

**ENQUIRY INTO THE SOUTH GAUTENG DIRECTOR OF  
PUBLIC PROSECUTIONS' FITNESS TO HOLD OFFICE**

**HELD AT**

**SALU BUILDING, 316 THABO SEHUME STREET,  
DEPARTMENT OF JUSTICE AND CONSTITUTIONAL  
DEVELOPMENT**

**20 NOVEMBER 2025**

**DAY 4**



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SOUTH GAUTENG  
DIRECTOR OF PUBLIC  
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**PROCEEDINGS ON 20 NOVEMBER 2025**

**CHAIRPERSON:** Good morning, everyone. Good morning, Ms Batohi. Good morning, Mr Chauke. We will begin, Mr Mohlamonyane. Advocate Batohi, remember, you are still under oath.

**ADV BATOHI:** Yes.

**SHAMILA BATOHI** (still under oath)

**CHAIRPERSON:** You may begin, sir.

**EXAMINATION BY MR MOHLAMONYANE SC (continues):**

10 Thank you, Madam Chair. Advocate Batohi, I think it is important that we should recap. I want to take you a little back to what was being done yesterday and what you said yesterday. I want us to recap. Remember, you dealt with your role as NDPP and your review powers. Can you repeat so that we can recap and move forward?

**ADV BATOHI:** Do you want me to refer to a paragraph in the affidavit?

**ADV MOHLAMONYANE SC:** You may, you may not. Because paragraphs ...[intervenes]

20 **ADV BATOHI:** Can you refer me there, so that I can, I am not sure whether you want me to read out what is in the Act or whether you want me to describe something else.

**ADV MOHLAMONYANE SC:** I refer you to paragraphs 57 and 58. We will go to the Act at the later stage. Just for the moment...

**ADV BATOHI:** Is it 57 and 58?

**ADV MOHLAMONYANE SC:** Yes, paragraphs 57 and 58 for the moment. In recapping so that we must tie everything together from yesterday. About your review powers, start there.

**ADV BATOHI:** So maybe we should go to the Constitution and the NPA Act that deals with this aspect. So it is section 179(5)(d) of the Constitution and section 22(2)(c) of the Act.

**ADV MOHLAMONYANE SC:** That is correct, yes.

10 **ADV BATOHI:** Empowers a National Director to review a decision of a DPP. Perhaps I can just refer to, we go to section 22(2)(c) so that we are clear about what exactly it says. So section 22 broadly deals with the powers and functions of the National Director. And 22(2)(c), well, 22(2)(c) says that:

“In accordance with section 179 of the Constitution, the National Director may review a decision to prosecute or not to prosecute.”

20 **CHAIRPERSON:** If I may, if I may Advocate Batohi, through you counsel, remember yesterday, these paragraphs that you have just referred to, as we ended yesterday, we were addressing the issue of autonomy.

**MR MOHLAMONYANE SC:** Yes, I remember that.

**CHAIRPERSON:** Yes. So perhaps this is the theme that

you should address. Otherwise, you will go back to those provisions that we dealt with yesterday. I do not want to interfere with your manner of presentation, but I thought that maybe we should just capture the evidence where we left yesterday, as per my book and my notes and the paragraphs where we ended. 58 seeks to resolve the autonomy issue, when you read it together with the other paragraphs above. So I thought maybe you should just maybe address that issue of autonomy to wrap it up and then proceed.

10 **ADV MOHLAMONYANE SC:** Thank you, Madam Chair. Let me hasten to do that. Paragraph 58, Advocate Batohi has a rider there. Let us just recap, subject to the controlling directions of the NDPP, what it means and what is autonomy. What should we understand by the autonomy that DPPs have?

**ADV BATOHI:** Okay, so let us firstly go to the powers of the DPP. If chapter 4, section 20, 23, the power to institute and conduct criminal proceedings, subsection 3 of that says that:

20 “Subject to the provisions of the Constitution and this Act, any Director shall, subject to the control and directions of the National Director, exercise the powers referred to in subsection 1...”

Which are set out there;

“...institute and conduct criminal proceedings...”

I do not want to read out subsection 1 again, it has been read into the record. And so it says that those powers may be exercised, subject to the control and directions of the National Director. So yesterday we were trying to understand what exactly this means.

