

**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 KD Moroka (SC) – DoJ representative  
Adv Yanela Ntloko- NPA representative  
Adv Motlalepule Rantho (for SAPS)  
Adv Ebenezer Propy (for SAPS)  
Adv Irene Dikgale (for SAPS)  
Adv Varney (SC) – The Calata Group  
Adv D Pillay – The Calata Group  
Mr Jao Venter – The Calata Group  
Mr Siphon Tlhaole – The Calata Group  
Ms Vuya Nako – The Calata Group  
Adv Nwabisa Ntshizana (for Ex-NDPP's Officials)  
Adv Bridgette Nthambeleni (for Adv Jiba)

**26 MAY 2026**

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PROCEEDINGS ON 26 MAY 2026

CHAIRPERSON: Good morning. Mr Soni?

ADV SONI: Morning, Commissioner, Chairperson; morning, Commissioners. Chairperson, we have today Mr Masutha to give his evidence.

CHAIRPERSON: Thank you. Mr Masutha, are you going to give evidence under oath or affirmation?

ADV MASUTHA: I will make an oath, M'Lady.

CHAIRPERSON: Yes. Will you swear that the evidence you will  
10 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'.

TSHILILO MICHAEL MASUTHA: duly sworn states

CHAIRPERSON: Thank you, Mr Masutha. Mr Nalane?

EXAMINATION BY ADV NALANE: Thank you, Commissioner. Mr Masutha, you have deposed an affidavit which appears in the bundle for you.

ADV MASUTHA: That is correct.

ADV NALANE: You know that you are partly cited. I saw you are using Braille as well to read some of the documents, right?

20 ADV MASUTHA: That is correct.

ADV NALANE: You deposed an affidavit on 21 March 2026 at Thohoyandou SAPS.

ADV MASUTHA: That is so.

ADV NALANE: Do you confirm the contents of that affidavit and you stand by the contents?

ADV MASUTHA: That is correct.

ADV NALANE: Mr Masutha, you have been asked to come here to shed light and assist the Commission in going about these terms of reference, which I am sure you are familiar with.

ADV MASUTHA: Certainly.

ADV NALANE: And in your affidavit, you summarise the terms of reference, which we are all aware of. What I will do is; I am going to read aloud the contents of your affidavit, but if you want to read through your Braille as well, you may do so; and then I will ask you to  
10 comment further, if necessary. Would that be in order?

ADV MASUTHA: It would be my pleasure, yes. Thank you.

ADV NALANE: In your affidavit, at paragraph 3, you correctly summarise and state that:

“On 29 May 2025, the President of the Republic of South Africa, Mr Matamela Cyril Ramaphosa, issued Proclamation Notice 264 of 2025 establishing a Commission of Inquiry into allegations regarding efforts or attempts having been made to stop the investigation or  
20 prosecution of the Truth and Reconciliation Commission of TRC cases.”

Correct?

ADV MASUTHA: That is so.

ADV NALANE: We will deal with your profile a little bit shortly, but you were a Minister of Constitutional Development and Correctional

Services at some point.

ADV MASUTHA: Yes, I was Minister of Justice and Correctional Services from May 2014 to May 2019, yes.

ADV NALANE: And part of the period covered by the terms of reference would coincide with a period in which you have been in public service.

ADV MASUTHA: That is correct.

ADV NALANE: And that is why you are called here to come and testify to the extent that you know anything to deal with the

10 Commission terms of reference.

ADV MASUTHA: Certainly, yes.

ADV NALANE: And in paragraph 4 you summarise what the terms of reference are, and as you say:

“The Commission's terms of reference require the Commission must inquire, make findings, report and make recommendations concerning:

1.1 whether, why and to what extent and by whom efforts were made to influence or pressure members of the Southern Police Service or the National Prosecuting Authority to stop investigating or prosecuting TRC cases; and

20

1.2 whether any members of the Southern Police Service or the National Prosecuting Authority improperly coordinate with such

attempts to influence or pressure them,  
amongst other things.”

Those are the basic terms of reference.

ADV MASUTHA: Yes, I am aware of them.

ADV NALANE: And then in paragraph 5 you deal with your terms as Minister of Justice and Constitution Development, but before we deal with paragraph 5, perhaps we can deal with paragraph 6 where you deal with the professional qualifications and where you obtained them and your academic history.

10 ADV MASUTHA: Yes, I started off; maybe let me start that I went to a special school for the blind in 1972 where I eventually matriculated in 1984, having been diagnosed with eye cataracts when I was born and was hospitalised for about, since I was a year and two months for about six years intermittently, until eventually I was referred by the ophthalmologist to a special school where I learned the use of Braille and other forms of reading and writing used by visually-impaired persons.

I am not blind, neither am I partially blind, but I am actually partially sighted. And as they say in French that the wine glass is  
20 always half full and not half empty. So I still have residual vision, which enable me to function, except that for purposes of reading. I do not drive my own car and I only use large printed lists for purposes of reading print.

I was admitted at the University of Limpopo in January 1985 to study towards the degree of B.luris, which I completed in 1988;

and in 1989 I was admitted to the University of the Witwatersrand to study towards the LLB degree, which I completed in 1990; and hence the two law degrees that I hold.

ADV NALANE: And what did you do after your study at the University of the Witwatersrand?

ADV MASUTHA: Well, from January 1991, I was invited to establish and be Director of the Disability Rights Unit at an organisation called Lawyers for Human Rights, where I served for a period of five and a half years until I proceeded to be appointed to be head of legal  
10 services at the department, then called Social Welfare and Population Development, now called the Department of Social Development in Pretoria in June 1996.

ADV NALANE: And your career in parliament and public service, how did that start?

ADV MASUTHA: Well, I may pause for a moment, if you allow me, and dwell a bit on my stint as head of legal services at the Department of Social Development, which preceded my election to parliament in 1999, if you allow me. Should I go ahead?

ADV NALANE: Go ahead.

20 ADV MASUTHA: Yes. When I was appointed at the Department of Social Development, it was during a transitional phase where South Africa was rediscovering itself as a democratic nation based on constitutional democracy.

I was assigned under Minister Fraser- Moleketi, Geraldine Fraser-Moleketi, to head legal services there; and amongst the key

responsibilities that I held was to see to the development of the legislative framework that facilitated transition from the erstwhile apartheid social welfare system into a system that was in conformity with the new constitutional order.

Amongst others, for example, I drafted legislation that introduced the child support grant, replacing it with the erstwhile maintenance grant, which was only accessible to white children, white poor children; and replaced it, well, mainly, and replaced it with a universally accessible child support grant that was available to all  
10 poor children in South Africa.

I can go on and on with some of those seminal initiatives in legislative and policy reforms prior to my elevation to the National Assembly as Member of Parliament in 1999, but maybe I should pause there.

ADV NALANE: Yes, I think we can then move to... but what you are saying is; your involvement with human rights issues has been quite prominent, even as you were in the Department of Social Services.

ADV MASUTHA: Yes, actually, starting with my period advice for  
20 human rights, which I have already alluded to, I was quite involved in the advancement of the rights of disabled people, advocating for the inclusion of disability and the Equality Clause in our constitution, in our labour relations legislation, *et cetera*, and that exposure helped me in good stead when I had to then deal with issues before me at the Department of Social Development.

My assignment in particular focused on social welfare and

child protection; so all legislation, litigation, *et cetera*, that related specifically to those two areas was my domain. When I went to Parliament in 1999, one of the primary portfolio committees I served under was the Portfolio Committee on Justice, chaired by former Adv Johnny de Lange MP.

ADV NALANE: Before you proceed, so just to round off; your involvement with the issue of transformation is quite strong.

ADV MASUTHA: Yes. Actually, even before 1994, when I was serving at Lawyers for Human Rights, I was in 1993 in preparation  
10 towards a takeover by the African National Congress of Government, part of the teams that were set up to understudy the legislative and policy framework that prevailed under apartheid.

So, in my case, reporting to the late Mr Jackie Selebi who took over from the late Ms Winnie Mandela, I was assigned the responsibility to understudy the legislative framework governing social development at the time, or social welfare, it was then called, and worked closely with Prof Vivienne Taylor, who was the policy analyst, and together we formed a partnership. And we would visit the department on a daily basis to meet with our officials to study the  
20 relevant frameworks in order to prepare for the eventual takeover.

And of course, when I eventually got appointed in 1996, I was already familiar with some of the issues at hand that needed attention to facilitate transition in line with the new constitutional dispensation. And amongst others, for example, I drafted legislation that facilitated transition from the 13 administrations, the TBV state and self-

governing territories and the four provincial administrations, then applicable in terms of the legislative frameworks that governed social welfare provisioning, and consolidated those into a single national social welfare system, for example, under the Social Assistance Act.

ADV NALANE: Would that have been before or after your stint in Parliament?

ADV MASUTHA: That would have been during the time when I was heading Legal Services at the Department of Social Development. However, I carried through some of that work when in Parliament I  
10 was assigned to serve on the Portfolio Committee on Social Development as well, where we basically built on that foundational work that we had done during the transitional phase into democracy.

And for example, when I was in the Portfolio Committee of Social Development, we worked on the refinement of the transition of the social assistance programme from the nine different provincial administrations. We nationalised it into a single national delivery system and past legislation, the SASSA Act; that also centralised the administration, so that all South Africans who qualified, would have the same rights, equal rights, regardless of which part of South Africa.

20 So we took them away from the provincial administrations and centralised them in line with the constitutional mandate of ensuring that there was equal access to those social support programmes.

ADV NALANE: So before you became Minister of Justice Constitutional Development, did you have anything to do with justice in your stint in Parliament?

ADV MASUTHA: Yes. As I indicated, the two portfolio committees, my apologies, I had thought I put it on silence or on... sorry, sorry about that. It is not responding. I wanted to put it on 'aeroplane mode'.

As I indicated, when I arrived in Parliament, the two major Portfolio Committees I served on was Social Development and Justice. And as a member of the Portfolio Committee of Justice, we were involved in quite a number of the foundational legislative frameworks, especially those that were sanctioned by the  
10 Constitution, such as the Equality Act and a plethora of anti-corruption laws, whistleblower legislation, anti-money laundering legislation, *et cetera*, all of which were at the time regarded as critical and foundational in building the kind of constitutional democracy that we wanted to see.

ADV NALANE: Did you by any chance come across any TRC case-related matters in your portfolio in Justice?

