEDWABA: No 28(1)(b), it gave him superpowers.

COMMISSIONER GABRIEL: But it used the same definition of specified offence.

MR LEDWABA: I always argued that even a theft of Pick and Pay, he  
20 it. could have just said, use 28(1)(b), it is a specified offence, go and do

COMMISSIONER GABRIEL: Okay. So it seems to me then that maybe what there ultimately was, was a legal difference, a legislative difference between you and possibly the prosecutors, the PCLU prosecutors.

MR LEDWABA: I would not necessarily agree, Commissioner,

because legislation is clear. Specified offence accommodate under 1a and certain specified offence suddenly under 1b. If it was the same, there was no need for 28(1)(b).

COMMISSIONER GABRIEL: My difficulty is specified offence is defined in the Act and it is not what you have given us.

MR LEDWABA: Correct, in terms of this current Act.

COMMISSIONER GABRIEL: Right, so will you provide us with your copy of the legislation?

MR LEDWABA: I will.

10 COMMISSIONER GABRIEL: Thank you very much.

MR LEDWABA: Thank you.

CHAIRPERSON: Mr Nalane, any re-examination to be conducted on your witness?

ADV NALANE: No re-examination, Commissioner.

CHAIRPERSON: Thank you. Mr Ledwaba, we thank you for having come to give evidence before this Commission. As you have heard, there is an intention to apply for your cross-examination, in which event you will be expected to come back to this Commission for such cross-examination. But for now, you are excused as a witness.

20 MR LEDWABA: Thank you, Commissioner.

ADV NALANE: Chair, that is the end of the business for today.

CHAIRPERSON: Thank you. Are we commencing tomorrow at 09:00? Mr Varney?

ADV VARNEY: I will check with my instructing attorneys on that. Chair, I am told by my instructing attorney that Mr Ackerman has not

indicated, but can I suggest that, just given his situation, that we go for 09:00 tomorrow morning?

CHAIRPERSON: Yes, until 13:00.

ADV VARNEY: As the Commission pleases.

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

INQUIRY ADJOURNS UNTIL 23 APRIL 2026

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**FORUM OF ORIGIN** : Inquiry  
**CASE NUMBER** : N/A  
**TRANSCRIBERS** : M Brits, W Kruger, L Lerm  
**DATE COMPLETED** : 2026-04-22  
**NUMBER OF PAGES** : 104 (Including front page)  
M Brits: Page 1-32  
W Kruger: Page 33-64  
L Lerm: Page 65-102

**TRANSCRIBERS** :    


#### TRANSCRIBER'S NOTE:

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- Grammar errors types verbatim.



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