So, and to emphasise that these powers shall be exercised by a Director in the area of jurisdiction for which he or she has been appointed. Now if we go to paragraph of my affidavit, it is paragraph 57, well 58 says:

10           “For present purposes it is important to understand what the phrase “subject to the control and directions of a National Director” mean in relation to general prosecutorial powers and functions.”

Firstly, we state:

20           “It does not mean that an NDPP can instruct a DPP to prosecute or not to prosecute in any given criminal case. In this regard, what it does mean is that if an NDPP exercise his or her review powers of the decision to prosecute or not to prosecute, which are contemplated in section 179(5)(d) of the Constitution, as well as section 22(2)(c) of the NPA Act, the NDPP is acting in terms of these provisions and complying

with the procedure and processes which are prescribed in the Constitution and in the NPA Act and in those circumstances, exercising his or her review powers, he or she may overturn the decision of a DPP to prosecute or not to prosecute and accordingly, issue an instruction or direction that the prosecution must be proceeded with or charges may be withdrawn, whatever the case may be.”

10

So that is the first thing that we talk about. And then I should, I should, section 58 is important because it says that if the converse were true, if ...[intervenes]

**CHAIRPERSON:** I beg your pardon, counsel, not section, paragraph.

**ADV BATOHI:** My apologies, thank you, Chair. I must remember that I have been making this mistake too often.

Paragraph 58 states:

“If the converse was true, that subject to the control and directions of an NDPP means that an NDPP can, outside the scope of section 179(5) and section 22 of the NPA Act, which sets out the powers of a National Director, so if a National Director can, outside of the scope of those provisions,

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instruct a DPP or prosecutor to prosecute or not to prosecute in a criminal case, this would render nugatory or undercut the NDPP's review powers over such decisions which the legislature did not intend.

It would also be inconsistent with the constitutionally enshrined principle that DPPs are responsible for prosecutions in their respective areas of jurisdiction.”

10 We then go on to note, and this is important, particularly in the context of what one of the panel members asked yesterday about a DNDPP's powers.

“It is to be noted that in terms of section 23 of the Act, any DNDPP...”

And we could go to that section;

“...may exercise or perform any of the powers, duties, and functions of the National Director which he or she has been authorised by the NDPP to exercise and perform.”

20

So in the context of the way the NPA functions, a DPP, as it says very clearly, may perform any of a National Director's functions, but relating to those that he or she has been authorised to do. And in the context of the NPA, DPPs, DNDPPs, Deputy National Directors, have authority over

specific areas of responsibility, as I mentioned yesterday, like the DNDPP NPS. Chair, we had made copies of the organogram which we thought might be useful to hand in, but perhaps the evidence leader can deal with that at some point. I am not sure, Chair, whether it will be useful to have it now, or whether I can continue and we can arrange for that too, there are copies, I believe, of the organogram somewhere. But if I may continue at this point, Chair, I am in your hands.

**ADV MOHLAMONYANE SC:** You may continue.

10 **CHAIRPERSON:** I suppose for the completeness of this record, it might be helpful, but the counsel will decide at what stage he wishes to hand it up.

**ADV BATOHI:** Thank you, Chair.

**CHAIRPERSON:** But if I may, before you proceed, madam, as I understood your affidavit, you remember yesterday there was a bit of misunderstanding with the concept 'subject to the control and direction of the DNDPP' in paragraph 53, which seems to be extracted from the Mokgoro report.

**ADV BATOHI:** That is correct.

20 **CHAIRPERSON:** And as I understand your affidavit later, the subsequent paragraphs and the very paragraph that you have just read, which is paragraph 58, this paragraph seeks to very comprehensively, to me, to be addressing that very issue that you addressed yesterday.

**ADV BATOHI:** That is what I am doing today, Chairperson,

because I realised there was some lack of clarity in that regard.

**CHAIRPERSON:** Yes. So paragraph 58, counsel, seems to clear that issue that we spoke about yesterday. And as you proceed, I suppose that settles our mind with regards to the issue of autonomy, the control, and direction that we spoke about yesterday as per the Mokgoro report. That we said, because we do not have the entire report in front of us and cannot read that paragraph in its proper context, we need  
10 clarity. And as we read later, it then emerges from 58 that the answer is in that paragraph that you have just read.