ADV MASUTHA: Amongst the many ad hoc committees that I was appointed to serve in from time to time includes the ad hoc committee that considered President Thabo Mbeki's draft regulations for the  
20 implementation of the TRC recommendations, which report was tabled before, our report was tabled and accepted by the National Assembly, effectively accepting President Thabo Mbeki's proposed regulations to give effect to the recommendations of the TRC. That is as much as I recall my involvement with TRC-related matters when I was still in Parliament, when I was still a backbencher, as it is called

in Parliament.

ADV NALANE: Your recollection, what did the regulations deal with?

ADV MASUTHA: The regulations, to the best of my memory, primarily dealt with reparations and community rehabilitation, where, for example, the president determined that the amount to be payable to some 200, sorry, some 22 000 victims identified by the TRC in the form of reparation would be set, as well as the approval of the list of 22 000 that were to benefit from both reparation and all other social interventions, such as access to education, health care, housing and  
10 other amenities.

And of course there was this other aspect which continued to be elusive even during my stint; and that was how best to give effect to community rehabilitation, in terms of which I cannot recall how many communities were identified. I think it was 18 or so, as particularly having suffered the atrocities of apartheid and therefore needing rehabilitation interventions, which are some of the matters that I was seized with quite closely when I took office.

Of course there were other issues arising out of the TRC that I had to deal with when I took office as well, which may or may not  
20 have directly been dealt with in those draft regulations.

ADV NALANE: Then if we may go back to your affidavit at paragraph 8. You deal with your period as when you started serving as Minister of Justice and Correctional Services. You say:

“From May 2014 to May 2019, I served as  
Minister of Justice and Correctional Services.”

ADV MASUTHA: Yes. There is so much to say. Five years is quite a long time. I was... they often taunted me, colleagues, that I was thrown in the deep end and had a few hot potatoes to handle when I took office. Amongst the more prominent of these was that two days into office, I was slammed with a court order from the North Gauteng High Court, requiring me within 30 days to consider a certain Mr Eugene de Kock of the dubbed Prime Evil because of the atrocities that he was associated with during the days of apartheid.

10 And in considering his application for parole and going through his profile, a profile being a record of your entire stay at Correctional Services from the first day you were admitted until the last day you leave Correctional Services, I noticed something strange in that profile. There was a stand-alone paragraph that said that the victims, the families of the victims of Mr de Kock were consulted, leading up to recommendation for his release on parole; and they all had no objection to his release. Now what was strange about that was that there was no paper trail, no supporting documentation that supported that assertion. It was just a statement.

20 And upon further enquiring, I discovered that around the time when the NCCS, I think it was in November 2013, a few months before I took office; the NCCS refers to the National Council for Correctional Services. It is the body that makes final recommendations to the minister when it comes to persons serving life in prison for parole, for granting or denial of parole.

When I went through, so I came across a newspaper article

that said quite the opposite of what was contained in that paragraph, which said that families of the victims of Mr de Kock heard rumours of or had received information of his imminent release, and they were unhappy about the fact that they were never consulted.

Now that concerned me; and because I could not verify the truth or otherwise of this, I then convened a luncheon with all the five families. It was a whole full of probably close to 250 people to answer a simple question; whether they were in fact consulted as stated in the profile or not. And one after the other, they all denied  
10 that they were ever consulted.

And on that basis and purely on that basis, I decided to defer his release on parole by rejecting his application initially to allow that consultation process to proceed. And it was only after that had been completed that I then granted him parole, but subject to certain conditions.

ADV NALANE: I think you deal with that a little bit more in detail at paragraph 29 onwards, but the point you make is that from day one, paragraph 29, the pagination is 1732, but the paragraph is on 29. You say:

20 "Victim-centric approach: From day one, I prioritised victims in accountability processes. For parole of TRC convicted lifers, like Eugene de Kock, killers of Chris Hani, Clive Derby-Lewis and Janusz Waluś, I introduced a victim-centric policy requiring consultation with victims before

decisions.”

In paragraph 30 you describe what you have just described now.

“In light of this approach, I rejected Mr Eugene de Kock's initial application upon discovering that families of victims of his crimes were not consulted by the Department of Correctional Services and only approved his parole after proper engagement with the families of victims occurred.”

10 You also say in paragraph 31:

“In addition, I made it one of the conditions of parole so that Mr Eugene de Kock assists NPA's Missing Person's Task Team in locating the remains of victims of apartheid atrocities. This approach extended to TRC matters, like the Timol case, emphasising victim impact.”

That is what you say there.

ADV MASUTHA: That is in essence what I was trying to refer to earlier. That is correct.

20 ADV NALANE: One of the functions which you had to be responsible for as Minister of Justice would be the National Prosecuting Authority.

ADV MASUTHA: That is correct.

ADV NALANE: And you deal with that in paragraph 8, the last sentence.

“In this role, I oversaw matters including those relating to the National Prosecuting Authority.”

In paragraph 9 you deal with your approach to criminal and prosecution issues. I am going to read, then you can comment if you want to.

ADV MASUTHA: Yes.

10 “My approach to criminal and prosecutorial issues, including Truth and Reconciliation Commission cases, was to await approaches from the NPA for specific action as opposed to initiation of cases.”

What do you mean by that?

ADV MASUTHA: Yes. You will be aware that in the constitution the cabinet member responsible for the administration of justice exercises final responsibility for the National Prosecuting Authority; and that refers to the Minister of Justice of the day. You would also be aware that there was a so-called Ginwala Commission of Inquiry that dealt largely with the question of independence of the prosecutorial authority in the Republic, which clarified how far that  
20 constitutional injunction went and did not go in so far as the role of a Minister of Justice is concerned.

Specifically, as I would recall, that commission report, bless her soul, by former speaker Frene Ginwala, was in essence to the effect that a Minister of Justice should not in any way interfere in prosecutorial decisions. In other words, you do not as a minister

decide who to be prosecuted or not to, when to be prosecuted and for what they should be prosecuted and whether or not prosecution should go ahead.

So that to me was a Chinese wall that could not be crossed; and hence I could not *mero motu* instruct the prosecuting authority, be it any prosecutor in any court or the NDPP himself or herself, to perform their prosecutorial functions.

ADV NALANE: And so in paragraph 10, you then say:

10                    “In my capacity as the former Minister of Justice  
                         and Constitutional Development, I was not  
                         involved in the operations and daily dealings of  
                         the cases.”

ADV MASUTHA: That is so. I did not even consider it my responsibility to micromanage the affairs, the prosecutorial responsibilities of the NPA. I had confidence in the institution and its leadership and I believed that it was made up of men and women, well-trained, capable, who probably knew better than me how to do their work. Yes.

20                    ADV NALANE: Then in paragraph 11, you deal with one TRC-  
                         related matter that required a specific action during your tenure; and  
                         that was that of the late Ahmed Timol. And you say:

                         “I received an application to establish an inquest  
                         into Timol's death, which was granted.”

Do you want to explain further?

ADV MASUTHA: Yes. Actually, it turned out to be just one of a few

of those matters that ended up in the resuscitation of inquests to determine the cause of death for purposes of establishing who could be held responsible and therefore for prosecution to ensue. I would, in all instances, have been approached by the NPA when they were ready to do so, to request me to endorse pursuit of such inquests in that manner. And in all instances, convinced with the motivation that they gave, I had no reason not to accede to that; and indeed that is what I did. My role specifically was confined to requesting the Judge President concerned to appoint a judge to conduct such an inquest or  
10 preside over it.

ADV NALANE: You deal with that in paragraph 12, where you say:

“I authorised the appointment of a judge to conduct the inquest through the office of Deputy Judge President. The decision to conduct the inquest was unsuccessfully challenged in court by Mr Rodrigues up to the Supreme Court of Appeal leading to the inquest and subsequent prosecution, which ended due to his passing.”

Do you want to explain further; who is Mr Rodrigues and what was  
20 your involvement?

ADV MASUTHA: Yes. I think, perhaps I should state that one of my cardinal principles when I took office was that everyone must be accountable for their own actions, including myself. And I recall that quite frequently at management meetings of the departments I was responsible for and their entities, I used to use the phrase ‘black men,

black women, white men, white women.’ If you follow my example as I am here to lead by it, I will stand right behind you. If you fall, we will fall together. But if you do your own thing – black men, black women, white men, white women; you are all on your own.

And this was to emphasise and make it very clear where I stood principally with regard to my approach in the discharge of my work, my responsibility as Minister of Justice and Correctional Services; that I expected nothing less of all of us to discharge our responsibilities without fear, favour or prejudice in line with the law  
10 and the constitution.

ADV NALANE: Then at paragraph 13 you say:

“Prior to and post Timol's case being brought to my attention, no other TLC cases required my specific intervention. On the other hand, I have no recollection of any other matters, such as the Nokuthula Simelane matter, being brought to my attention for any action during my term.”

ADV MASUTHA: I think I need to clarify that in the case of Timol, I had to defend my decision to support an inquest in the courts, all the  
20 way to the Supreme Court of Appeal, all the way to the actual trial commencing. And I was determined to make sure that that entire process runs its course, culminating of course in his prosecution, which unfortunately was terminated when he passed on. In the other matters, such as the ...[intervenes]

ADV NALANE: If I may just interrupt you there. So, in the Timol

matter, you authorised reopening of the inquest after requesting by the NPA.

ADV MASUTHA: Yes and the manner of it was by acquiescing to requesting the Judge President to appoint a judge to ...[intervenes]

ADV NALANE: And your decision... Sorry.

ADV MASUTHA: To preside over such an inquest.

ADV NALANE: And your decision to authorise or agree to the reopening was challenged by Mr Rodrigues.

ADV MASUTHA: Certainly.

10 ADV NALANE: And you took the matter all the way until that was resolved and the inquest reopening proceeded.

ADV MASUTHA: Certainly.

ADV NALANE: Is there anything else you want to add in paragraph 13 where you say:

“On the other hand, I have no recollection of any other matters.”

ADV MASUTHA: I wanted to contextualise to say that that does not negate what is contained in paragraphs further down, where I deal with other inquests that I authorised; namely, the Haffejee matter and  
20 the Neil Aggett matter, where I equally authorised the commencement of the inquest. I think the context there was essentially to say that the action that I took was to pursue seeing to having approved the inquest to ensuring that that decision is defended all the way through the courts until it took effect.

ADV NALANE: And then at paragraph 14, you say:

“I have also given approval for the reopening of the inquest into the death of the late Dr Neil Aggett in detention on 5 February 1982 at the John Vorster Square Police Station.”

And the authorisation is attached to your affidavit.

ADV MASUTHA: That is correct.

ADV NALANE: So you put a similar, upon request by the NPA, you would approve the reopening of inquests?

ADV MASUTHA: Certainly.

10 ADV NALANE: You also deal at paragraph 15 with the inquest of Dr Hoosen Haffejee. You say:

“I also approved the reopening of the inquest into the death of Dr Mia Hoosen Haffejee on 3 August 1977 whilst in detention at Brighton Beach Police Station.”

And you also attach a copy of the approval.

ADV MASUTHA: That is correct.

20 ADV NALANE: Now, in paragraph 16 you deal with briefings that you would receive now and then. I suppose as a minister, you would not just sit and wait. If there were any issues of concern to the public, it will be your duty to enquire into and ask questions about it. Correct?

ADV MASUTHA: That is correct.

ADV NALANE: So you are saying you knew your lane, you could not tell them what to prosecute, what not to prosecute, but you could

send a question if there were issues that concerned the public.

ADV MASUTHA: That concerned me. If I found something untoward in my estimation, I of course would avail myself of the opportunity to probe further, for clarity's sake at least, and provide some guidance at best without seeking to direct the NPA what they should do and how they should do their work.

ADV NALANE: In paragraph 16 you say:

10 “I received general briefings on NPA matters under the NPA Act as and when needed. I became aware that during 2013, before I was appointed Minister of Justice and Constitutional Development, the matter of Simelane was brought to the attention of the National Prosecuting Authority and addressed by my predecessor.”

20 ADV MASUTHA: That is correct. I am aware that Mr Shaun Abrahams, or Adv Shaun Abrahams, during his tenure as the National Director of Public Prosecutions, did brief me about the interactions that had occurred or were occurring between himself and the affected families.

And I think there were court applications to compel either an inquest or a prosecution to take effect at some point, but my sense was the matter was in hand and the NPA was well in its position to pursue the matters. It does appear that an attempt was made to proceed with actual prosecution in that instance and not have to go

through inquests, if my memory serves me well.

But unfortunately, because of the complications, I do not know whether it had to do with legal representation for the accused, *et cetera*. In the interim, as they say the wheels of justice grind very slowly and sometimes they wait too slow for justice to eventually prevail, because my understanding is that some of those accused persons eventually passed away whilst those tussles were still ongoing.

ADV NALANE: And you describe your general approach; at  
10 paragraph 17 you say:

“My general approach to criminal matters or matters relating to the National Prosecuting Authority was to wait for them to approach me regarding anything that required my attention.”

Is this not what transpired in the Timol matter?

ADV MASUTHA: Yes, that is so. As I mentioned earlier, I always understood my role, inasmuch as I needed to constantly appraise myself of matters broadly in the prosecutorial space, as dealt with by the NPA. I, however, believed it was not my province to identify  
20 which matters needed prosecution, when those prosecutions needed to occur, and all other attended matters associated therewith.

ADV NALANE: And you explain that further at paragraph 18 where you say:

“I would not, under any circumstances, *mero motu* initiate a process relating to any

prosecutorial matter, be it a TRC-related case or  
any other matter.”

Just pause there. You use a big Latin word there; *mero motu*. Would you like to explain to...?

ADV MASUTHA: Yes, *mero motu*, referring to out of my own initiative. So, I was not the prosecuting authority. I exercised overall authority over it, but that did not extend to me usurping their role and taking over their function.

10 ADV NALANE: Because then you then explain in the same paragraph:

“My responsibility as a minister was, to the extent necessary, that I would request a written or oral report on any matter that I considered significant or necessary for me to receive a briefing. From time to time, I would receive briefings on different matters.”

20 ADV MASUTHA: Yes, that was ongoing. It happened quite often, especially when it related to matters which the NPA would consider to be of significant public interest, especially those that involved high-profile persons. I myself, from time to time when, within my own province, province referring to my own competence, legal and constitutional competence; had to make decisions within the course of the administration of justice of similar weight.

I would often seek audience with my principles, my principle of the time, of the day. Principle is the language we use in the public

sector, referring to the head of state and the head of government, the president, to brief him in both instances – it was a him; of any such matters, be they emanating from briefings from the NPA or emanating from the discharge of my own responsibilities relating to the administration of justice.

So yes, those briefings did happen quite frequently and they were often case-specific. And the idea was to make sure that before some such matters found their way into the public arena, at least I made a way as well as understand what was essentially going on.

10 And like I said, where it was necessary, I would in turn brief my principal accordingly.

ADV NALANE: In paragraph 19 you deal with a specific briefing or report, memorandum that was given to you by the then NDPP, Adv Shaun Abrahams. I am going to read to you, just to refresh your memory, what you say in this paragraph and then we can look at the memo and then you can comment further. You say:

20 “I was recently made aware of the existence of a report/memorandum dated 15 July 2015 signed by the then NDPP, Adv Shaun Abrahams, regarding TRC investigations and prosecutions. I noted that the said report, although addressed to the former DG, Ms N Sindane, the Deputy Minister, Mr J Jeffery and me, was not signed by all those cited. I first saw this report recently among the department documents requested for

this inquiry.”

And if I may direct the attention of the Commission, the memorandum is marked as SK3, but it is right at the end of the bundle. It was lifted from the evidence of Adv Shaun Abrahams and it still bears the pagination in that bundle, which is page 84. So just explain this memorandum, how it came about that you are given this memorandum.

ADV MASUTHA: And perhaps to give a fuller context, we may want to look at my paragraph that follows, 20 and 21; and if you could  
10 perhaps just go straight to 21.

ADV NALANE: At 20 you say:

“I have had sight of the affidavit of Adv Abrahams dated 12 December 2025 for the purpose of this Commission. He refers to a Ministerial Memorandum dated 15 July 2015, which he says was pursuant to a section 33(2)(a) of the NPA Act in relation to the investigation and prosecution of matters emanating from the TRC.”

In 21 you say:

20 “I do not recall having had sight of the memorandum which lacks my signature. As appears from the memorandum, it was merely for my noting by myself. It stated that I would be informed of the outcome of the individual cases once the investigations had been concluded and

decisions made on them.”

ADV MASUTHA: Yes, and of course, in due course, I suppose you would be going into that memorandum itself. The context is this. Soon after Adv Shaun Abrahams took office, I think around July 2015, one of the very first briefings that he gave me related to the legacy of TRC prosecutions or matters. And of course, the context was that at the time, there was much talk in the public space about lack of movement in pursuit of some of those cases over the years.

So, as you can see from that annexure, the memorandum,  
10 which bears only his signature, although it purports to be a submission to myself through the various functionaries, the Director-General of the Department, the Deputy Minister, then Mr John Jeffery; in large measure, it gives a historical account of how the approximately 400 cases that were identified for possible prosecution, in respect of which amnesty was not granted by the TRC, never saw the light of day in the form of them ever reaching the doors of the courts.

And it gives a whole exposé of the circumstances surrounding that, which is something that can be talked on a little on. But in the  
20 end, he states that only approximately eight matters were left to be considered for prosecution at the point in 2015 when he gave me the briefing.

Now, that memorandum never came through the system. What happened is that we had a one-on-one briefing, in which he went through the content therein, more or less along the lines that are

contained in it; and in my estimation, not much turned on it. Essentially, all it said was that much of the proverbial horse had bolted, in the sense that where we were at, most of those matters was water under the bridge, and gave a whole elaborate explanation as to what led to that.

And, yes, it may well be that he shared a copy of this memorandum with me, but it would not have been in the formal manner as prescribed in the legislation, because even though it was intended to come through in that manner, it never proceeded.

10 Reason being that, if I recall well, he indicated that a lot of the content therein needed further reflection, further investigation, further refinement, short of just paraphrasing his explanation; and that he would come back to me on a future date, because he had just taken over the role of National Director of Prosecution, and I believe the report would have, in large measure, have been put together by various functionaries within the NPA for his signature.

So we did not take matters further at that point, but what subsequently happened thereafter is that I received regular briefings on specific matters that could be pursued; that needed to be pursued

20 in some form or another; not only TRC, of course, but including TRC matters. And as it were, that is more or less what ensued going forward.

And of course, in the earlier paragraphs that you alluded to, there were specific matters indeed that came to the fore; and you would notice there, in the annexures that you referred to earlier, were

authorised various resuscitations of inquests; that those memos would be signed by several functionaries directed at myself for approval, for decision. Because ordinarily, memoranda or what we normally referred to as submissions, be they ministerial or DG submissions, would be generated and, you know, put through the system to facilitate decision-making.

So each of the cited functionaries would peruse the memorandum, be advised by those competent to advise them; and if they wanted to make any remarks or add some advice for  
10 consideration of the person destined to make the final decision – in this instance it would be the minister; they would have had that opportunity. And of course the minister would then take account of such advice and make the necessary decision.

So that memo never went through that process, and that is what I was referring to earlier when I was saying that in my document, that such a memo never came through.

ADV NALANE: Chair, I see it is 11:03.

CHAIRPERSON: Yes.

ADV NALANE: Will it be a convenient time to take the tea?

20 CHAIRPERSON: Yes, we will take a tea adjournment and reconvene at 11:15.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Mr Nalane.

EXAMINATION BY ADV NALANE (CONTINUES): Thank you, thank

you, Chair. Mr Masutha, you made the point that you did not sign this briefing note or memo, correct?

ADV MASUTHA: Yes, that is correct.

ADV NALANE: And you said you did not go through the various protocols of approvals before it comes to you as a last person in line?

ADV MASUTHA: And as the person to whom it was directed, that is correct.

ADV NALANE: And if you just turn to page, no I will read to you page 106, 107 in the, this is part of the memorandum. It is now SKA3  
10 and I will just read to you, I can tell you it just shows you names. It says Adv SK Abrahams, no signature, Ms Sindane, Director General for Justice and Constitutional Development, noted but no signature and then 107, Mr J Jeffery MP, Deputy Minister of Justice and Constitutional Development, date, no signature and then your name is the last one, TM Masutha, MP (Adv), Minister for Justice and Correctional Services, no signature. That is the point you are making?

ADV MASUTHA: Precisely.

ADV NALANE: If you con ...[intervenes]

20 ADV MASUTHA: Yes, thank you.

ADV NALANE: If you contrast that to the request for reopening of inquest, they are attached to your bundle, I think initially you had attached them as MM1, MM2 to your affidavit. Are they now ...[intervenes]

ADV MASUTHA: That is correct.