**ADV BATOHI:** Thank you, Chair. And it is important to note that the point is that the DNDPPs actually have the same powers and functions of a National Director, but in respect of the area that they have been authorised to perform. And the DNDPP NPS would then have those powers in respect of the National Prosecution Service. Thank you, Chair.

**ADV BALOYI-MERE SC:** Maybe just before you proceed further, can you just advise as to whether the NDPP has the  
20 power to review the decision of another NDPP, like the predecessor in particular?

**ADV BATOHI:** There is nothing specific in the Act that talks to that issue. But I would think that given the... Let me look at the powers of the NDPP as it is set out, before I respond more, in a better informed way. If we look at the powers of

the National Director, which is in section 22, the National Director as a head of a the prosecuting authority shall have the authority over exercising of all the powers, performance of duties... Sorry, I am just reading this out. Paragraph 2(c) of section 22 states that:

“In accordance with section 179 of the Constitution, the National Director:

c. May review a decision to prosecute or not to prosecute.”

10 In my view, that gives the National Director the view to – sorry, the power to review any decision to prosecute or not to prosecute.

**CHAIRPERSON:** I beg your pardon?

**ADV BATOHI:** Chairperson, I am saying that paragraph 2 of section 22 states that in accordance with section 179 of the Constitution, the National Director may review a decision to prosecute or not to prosecute. So if we stop there, the

National Director can review any decision to prosecute or not to prosecute, taken at any time by any person. And that  
20 would include a previous National Director.

**CHAIRPERSON:** I am not sure whether you understand the question by my sister, or am I missing something, my sister?

**ADV BALOYI-MERE SC:** No, you are not missing anything.

**CHAIRPERSON:** I think, please repeat the question. Advocate Batohi does not seem to understand your question.

**ADV BALOYI-MERE SC:** The question is confined to the powers of the DPP of a particular area, whether he can exercise review powers of another DPP. Am I correct?

**ADV BATOHI:** [No answer]

**ADV BALOYI-MERE SC:** Am I correct? Another NDPP, and I said specifically like a predecessor.

**ADV BATOHI:** That was my understanding, Chairperson.

**ADV BALOYI-MERE SC:** Yes.

**CHAIRPERSON:** Oh NDPP.

10 **ADV BATOHI:** Yes, that was my understanding, whether an NDPP can review a decision of a previous NDPP. And that is why I said, given that 2(c) of the NPA Act states that the National Director may review a decision to prosecute or not to prosecute, my understanding of that will be that it gives a National Director the power to review any such decision, whether it is made by a prosecutor, a Deputy Director of Public Prosecutions, a DPP, or even a previous National Director.

**CHAIRPERSON:** In short, your answer is she or he may.

20 **ADV BATOHI:** That is correct, Chairperson.

**ADV BALOYI-MERE SC:** And that is your understanding in the face of a clear provision in the NPA Act, that the NDPP has the power to review the decisions of the DPPs.

**ADV BATOHI:** That is my understanding, not just the DPPs, that is my understanding, given that the NDPP has the power

in terms of 2(c) to review any decision to prosecute or not to prosecute. And I emphasise any decision. In fact, any is not in the Act, but the Act says may review a decision to prosecute or not to prosecute. And my interpretation of that is that it is any decision to prosecute or not to prosecute.

**ADV BALOYI-MERE SC:** Chair, I think I have made my point, it is about in the face or even, but that is fine, we may proceed.

**ADV BATOHI:** Chairperson, I am sorry, if there is a lack of  
10 clarity, I would like to be given the opportunity to clarify because it seems like there is still a lack of understanding, to the extent that I can.

**ADV BALOYI-MERE SC:** Through you, Chair. I understand your interpretation. And I think you correctly say, according to my understanding, the succeeding provisions give me the power. That is where you believe the NDPP gets the power to review the decisions of other NDPPs. And in this case, like I said, the predecessor.

**ADV BATOHI:** Chairperson, if I may clarify, in my view, it  
20 states in the Act that the National Director may review a decision to prosecute or not to prosecute. And given that it does not exclude a National Director, that it gives a National Director that power.

**CHAIRPERSON:** Let us look at the practical scenario because I am getting confused. Looking at the former, the

number of former NDPPs and those who acted. Let us look at the situation of NDP or acting NDPP Nxasana. Let us just assume that he had made certain decisions. Will the subsequent NDPP have the power to review the decision of the former, in this case of Mr Nxasana?