ADV NALANE: Referred to as annexures G, from G onwards. And I just refer you to the – well if we start at annexure A, it is the reopening of the inquest – Deceased: Dr Neil Aggett, Death in detention: John Vorster Square, John Vorster police cells: Johannesburg – Date 5 February 1982. And it says, ‘To MT Masutha, MP (Adv) Minister of Justice and Correctional Services’. So this was directed to you?

ADV MASUTHA: That is correct.

ADV NALANE: And it says at the bottom of the page, ‘From Adv S  
10 Batohi, National Director of Public Prosecutions’. That is where you have emanated it from?

ADV MASUTHA: Yes.

ADV NALANE: The case to be reopened?

ADV MASUTHA: That is correct.

ADV NALANE: And if you turn the page, it is marked B, it says “Route Form. Component: Office of the National Director of Public Prosecutions, Subject: Reopening of inquest - Deceased: Dr Neil Aggett, Death in detention: John Vorster police cells: Johannesburg – Date 5 February 1982’. And then you have got names of officials  
20 there. It says, ‘Drafting officer, Adv S Bukau’. You remember who Adv Bukau was?

ADV MASUTHA: I must confess that I would not have a good recollection of all the names of the many officials at different levels ...[intervenes]

ADV NALANE: Actually an official.

ADV MASUTHA: Sorry?

ADV NALANE: She was an official.

ADV MASUTHA: Yes, I would imagine ...[intervenes]

ADV NALANE: Ja.

ADV MASUTHA: She would have been one of the officials in [indistinct] ...[intervenes]

ADV NALANE: And then it also says the 'Route Form, Post Design NDPP, title'. It lists Adv S Batohi and there is room for her signature and date, and then 'DG: DoJ&CD, V Madonsela Esquire' and

10 Madonsela signed?

ADV MASUTHA: That is correct

ADV NALANE: And then 'Deputy Minister: J Jeffery', also signed?

ADV MASUTHA: That is correct.

ADV NALANE: And that document would be accompanied by the document which appears as annexure C which is like an explanatory note to you. It talks about:

20 "The purpose of the memorandum is to request the Minister in terms of section 17A(1) of the Inquests Act 58 of 1959 to approach the Judge President Gauteng Division to appoint a Judge so that the inquest in respect of the above matter can be reopened."

ADV MASUTHA: That is correct.

ADV NALANE: It gives a background and then at the end at paragraph (d) there is a recommendation, then paragraph (e) says, page D paragraph 10:

“I therefore request you in terms of section 17A(1) of the Inquests Act 58 of 1959 to approach the Judge President to designate a Judge to reopen the inquest. I attach herewith as annexure A, a draft letter to the Judge President for your approval. Kindly provide me with a copy of your letter to the Judge President.”

And it appears there that you signed on the 23 April 2019.

ADV MASUTHA: That is correct.

10 ADV NALANE: And accompanying that note would be a letter which appears at annexure F to the Honourable Judge President, Gauteng Division, asking that a Judge be appointed to head the inquest.

ADV MASUTHA: That is so.

ADV NALANE: And you signed that letter as well to the Honourable Judge President?

ADV MASUTHA: That is correct.

ADV NALANE: So that is how you deal with matters that requires your approval of action, at least for you?

ADV MASUTHA: That is correct.

20 ADV NALANE: And so the note, the memo from Adv Abrahams did not require any specific action to be taken on your part?

ADV MASUTHA: Apart from agreeing to approaching the Judge President to appoint ...[intervenes]

ADV NALANE: Yes.

ADV MASUTHA: A Judge to preside over such an inquest.

ADV NALANE: All right.

ADV MASUTHA: And effectively requesting me to endorse a decision of the NPA to pursue an inquest in that matter.

ADV NALANE: And if we go to the one above from Dr Hoosen Mia Haffejee, it follows the same process, so the same covering documents and a letter from you as well as the accompanying letter to the Judge President?

ADV MASUTHA: That is so.

ADV NALANE: Now if you may turn back to the memorandum sent to you by Adv Shaun Abrahams, at the very least what you had  
10 known from the briefing of Adv Shaun Abrahams is that there were cases in which the TRC, post-TRC cases in which investigations and prosecutions had to happen?

ADV MASUTHA: That is correct.

ADV NALANE: And you have been told if we look and I am reading from paragraph 3.7 of the memorandum where it says:

“The audit process however identified 400 cases which were in the main disposed of on the following basis.”

And he summarises the basis on which they were finalised.

You had been aware of the briefing to that effect?

20 ADV MASUTHA: That is so.

ADV NALANE: Then he says to you at paragraph 3.9 at page 91:

“Approximately 350 of the 400 cases were finalised on the above basis. In respect of the remaining 50, further investigations were necessary before decisions whether or not to prosecute could be taken.”

You have testified that as far as you know, the cases were dwindled down to about eight or so?

ADV MASUTHA: Yes, that is correct.

ADV NALANE: Around eight, yes. Then what he tells you in paragraph 3.8, he tells you about the prosecutions that have followed. He says:

“Prosecutions were however instituted in the following cases; *S v Terre’Blanche*, *S v Blani*, *S v Nieuwoudt & 2 Others*.”

10 Correct?

ADV MASUTHA: Yes, that is correct.

ADV NALANE: And this would be out of many cases, 300, 400 plus that Adv Shaun would have told you about?

ADV MASUTHA: That is so.

ADV NALANE: By any, by in account the record is very, not very good in terms of prosecutorial decisions, successful ones?

ADV MASUTHA: I would support that sentiment.

20 ADV NALANE: Now you as the Minister, of course you know you cannot interfere, but you are, you are the, you, I think the term is you play a political oversight?

ADV MASUTHA: Mm.

ADV NALANE: And it means you have got to ask questions where things are not going right and demand answers?

ADV MASUTHA: That is correct.

ADV NALANE: Did you enquire from anyone in the NPA, about this

clearly not good record in the prosecution of the TRC cases?

ADV MASUTHA: In my estimation, that briefing was fairly detailed and contextual, sufficient for me to appreciate the difficulties or the difficult position that the NPA found itself in.

ADV NALANE: Mm.

ADV MASUTHA: When I took office, as I said earlier, the then and I think it was called DSO or Scorpions which was the only investigate arm of the NPA that existed prior, had ceased to exist, leaving very little if any, investigative competence within the NPA. Of course it is  
10 my understanding that after my stint, some form of an investigative competence was resuscitated institutionally within the NPA, but when I took office, the concept was the NPA was there to assist with investigations but not initiate or conduct same in order to ensure maximisation of prospects of successful prosecutions when the matter is eventually or the dockets eventually were ready for trial.

So if the police whether failing to cooperate or simply not having the capacity or whatever constraints which would not be in respect of which I would not be intimately acquainted with, for whatever reason failed to initiate or pursue investigations, it would  
20 have been extremely difficult for the NPA to assume that role on behalf of the police and themselves you know, to conduct such investigations without which there would be no basis for pursuing prosecutions.

And as you can see from that report, it clearly articulates the difficulties that the NPA encountered in that regard. So I had no

authority over the police, constitutionally and legally my mandate only extended insofar as the NPA is concerned in this context.

So I did not see my way clear what I possibly could do beyond acknowledging those challenges clearly as I said earlier, the horse had bolted in a large measure and all I could do is to make sure that where the NPA confidently felt that prosecutions or inquests could be successfully pursued, that I would support that. That is in as far as I could go under the circumstances.

ADV NALANE: So you would say there is a correlation between the  
10 investigations by the police and a good income of prosecutions?

ADV MASUTHA: Yes. Prosecution cannot occur without sufficient evidence having been gathered and presented to prosecution to enable effective prosecution. As I indicated earlier, the concept when I took office was investigation guided or prosecutor guided investigations as opposed to prosecution led investigations.

And that referred to the reality that the NPA neither had the mandate nor the capability, the capacity to itself *mero motu* to initiate and conduct investigations. They relied entirely on the cooperation and the capacity of the police to pursue such investigations. That  
20 would have been the context.

ADV NALANE: If you may just now in wrapping up go to your affidavit? At paragraph 23 you say:

“I am unaware of any formal or informal complaints about delays in TRC cases during my tenure, and no policy existed or was pursued by me to suppress TRC

investigations or prosecutions.”

ADV MASUTHA: Perhaps I should qualify that statement to say that that is in relation to the matters in hand that was, that were identified to be within the radar, the side of the NPA to pursue. And to the best of my recollection except for Khulumani which earlier on in my stint approached me, raising a number of issues directly relating to aspects of the purported regulations to give effect to the recommendations of the TRC during the time of President Mbeki that I alluded to, I do not recall any other approaches directed at me in a  
10 similar vein.

And of course in relation to Khulumani, I did seek audience with, well I did indicate to them that it was not my province to reconsider or review the regulations that were promulgated by the then President which as I said, I have served in the committee in Parliament which recommended the adoption by the National Assembly and suggested that any concerns they had in seeking to have the lid lifted on the caps that were set with regard to especially issues of reprehension, that the appropriate door to knock at would be that of the President himself.

20 But I did brief President Zuma about that particular encounter and I do not know if on their own, they took the matter further than that. I do recall though that one of the questions he raised was that the entire socio-economic transformation programme of the new Government under democracy was in large measure aimed at redressing the inequalities and the injustices of the past and

therefore it becomes difficult to single out any particular group beyond what the TRC did to try and prioritise them over all others who equally may have suffered in some form or another under the apartheid and colonial deprivation and atrocities in fact. That ...[intervenes]

ADV NALANE: Just a, oh sorry.

ADV MASUTHA: Ja.

ADV NALANE: I am sorry. No, you can finish, I am sorry I ...[intervenes]

ADV MASUTHA: Ja, so that is as far as I would recall my interaction  
10 in trying to convey. Like I said, I would have regular briefings also with my principals and as when matters of significance arose of public interest from time to time and that could have been one of the issues, but I did not take it further than that based on the fact that I had advised that this was an area which was the President's province.

ADV NALANE: Thank you.

ADV MASUTHA: To deal with.

ADV NALANE: When you talk about regulations, TRC, you are not dealing with, you are not talking about regulations dealings with prosecutions and investigations of cases, are you?

20 ADV MASUTHA: No, those were essentially to do with reprehensions and commentary rehabilitation envisaged.

ADV NALANE: Thank you.

ADV MASUTHA: Under the TRC recommendations. Prosecutions as I understood them, fell within the purview of the independent institution called the National Prosecuting Authority to deal with.

ADV NALANE: Thank you. And then in paragraph 24 you say:

“My stance was accountability for all, with TRC cases being no exception.”

ADV MASUTHA: Yes, as I said earlier, my principle when I took office, was all of us ultimately have to take responsibility for our actions, and I applied that principle in all aspects of my work which was quite vast and varied. I can talk for example of the over 200 a month consideration of parole applications, for life was apparently in the region of 2 500 a year where I had to scrutinise in line with the applicable prescripts, whether an offender deserved the privilege of parole which by the way, is simply being permitted to continue to serve a sentence outside of a correctional facility, it is not intended to end your sentence.

ADV NALANE: Thank you.

ADV MASUTHA: And equally I received all manner of requests for expeditions from different part of the world. Those were some of the run of the mills matters on a daily basis that I had to deal with and in all instances. And of course the SIU would pile me with hundreds of draft proclamations for the President’s consideration with regard to matters relating to fraud and corruption cases that had to be dealt with by the SIU, that had to go past my desk.

ADV NALANE: Thank you.

ADV MASUTHA: So it was a very busy office, but in all instances the cardinal principle was always no holy cows, everybody should take responsibility and be held accountable for whatever actions they

have chosen to embark upon.

ADV NALANE: Thank you. You then say at paragraph 25:

“I am aware that at some point there were discussions about an amendment to government policy regarding prosecutions that was adopted. However, I confirm that when I took office in 2014, there was no such amendment policy and at no stage did such policy question arise.”

You confirm that?

10 ADV MASUTHA: That is a ...[intervenes]

COMMISSIONER KGOMO: Mr Nalane, is it not better where paragraphs go together, to read them and then the witness can then comment? Because otherwise later on it becomes a bit of a repetition. Consider that, but carry on.

ADV NALANE: Okay. You confirm 25?

ADV MASUTHA: Yes, certainly I do.

ADV NALANE: Thank you. At 26 you say:

20 “During my tenure, there was never an actual policy or an active attempt to suppress any pursuit of TRC cases.”

ADV MASUTHA: That is so.

ADV NALANE: Okay.

ADV MASUTHA: I can just state that I was aware of such previous apparent attempts at seeking to shall we say, interfere with the autonomy of the NPA to make such prosecutorial decisions. But that

was something that was something of a historical matter that never arose during my stint and certainly none of my principals be it then President Zuma and thereafter President Cyril Ramaphosa to whom I reported, ever at any point approached me, seeking me to in any way restrain the role of the NPA in pursuing any matter, let alone the TRC cases in particular, yes.

ADV NALANE: Okay and you confirm in paragraph 27:

“While I could request NPA reports and noted briefings,  
I could neither direct prosecutions nor halt them.”

10 But I think that we have, we have dealt with that.

ADV MASUTHA: Ja, yes, certainly.

ADV NALANE: And then 28:

“My oversight focused on professionalism: querying discrepancies in processes and also urging the exercise of due diligence to avoid creating perceptions, amongst others of political targeting often alleged in the past, but never on prosecution outcomes.”

So you stayed to your lane as Minister?

20 ADV MASUTHA: Yes and the significance thereof is that given the history of perceptions that prevailed before my time of perceived use of state institutions to pursue certain political interests to benefit or favour certain political groups through prosecutorial decisions, as well as perceived you know, other impurities that would have crept into the prosecutorial autonomy of the NPA to prosecute their responsibility without fear, favour or prejudice, I was particularly

emphatic in my interactions with the institution, that under my watch I did not care which political interest, even in my own political party, the African National Congress or any other political interest.

There shall not be any perception created or actually effected that sought to allow political expediency and other such impurities to interfere in the independence of the NPA in the execution of its tasks. That is what I am referring to there.

ADV NALANE: Thank you. When I asked you about, I think we were dealing with paragraph 26 during your tenure when you said  
10 there were no attempts or actual policy to suppress the pursuit of TRC cases, you mentioned that there may have been some historical events. Do you want to explain that?

ADV MASUTHA: Well the report seems to point the memorandum in question, the 2015 memorandum which is quite elaborate from Adv Shaun Abrahams, that seemed to suggest that there may well have been such perceived or actual interferences. I cannot vouch on that, I cannot deny or confirm that, because all of that related to the periods way prior to my assumption of office.

ADV NALANE: So you are referring to what Shaun, Adv Shaun  
20 Abrahams in the memo that was sent to you?

ADV MASUTHA: Yes, I took note of that, but nothing turned on it in my time, because those issues simply did not arise. Any matter that was ready for prosecution had to go through the motions and that was it.

ADV NALANE: I want to conclude but I want to ask you if there is

anything else that we may not have touched on which you think might be of assistance to the Commission?

ADV MASUTHA: Well I must start by expressing my profound gratitude to the Commission for giving me this platform to give just a little bit of my story in line with its mandate. I hope I have succeeded in discharging my responsibility as per the request and invitation of the Commission to assist in the discharge of its mandate.

But I should also equally take the opportunity to express gratitude for both former President Jacob Zuma and after him  
10 President Cyril Ramaphosa for having invited me to serve in the highest office in the country, that of being a member of Cabinet and retained respectively and of course the African National Congress, my political home for having invited me and kept me, representing it. Hopefully I did not do a bad job in the almost a quarter of a century stint that I served as a member of the National Assembly and Parliament of the Republic.

I must also just add that when I took office in 2014, I took time to appreciate firstly what were the legacy projects that my predecessor was seized with, former Minister Jeff Radebe and others  
20 before him. There was a vision 2000 that was developed under the first Minister of Justice, Minister Dullah Omar, that defined the vision going forward that was to be pursued by the new democracy in promoting access to justice for all and that amongst others, included ensuring that we make sure that all South Africans have equal access to the courts, one, by rolling out court infrastructure which we did.

I ensured that projects that Minister Radebe had initiated to build High Courts for Mpumalanga, Limpopo which did not have their own dedicated High Courts, were completed during my time and we almost reached the target of building on average, two courts a year in the five years' stint that I was there, as well as rollout major infrastructure refurbishments in no less than 13 courts.

And of course Kgomo Mokoena I see present here, would recall when I appointed her to assist me in seeing to the rolling out of the new dispensation governing the legal profession itself under the  
10 Legal Practice Act to whom I remain indebted for the support she gave me and there were many others who supported our endeavours to really pursue vision 2000 who ensured that every High Court had at least one local seat to make the High Court more accessible.

We made sure that over 700 magisterial districts were aligned along the lines of municipal boundaries, in line with the new Constitutional special makeup, *et cetera*, and the list goes on.

ADV NALANE: Thank you.

ADV MASUTHA: So in conclusion I would really wish to express my profound gratitude to all those who made sure that I had the privilege  
20 of serving this country in the manner I did. And maybe to conclude, let me also thank my Creator for keeping me alive. Three years ago I had a heart transplant when I was left with less than a week to live after battling heart failure resulting from cardiomyopathy and would want to seize this moment to encourage as many people to become organ donors to save more lives like mine was. Thank you very

much.

ADV NALANE: Thank you. Those are the questions, Commissioner.

CHAIRPERSON: Thank you, Mr Nalane. Ms Moroka, any clarificatory questions?

ADV MOROKA: None Chair, thank you.

CHAIRPERSON: Thank you. Ms Rantho?

ADV RANTHO: Likewise from my side, Chairperson.

CHAIRPERSON: Thank you. Ms Ntambeleni?

ADV NTAMBELENI: No questions Chair, thank you.

10 CHAIRPERSON: Thank you. Ms Mtshizane?

ADV MTSHIZANE: No clarity seeking questions, thank you.

CHAIRPERSON: Thank you. Mr Varney?

ADV VARNEY: Chairperson, we do have a few questions by way of clarification.

CHAIRPERSON: Yes.

ADV VARNEY: As the Chairperson pleases. Firstly Mr Masutha, I think I should disclose to you and the Commissioners, that we do have something of a prior relationship starting with sharing a coffee, I believe it was in 2014 when you were campaigning in Norwood. We  
20 had a very interesting discussion which I still remember today and I think we did actually have a subsequent meeting in your office in Pretoria although I cannot recall when, on the issue of reparations.

Before I commence, I should just say at the outset that the families do not regard you as a person of interest and they make no allegations against you in relation to stopping of the TRC cases. I

want to start by drawing your attention to paragraph 12 of your statement and I will just read the relevant section. And this is in relation to the inquest into the late Ahmed Timol. You mentioned that you authorised the appointment of a Judge to conduct the inquest through the office of the Deputy Judge President.

10            “This decision to conduct the inquest was unsuccessfully challenged in court by Mr Rodrigues up to the Supreme Court of Appeal, leading to the inquest and subsequent prosecution, which ended due to his passing.”

I just want to offer a small correction to that paragraph. Mr Rodrigues did not challenge the inquest, in fact he was called as a witness in that inquest but he did bring an application for permanent stay of prosecution following the inquest after he had been charged with murder. Do you recall that?

ADV MASUTHA: Thank you for the correction, indeed that is correct.

20            ADV VARNEY: And while we run the Rodrigues case, you recall that it was first before a full court in Johannesburg and that went up to the Supreme Court of Appeal. I was also involved in that matter on behalf of the Timol Family. You also filed an affidavit, an answering affidavit in that case. Do you recall the NPA also filing an affidavit in which they essentially admitted that the NPA in previous years had been subject to interference in relation to the TRC cases?

ADV MASUTHA: I think I recall something to that effect, yes.

ADV VARNEY: And as a result of that, both the full court and then subsequently the SCA made findings in which they lamented that occurrence and called on the NPA to conduct an investigation. Do you have a recollection of that?

ADV MASUTHA: I faintly recall that something along those lines was contained indeed in that finding of the court.

ADV VARNEY: And perhaps we can then move to paragraph 13. You mentioned that following the Timol case, no other TRC cases required your specific intervention. And then you say:

10           “On the other hand, I have no recollection of any other matter such as the Nokuthula Simelane matter being brought to my attention for any action during my term.”

          And again I just want to jog your memory, the family of Nokuthula Simelane in the course of 2015, in fact it was in May 2015, they brought an application against the NDPP to compel a decision in that case, either to make a prosecutorial decision or to refer that matter to an inquest. You were also cited in those papers. Do you have a recollection of that application?

20           ADV MASUTHA: I do recall in my earlier testimony I did allude to that particular aspect. It may well be that indeed I would have responded to the invitation to join the proceedings. I cannot quite recall because in the documentation that I was provided by the Department, some of those documents were not contained in the bundle that I was provided. But I, my general approach would suggest that I would have supported that and at least offer to abide

by the decision of the court in that regard. But I stand to be further reminded.

ADV VARNEY: Yes and in fact what happened, well there was a positive outcome because NDPP Abrahams then decided to focus on the matter and ultimately an indictment was issued against four accused in 2016 and as a result the litigation was held in abeyance. Do you have a recollection of that?

ADV MASUTHA: Like I said, I faintly recollect but in my earlier testimony I did indicate that the bit I recall, was that the holding in  
10 abeyance of the litigation of prosecution, if I recall well was in part because of the tussle around provision of legal representation. I stand to be corrected, that had been applied by for the accused and there were issues around the provision thereof and whilst the toing and froing was going on, the horse bolted there in a sense that I think the accused eventually passed on or something, but I stand to be corrected and to be further reminded, yes.

ADV VARNEY: Actually that is correct, although that, that emerged in subsequent years after the indictment, the accused did seek state support for legal representation which was initially denied and they  
20 did go to the High Court to get an order compelling the police to pay their legal fees and on that score your memory is actually correct.

ADV MASUTHA: Thank you.

ADV VARNEY: Let us move to paragraph 16. Here you mentioned that you received general briefings on NPA matters as and when needed. You became aware during 2013 before you were appointed

Minister of Justice that the matter of Simelane was brought to the attention of the NPA and addressed by your predecessor. Would your predecessor have been Jeff Radebe?

ADV MASUTHA: That is correct.

ADV VARNEY: All right, I think you can accept that it was fully addressed because of the application that the family brought in 2015 to compel a decision.

ADV MASUTHA: Indeed that much should be apparent in those circumstances, yes.

- 10 ADV VARNEY: And then let us jump to your paragraph 19. Here you make reference to the memo that NDPP, Adv Shaun Abrahams provided you on the 15 July 2015 and in your evidence-in-chief you described it in some detail and you mentioned that you had a one-on-one with Adv Abrahams.

Now I just want to ask the timing of this memo, would I be right in saying that given that the application brought by the Simelane Family was on the 29 May 2015 and this memo was dated the 15 July 2015, that it is likely possible that the Nokuthula Simelane litigation prompted this particular memo?

- 20 ADV MASUTHA: It may well be so, but equally it may well be that when Adv Abrahams assumed office of National Director of Public Prosecutions, deemed it expedient that one of the tasks he needed to discharge at its earliest, would be to apprise me in particular of the subject of matters of the, regarding the prosecution of TRC-related cases. But I would not dispute if any other consideration would have

prompted him to approach me in the manner that he did early on to give me this kind of detailed briefing, yes.

ADV VARNEY: Thank you. Perhaps if we can just turn to that memo at page 92 and if I can draw your attention to paragraphs flowing from 3.10 and it appears that what Adv Abrahams is doing here, is setting out the situation that he and you inherited. So for example at paragraph 3.10 he describes the struggle to get investigators and that both the DSO and SAPS were requested to investigate the remaining 50 cases, but declined to do so.

10           At 3.11 he sets out the, putting the TRC cases on hold pending the formulation of special guidelines for the TRC cases which eventually were issued in December 2005. Another example in relation to the struggle of investigations is at 3.17 onward where Adv Abrahams points out that SAPS would not investigate the cases pending the outcome of the Ginwala Commission and said the same thing in relation to taking the Prosecution Policy judgment on appeal. And then ultimately in 3.21 that the investigations would only commence after the 2010 World Cup.

20           Now I have summarised those passages for you. When you mentioned the historical problems in relation to interference, would I be right in saying that you and you made reference to the Abrahams memo, would I be right in saying that it was these paragraphs that you were highlighting?

ADV MASUTHA: Certainly.

ADV VARNEY: And if you can just pause on paragraph 3.19? You

indicate that by that stage the number of outstanding cases requiring investigation had been reduced to eight. Now in the context where a few hundred matters were on the books of the NPA in the early 2000s, I suppose the question has to be asked, why so few cases and did that question occur to you at that time?

ADV MASUTHA: Well it obviously did but as he explains in his memo, the many hurdles over time, stretching over a period of over a decade, ranging from refusal to pursue investigations by be it the police or the Scorpions and then who were the investigative arm of the NPA *et cetera*, as well as other circumstances relating to a lack of cooperation with regard to evidence necessary to provide sufficient basis to pursue prosecutions *et cetera*.

It was a whole myriad of issues but none of those in my estimation arose at the time when I took office and being given only eight cases that were within the radar screen of the NPA to consider prosecutions and other interventions like resuscitation of inquests, I was not sure how I within the confines of my statutory and constitutional mandate, I could pose any of those issues to be revisited years after you know, that had occurred when I took office.

And my focus really became to ensure that those that were in hand were pursued in the manner that indeed they were as reflected within the various revitalisation on inquests in particular matters and subsequent prosecutions as well.

ADV VARNEY: Thank you. Perhaps we can return to your statement, paragraph 23 and here you state:

“I am unaware of any formal or informal complaints about delays in TRC cases during my tenure.”

And I recall you saying that you wish to qualify that and you mentioned that you were referring to matters that were in the hands of the NPA. So just by way of context, we are aware that from the Chikane matter in 2007 and then the indictments in the Nokuthula Simelane case in 2016, no inquests or prosecutions proceeded. And to be fair, there was only a small overlap with your tenure, 2014 to 2016. But would you accept that that lack of activity between 2007  
10 and 2016 amounts to poor delivery?

ADV MASUTHA: Sorry, amounts to? I missed the English.

ADV VARNEY: Poor delivery.

ADV MASUTHA: Poor delivery?

ADV VARNEY: Ja.

ADV MASUTHA: Oh sorry, I thought it is some fancy English term, I did not hear properly. Look, looking overall at the circumstances described by Adv Abrahams giving context to why there was no real movement as you allude to during that period, I think that you could say that there was poor delivery if you accept the explanations such  
20 as he proffers in his memo as to why some of those matters never saw the light of day.

So in that context I would say on his own assertion, raising all the different difficulties attended on the efforts or lack thereof to pursue these matters, you could perhaps say that indeed better could have been done to pursue some of those matters, yes.

ADV VARNEY: And just in relation to your statement that you were unaware of, formal or informal complaints, you have already acknowledge the Simelane application of 2015, but I can also advise you that the families of Ahmed Timol, Neil Aggett and Hoosen Haffejee, they actually placed the NDPP on terms with letters, threatening actions if those inquests were not reopened.

But to be fair to you, you were not copied on that correspondence but were you aware that the NDPP had been placed on terms and in the Timol, Aggett and Haffejee matters?

10 ADV MASUTHA: To be honest, I did not, I was not aware and I did not understand the issues to arise in that context. My understanding was that indeed there had been approaches between the NPA and the affected families had been caught, pursuits along those lines and, but in the end my understanding was there was ultimately no resistance to pursuing the matters as per the actual inquests and prosecutions that eventually ensued.

20 So I will put it more in that context, but if there had been initial resistance of some form or another and took a little of nudging, persuasion, *et cetera*, I would not have been intimately involved or privy.

ADV VARNEY: Did you recall receiving a letter from the former TRC Commissioners? It was addressed to the President, you were copied on it. It was in February 2019 where the former TRC Commissioners asked the President to issue an apology to the victims and families for the lack of action and they also asked for a Commission of Inquiry

into the failure to pursue the TRC cases.

ADV MASUTHA: I do not quite recall, but I would not dispute that that may have come up. Like I said in my earlier testimony at any given time there would be no less than a 100 files on my desk, ultimate decisions and I had given a fair list of some, sampling some of the matters on which I had to make decisions and that tended to be my primary preoccupation, to make sure that decisions that rested upon me are promptly acted upon so that justice is not delayed and effectively denied.

10           But I would not necessarily dispute that such communication may have reached my desk as opposed noting as it clearly did not require action from me but from my principal I suppose, as I understand it.

ADV VARNEY: And if we can turn to, just one follow-up in relation to the Abrahams report to you, you mentioned that subsequently you would then receive updates from the NPA on these cases. Can you recall when, when you were updated, would you have received written memos?

ADV MASUTHA: A manner of fact was as I explained earlier,  
20           memos or what we called submissions, in this case ministerial submissions, was for purposes of making decision. It was not for general information. General information was provided in the manner of briefing notes that would not come through the formal channels, they would be accompanied by oral briefings and the notes would simply be to facilitate one following in more specific terms, whatever

would be the subject of those oral briefings.

So I would have received briefings not only from the NPA, but from the entire team of the justice system, its various entities as well as Correctional Services of course, so briefings was my life, so to speak. I would not recall in specific terms and briefings did not go on file because they would have been generated from underlying source documents which would be the real essence of what the briefings related to.

10 So for example if there would be ongoing matters, currently in action or whatever the English, in the hands of the NPA and at any point they felt the need for me to be appraised of where they are at, the records in the NPA itself would probably in most specific terms provide more specific information, but that would then be distilled into briefing notes to appraise me as and when that need was identified.

ADV VARNEY: Thank you. Let us move to your paragraph 25 and there you make reference to the fact that at some point in discussions about an amendment to government policy regarding prosecutions that was adopted, but you confirmed that when you took office in 2014, there was no such amendment policy, at no stage did such a  
20 policy question arise. Did you recall that there was litigation about, around that earlier special policy that was struck down by the High Court in 2008?

ADV MASUTHA: Yes, I do recall that well ahead of my assumption to office, such litigation did occur and that such a policy intervention was outlawed by the courts for the consequence that it never saw the

light of day beyond that, so when I took office that issue did not at all arise.

ADV VARNEY: Yes, that is correct, it was only enforced effectively between 2006 and 2008. And related to that, were you also aware of litigation around the presidential programme called the special dispensation for political pardons which was to accommodate perpetrators who had not applied for amnesty which was also struck down by the High Court in 2009 which was upheld by the Constitutional Court in 2010?

10 ADV MASUTHA: I think I do have some recollection of that as part of my, acquainting myself with the history of all of this as I assumed office, but all of that in my estimation no longer bore any relevance at the time I took office, as those had long been rendered obsolete.

ADV VARNEY: So let us turn to what you said about Mr Eugene de Kock. That is at paragraph 30 and 31. So you have explained why you rejected Eugene de Kock's initial application for parole after consulting with the families and you made it one of the conditions of parole, that De Kock assists the NPA's Missing Persons Task Team in locating the remains of victims of apartheid atrocities. And my  
20 recollection is that he actually did assist that team to locate some remains.

ADV MASUTHA: It is indeed my recollection as well.

ADV VARNEY: Yes. Did you ever consider making it a condition that he also cooperate with investigators and prosecutors in relation to criminal cases?

ADV MASUTHA: I took it as a given that since the Missing Persons Task Team was a focus project of sort of calling it, sort of a better way to call it, of the NPA which in turn assist with the matter in hand, then the prosecution of erstwhile apartheid atrocities that naturally by requesting him to assist with finding the whereabouts of the missing as a result of such atrocities that would also assist naturally the NPA in being able to piece them, to put together the puzzles of what really transpired and who was responsible and should therefore be held accountable, including possible pursuit of such violations by way of  
10 prosecution amongst others.

But I must say that for me given the report from Shaun Abrahams, Advocate, that very little was left to be pursued through the prosecutorial route. My primary focus was to at least try and bring some form of closure by helping relocate, sorry, by helping locate the whereabouts of the remains of victims of these atrocities to allow the families and loved ones of the victims to find some solace from their losses.

ADV VARNEY: So there is a very widely held perception that Eugene de Kock was the so-called 'fall guy' for his superiors in the  
20 Security Branch and the police, and those who had issued him with commands when he was at Vlakplaas, had not been pursued, so the Generals above him. Would you agree with that perception and that concern that only he was pursued and there is a level of suspicion as to why his superiors did not have to face justice?

ADV MASUTHA: Well as I indicated earlier, the fact that almost all

the security establishments were falling over each other so to speak, to get him into, under their care, I know the police wanted him, I think the defence wanted him and so was the SSA. He was almost like a coveted trophy, it sounded very strange to me being somebody who is not a vetted person and therefore not privy to intelligence matters, not that I was particularly keen to delve into that terrain, I was happy to deal with matters within my province.

The rumour was that some of them wanted him to keep him close enough for their own protection against that risk of him exposing them and that some wanted to see him gone for their own protection. Some wanted to see him gone because of his title of prime evil and hence heavy security was deployed around him, even when he was with the SSA to the best of my understanding.

I did not manage him directly, the Correctional Services Unit dealing with parole would have interacted with SSA on an ongoing basis regarding the management of his parole, because as long as you are still on parole, you are still our responsibility at Correctional Services. But he was this one exception who I do not recall any of the people that they released on parole who was dealt with in that manner, he was the only one.

ADV VARNEY: Unusual indeed.

ADV MASUTHA: Yes.

ADV VARNEY: Mr Masutha, thank you for taking the time to be with us today. No further questions, Chairperson.

CHAIRPERSON: Thank you, Mr Varney.

ADV VARNEY: Thank you.

COMMISSIONER GABRIEL: Minister, I have a question and it arises from this memorandum from Shaun Abrahams. It appears to have been prepared roundabout July 2015 and you say that this was not, it did not reach you formally, it was not sent to you formally but you had a briefing from Mr Abrahams.

ADV MASUTHA: That is correct.

COMMISSIONER GABRIEL: I assume more or less along the lines of what was in this memo.

10 ADV MASUTHA: That is correct.

COMMISSIONER GABRIEL: Okay, so what he does at the end of the memo is, this is now as at July 2015, in paragraph 6 he says and he labels it, 'Matters of current concern', so I assume that during his briefing with you, he would have described some of the matters of current concern?

ADV MASUTHA: Yes.

COMMISSIONER GABRIEL: Yes and one of the issues he raises in the memo which I want to ask you about, whether he told you about, was that even though there were only eight cases, the quality of  
20 investigations even on those eight cases, were very poor. Now does that ring a bell for you?

ADV MASUTHA: That is correct, Commissioner.

COMMISSIONER GABRIEL: Okay. Now my question is, what did you do about this? I mean you know you say that you had no authority over SAPS, but is it not something you could have

addressed at a ministerial level with your counterparts in government?

ADV MASUTHA: Between you and me, interphases between myself and colleagues within the Cluster, the Security Cluster on a one-on-one very few and far between. It was not very easy to secure such engagements. What used to happen of course is that the Security Cluster itself had platforms through which we would meet to discuss matters of mutual interest based on a specific agenda.

10 It was not a situation where you could suddenly bring up something on an ad hoc basis in that manner. Ideally it would have been something that one could have perhaps privately engaged the counterpart and pointed to. Like I said, it was not always easy, perhaps people were way too busy with their own priorities and preoccupations *et cetera*, but ja, I... It was also very vague because it was not specific in what manner this occurred, there was not really much further articulation even from Shaun himself in what specific detail, in respect of what specific matter this was the case.

20 So I took comfort in the fact that he had direct interphase with his counterparts in the Security Cluster, sufficient for him to be able to pursue some of these technical glitches that he had identified. But further to that, you can see from that memo that he felt that some of these matters needed further interaction and that in future he would keep me posted, *et cetera*.

And that came through in the form of as and when matters arose that required further updating and in most instances as you can

see, many of them or some of them ended up in me eventually coming in formally to authorise pursuit of reintroduction of inquests. So the focus really was more on what action within my purview is required for me to ensure that some of these matters are taken forward.

COMMISSIONER GABRIEL: Okay. So with respect to the quality of investigations, you took no action?

ADV MASUTHA: No, it was not apparent to me.

COMMISSIONER GABRIEL: Okay.

10 ADV MASUTHA: What exactly that related to and if the NPA felt that I needed to take specific action, that would have come in the form of a recommendation.

COMMISSIONER GABRIEL: All right.

ADV MASUTHA: Because I also had to be mindful of not micromanaging or interfering in the discharge of their work because they had a direct relationship with the police or any other ...[intervenes]

COMMISSIONER GABRIEL: Okay.

ADV MASUTHA: Security entities to assist in that regard.

20 COMMISSIONER GABRIEL: Okay. All right, thank you very much.

ADV MASUTHA: Thank you.

COMMISSIONER GABRIEL: Thank you.

COMMISSIONER KGOMO: Good afternoon, Mr Masutha.

ADV MASUTHA: Afternoon, Judge President.

COMMISSIONER KGOMO: Oh, you still recognise my voice from

2019. We visited you maybe once or twice at different stages of my career from the days when I was ordinary back venture to days when we met in heads of court meetings, *et cetera*.

ADV MASUTHA: Yes, I do.

COMMISSIONER KGOMO: Yes and also when I was Hawks [indistinct] Minister. Mr Masutha, something that was start on and I am just dealing with two brief issues is, mention was made that Mr Eugene de Kock was possibly a 'fall guy' and reference was made also to the security establishment. Would you, do you recall the Civil  
10 Cooperation Bureau and what, how would it relate to these aspects that I have touched on? You remember the Civil Cooperation Bureau?

ADV MASUTHA: Faintly. I think it was one of the establishments under the security establishment during apartheid or something of the nature.

COMMISSIONER KGOMO: Yes.

ADV MASUTHA: I cannot ...[intervenes]

COMMISSIONER KGOMO: Yes.

ADV MASUTHA: Offhand recall in detail what it was all about.

20 COMMISSIONER KGOMO: Yes, but you cannot relate to, of the Civil Cooperation Bureau playing some part in possibly causing Mr De Kock to be a 'fall guy?' This is really the nub of my enquiry, but if you do not recall or if you cannot relate ...[intervenes]

ADV MASUTHA: I did not particularly recall that. The name of that ...[intervenes]

COMMISSIONER KGOMO: Yes.

ADV MASUTHA: Rings a bell faintly, but the relationship with Eugene de Kock, I do not recall that coming directly in my dealings with the De Kock matter *per se*.

COMMISSIONER KGOMO: Yes, but now more relevantly, you speak about President Mbeki addressing the issue of around 22 000 victims of human rights atrocities or violations and related to reparation, possible reparation or compensation. Now there is in our Terms of Reference a method that is still alive. Let me just read it to  
10 you, 1.4:

“What we should also enquire into, whether in terms of the law and fairness, the payment of any amount in constitutional damages to any person is appropriate.”

Can you relate maybe this Term of Reference to what President Mbeki was addressing?

ADV MASUTHA: My understanding is that what President Mbeki was addressing, was giving effect to the recommendations of the TRC in this relation, specifically in relation to the socio-economic aspects such as reparation and rehabilitation to both individuals and  
20 communities, including families of victims of those atrocities as per the TRC process. I am not sure whether that aspect would necessarily relate to that aspect of reparations.

I would imagine that perhaps what is being referred to there could have to do with any grievances that those victims would have felt that injustice had been meted out to them by the state not doing

enough to ensure that accountability was achieved in respect of some of those atrocities, be it through prosecution or other forms of holding them accountable that such, but I stand to correction, that such calls would more relate to that context. I do not know, I am not sure.

COMMISSIONER KGOMO: Yes.

ADV MASUTHA: You can correct me, Justice.

COMMISSIONER KGOMO: Yes. For your information is that our intention was directed to the fact that there is a matter that is before court on this aspect, but we cannot simply just avoid it, it is still a live  
10 matter in our Terms of Reference, that is why I invited your comment on this aspect.

ADV MASUTHA: Ja, I do not know but if it relates to failure on the part of the state to act when it should have in a manner and in circumstances which were not justifiable, whether deliberately or otherwise, for my part really I would say that during our stint the best we could do was to ensure that those matters that was in hand are pursued accordingly and I believe to a large extent that was realised judging from some of the actions that were taken, revisiting inquests and prosecutions that ensued for example.

20 COMMISSIONER KGOMO: Yes. No, thank you very much. Thank you, Chair.

ADV SONI: Chairperson, may I please place on record that Adv Ntloko is on MS Teams and has asked if she would be allowed to ask a clarificatory question?

CHAIRPERSON: Yes. Ms Ntloko?

ADV NTLOKO: Thank you so much, Chair. Unfortunately I was in court this morning and I have stood down. Good morning, Minister Masutha.

ADV MASUTHA: Good morning, madam. Afternoon.

ADV NTLOKO: It is actually afternoon.

ADV MASUTHA: Yes.

ADV NTLOKO: Well it is morning somewhere. Just a few questions on the ...[intervenes]

10 ADV MASUTHA: It must have been a busy day that you did not notice the afternoon coming up. [Laughs]. I am saying it must have been a busy day in court ...[intervenes]

ADV NTLOKO: It was actually busy.

ADV MASUTHA: That yes, please.

ADV NTLOKO: It is. I would just have a few questions for clarification. Commissioner Gabriel has asked most of the ones we had wanted to clarify, so we will start with what you indicated earlier about your role as the Minister versus what, the oversight in the NPA. During your tenure what did you regard as the boundaries of your oversight?

20 ADV MASUTHA: As I indicate at various points in my sworn statement and in my testimony this morning, what was holy ground for me was telling the NPA who they should prosecute, why they should prosecute that person, effectively instructing them to take action and when they should do so. I considered that to be the sole preserve of the NPA in respect of which I had no competence.

I qualify that by saying however, whenever a sense arose that their decision to or not to initiate prosecution, could be seen as deriving from extraneous influence that is outside the bounds of the law and the Constitution, such as perceptions of political interference or favouritism or discharging any particular political mandate in complete violation of their oath of office so to speak, certainly I would take strong exception there.

And those would be those instances where I would put them to task and of course if there was an element of sloppiness, there has  
10 been cases for example where the NPA lost cases and they considered appealing in many instances successfully and I encouraged them to do that because very often another court does see matters differently on appeal and that did happen.

I will not point to specific cases as they largely fall outside the purview of this Commission. I myself pursued the route of appeals as and when I was not happy with decisions of courts to higher courts. Other than that, I think the overall performance of their execution, prosecution of their mandate without fear, favour or prejudice was the mantra that I believed had to be closely guarded  
20 and adhered to. Thank you.

CHAIRPERSON: Ms Ntloko?

COMMISSIONER KGOMO: Frozen.

ADV NTLOKO: It is the network, I do not know what is happening.

CHAIRPERSON: Ms Ntloko, are you there?

ADV NTLOKO: I am, yes.

CHAIRPERSON: Yes, you may proceed.

ADV NTLOKO: Thank you, Minister. Thank you, Chair. Chair, I think it is network issues where I am.

CHAIRPERSON: Oh, thank you very much, Ms Ntloko.

ADV VARNEY: Chairperson, may I please ...[intervenes]

ADV NTLOKO: Thank you, Chair.

ADV VARNEY: May I seek an indulgence to pose one question following up from Commissioner Gabriel's follow-up question?

CHAIRPERSON: Yes, you may.

10 ADV VARNEY: Thank you, Chair. Mr Masutha, Commissioner Gabriel referred you to paragraph 6 which dealt with the challenges that Adv Abrahams had highlighted ...[intervenes]

ADV MASUTHA: Are you referring to his memo?

ADV VARNEY: Indeed, yes.

ADV MASUTHA: All right.

ADV VARNEY: That is page 105. I want to refer you to paragraph 6.5 ...[intervenes]

ADV MASUTHA: All right.

20 ADV VARNEY: And 6.6 at pages 105 to 106 and perhaps just let me just read you the relevant extracts for your reaction. In 6.5 he focuses on the Nokuthula Simelane matter:

“A particular case in point is the Nokuthula Simelane matter where a formal inquest before a Judge will be held. It is a fact that evidence will be led of key witnesses being dead and key evidence being unable to

be located. It is only to be expected that the Judge would require an explanation as to why this matter was not investigated prior to 2011.”

And on the next page he refers to the affidavits of Pikoli and Ackermann who alleged high level political interference. And then the last paragraph:

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

So can I ask for your reaction to those two paragraphs?

ADV MASUTHA: If that indeed was so, it was truly egregious for anybody in position of authority to seek to frustrate pursuit of rule of law and accountability under the law and the Constitution in respect and in particular in this case, of ensuring that people who caused so much harm and pain to others, should be left to continue to enjoy life whilst those who were victims of it or their loved ones who had to pick up the pieces had to endure, enduring pain as a consequence.

20 I say this because if you allow me to deviate for a second, when I dealt with the hundreds of parole applications in general matters of all kinds, I dealt with some of the most gruesome instances of the most perverted egregious actions on babies. Innocent babies were raped, killed, of people who were robbed and killed in a gruesome manner, *et cetera*, a whole host of matters, like I said on

average I am told that I was dealing with about 2 500 and if you are alive, you are alive because of a commence you committed must have been serious enough to warrant a sentence of life imprisonment.

So for me reflecting on the pain and hence my mantra was we shall drive the criminal justice system towards a victim centric approach to a criminal justice, and it was inspiration from all these atrocities, be they committed in current times or in the past as in the case of apartheid atrocities that inspired me to actually issue an  
10 instruction soon after I took office, that in relation to parole, no single parole application shall be considered without a reasonable attempt to identify and locate loved ones or victims themselves and seek their involvement and possible consultation prior to making a decision, not necessarily saying that that would be an automatic bar from granting anybody parole, but to make sure that the pain they went through get to be clearly communicated to the perpetrator with the hope that the perpetrator would show remorse.

I mean if I were to say that the reason for example that I denied Janusz Walus parole up to the last day of my stint in office,  
20 was precisely because I could not extract remorse from him, I could not extract a genuine repentance for the wrongs he had done and indeed I understand even after he left this country he continued to say that given a second opportunity he would do it again, and if I, it was within my power, I would not release any person for whatever motive that they committed a crime with that kind of attitude. And that

was my approach generally.

Sorry for wobbling off beyond what you had asked me to address. Thank you.

ADV VARNEY: Thank you, Chairperson.

CHAIRPERSON: Thank you. Mr Nalane?

ADV NTSHIZANA: Excuse me, Chair. Apologies, Chair. With your leave since Ms Ntloko has reported we have had network issues, she has asked that I beg your leave to ask questions on her behalf.

CHAIRPERSON: Questions on her behalf?

10 ADV NTSHIZANA: Clarificatory questions to this ...[intervenes]

CHAIRPERSON: No, that has never happened. We cannot allow you to ask questions on her behalf.

ADV NTSHIZANA: Thank you, Chair.

CHAIRPERSON: You are not acting on behalf of her clients.

ADV NTSHIZANA: Thank you, Chair.

CHAIRPERSON: Yes.

ADV NTLOKO: Chair, can I then ask that I do it? The problem is that my network in the Pretoria High Court is extremely bad and that is why I just wanted the clarifications to be over and done with so that  
20 we do not have to ever apply for cross-examination of this witness.

CHAIRPERSON: Yes, you may proceed if you are able to, Ms Ntloko.

ADV NTLOKO: Okay, thank you, Chair. Minister, I apologise for that unfortunately I am in Pretoria High Court and the network here is extremely bad. If we can then just proceed to paragraph 29 of your

statement? There you refer to a victim centric approach during your tenure. Could you kindly just elaborate how this approach informed your engagement with one TRC-related matters but to your oversight role over the NPA?

ADV MASUTHA: I believe the NPA itself embraced that approach judging from the testimony, the bit that I could pick up of Adv Shaun Abrahams himself. In fact, I, my instruction to the portfolio collective was for us to begin to look at ways in which we could do more to give expression, concrete expression to this notion.

10 I recall that, I cannot recall whether it was 2017 or so, I assembled a team even to go to the United States to explore their prison system but in particular to look at their model of victim support, because my feeling was the criminal justice system tendered to lean more towards the side of ensuring fairness in dealing with holding perpetrators of crime accountable, but I did not get a sense that we at this point in time, were doing enough to ensure that those that have to live with the scars and the suffering, imagine children who at a young age lose their parents because they were killed brutally and have had to live without parental support, *et cetera* and one can go  
20 on and on.

So I hope that more can still be done beyond just TRC matters. At least there is a model there to emulate in the form of the TRC recommendations that led to the kind of reparation arrangements that apply today, but what about the many other victims of violent crime who are often left to fend for themselves in

circumstances where no such dedicated support is available?

I believe that continues to be an ongoing challenge, but specifically in relation to the NPA, I recall that there was a victim, a victim something policy that was adopted in the early 2000s that sought to look into specifically the rights of victims in the criminal justice system. I just cannot recall offhand what that policy framework was.

My estimation was that it did not go far enough and more needed to be done. I am not sure if I can take that matter much  
10 further than that. Thank you, Commissioners.

ADV NTLOKO: Thank you, Minister. I can assure you that it was taken further. Ms Adv Singh did testify that from, for going forward they have been engaging with victims throughout. And then our last question on, on this, during your time, this question came during your interaction with Commissioner Gabriel, during your time in the Security Cluster, were there any discussions between you and your counterparts in relation to TRC matters and any difficulties that arise from them?

I understand that you say you did not have enough time or  
20 you did not have one-on-one's, more especially with your counterpart from the police but did these ever arise if they did, under what context?

ADV MASUTHA: I do not recall specifically such an agenda item coming up in, on those fora. My sense was that unless the NPA specifically requested in a formal manner in very specific terms

because the manner of the workings of Government is that we make decisions.

We do not engage in generalities, so if a decision is to be made that would have to be clearly articulated as a proposal with all the motivation and the possible options of interventions that could be implemented to realise the, you know, solution of the problem at hand, I did not get a sense that we ever got to that stage in dealing with the role of the other players in the system, specifically in relation to the matters at hand before the NPA as reflected in the Shaun  
10 Abrahams report. I do not think that I could take it further than that.

ADV NTLOKO: Thank you, Minister. Thank you Chair, that is all from us.

CHAIRPERSON: Thank you, Ms Ntloko. Mr Nalane?

ADV NALANE: Chair, no re-examination, thank you.

CHAIRPERSON: Thank you. Mr Masutha, you are the first former Minister to appear before this Commission and we are profoundly grateful for you, to you for having agreed to come to appear before this Commission. For now you are excused as a witness. We thank you for your attendance.

20 ADV MASUTHA: I thank you for the opportunity, Commissioner.

ADV SONI: Chairperson, that is the business for the day. The next sitting of the Commission because of certain developments regarding subpoenas and so on, is going to be on the 8 June, Monday the 8 June.

CHAIRPERSON: 8 June?

ADV SONI: As you please.

CHAIRPERSON: At 10:00?

ADV SONI: At 10:00, Chairperson.

CHAIRPERSON: Yes, these proceedings are adjourned until the  
10 June ...[intervenes]

ADV SONI: 8<sup>th</sup>.

COMMISSIONER KGOMO: 8<sup>th</sup>.

CHAIRPERSON: 8 June, sorry, I almost extended the time of the  
sitting, to the 8 June 2026 at 10:00.

10 ADV SONI: As it pleases, Chairperson.

CHAIRPERSON: Thank you.

INQUIRY ADJOURNS UNTIL 8 JUNE 2026

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## CERTIFICATE OF VERACITY

We, the undersigned, hereby certify that **as far as it is audible**, the foregoing is a true and correct transcript of the digitally recorded proceedings in the matter of:

### JUDICIAL COMMISSION OF INQUIRY INTO TRC

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- *Where no information provided, names transcribed phonetically.*
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