**ADV BATOHI**: In my view, Chairperson, that person would, the new NDPP would have that power to review the decision of a previous NDPP. It does not matter who it is, but that power, the current NDPP would have that power.

10 **CHAIRPERSON**: In terms of the Act and the policy directions, could you just take me to the provision that relates to that?

**ADV BATOHI**: Chairperson, in terms of the Act, I have mentioned section 22(2)(c), which says that:

“In accordance with section 179 of the Constitution, the National Director may review a decision to prosecute or not to prosecute.”

So in terms of that section, I say that a National Director can  
20 review any decision to prosecute or not to prosecute, whether it is taken by a previous National Director or any other member of the NPA. I should have a copy of the Constitution. I used your copy yesterday, Chairperson. You should make it...

**CHAIRPERSON**: Yes, my challenge is, if this is the case, it

essentially means that you are reviewing your own decision because you are in the same office. It is the office, not the name of the incumbent. In this event, Mr Nxasana was in this very office. Your office. How then do you review your own decision? Because it really means that you have taken a decision five years ago as the National Director of Public Prosecution. Two years later, you come back and review your own decision, the decision of that office. How possible is that?

10 **ADV BATOHI**: Chairperson, I am thinking about this. And... this paragraph...

**CHAIRPERSON**: Let me give you an example. I am not sure whether this example is apposite. A judge in the High Court makes a decision. That judge cannot come back later and reconsider her or her own decision because he or she is *functus officio*. The same principle should apply in relation to your office. Not so?

**ADV BATOHI**: Chairperson, I need to think about that, whether – because the position of a DPP, once you take a  
20 decision as a DPP, you can always, the same DPP, you can, if you get information, you can actually review that decision in a sense of re-look at the evidence. Decide whether that decision was the correct one. And you can change your decision as a DPP. You may decide not to prosecute. And then there may be other factors that are taken into account.

And then you rethink that and you say, I will actually prosecute this matter.

So I think there is a difference in terms of whether the *functus officio* principle, how it applies with regard to prosecutors and a DPP. And I think we need to look at this carefully, because in my view, DPPs are required in terms of our policy to reconsider evidence, to reconsider matters all the time. So it happens that we would actually prosecute and then for various reasons decide not to prosecute. The  
10 converse may happen.

So I think we need to think very carefully about how, whether the *functus officio* principle applies to a DPP. Because in my view, it cannot, because a DPP constantly reviews his or her own decisions, whether to prosecute or not and changes them, depending on what the information and evidence is before them. So I think we need to carefully think through this. For current purposes, in my view, it does not apply to a DPP who has made a decision. And then if we take it, and I think we do need to look at this and carefully  
20 unpack the legal implications.

But in my view, as I sit here now, without really interrogating this properly and doing some kind of legal research into it, that the fact that DPPs constantly are required to rethink and revise and review their own decisions on the basis of other information, that that principle does not

apply to prosecutors.

**CHAIRPERSON:** The principle of finality and legality. If you have, say, for instance, 10 NDPP, one coming after the other, within maybe, say, five years, the first one decides, two years later, the second one comes and upsets the decision of the former, the third one comes and upsets the decision of the second. Will that not impact, obviously, the principle of finality and legality, and also the interests of justice, and the very right of the victims and the accused people? So, we may not have clear-cut answers to those questions.

I would like you to reflect very carefully on this aspect, because the Act, that provision that you referred us to, seems not to be a model of clarity. We are not interpreting the legislation here. But given the answers you gave, it makes it very difficult to understand. And if that provision means what you say, then I will have difficulties with that. So, that is why I am saying, perhaps, counsel, we can defer these questions, so that counsel, Advocate Batohi, can reflect properly on the provision, and how she understands the provision, then we can revisit that later.

**ADV MOHLAMONYANE SC:** Indeed, Madam Chair.

**CHAIRPERSON:** Because I think all of us need clarification.

**ADV MOHLAMONYANE SC:** Yes, I think she should reflect on that.

**CHAIRPERSON:** From her, and subject to the advice by counsel on the extreme right. So that we can make progress, and then revisit that at a later stage, when she has properly applied her mind to these questions. And perhaps my sister can ask further questions, if you may. Then she can also reflect on that.

**ADV BALOYI-MERE SC:** Thank you, Chair. Thank you, Advocate Batohi. Further to the question that has been raised is, the Act seems to give the NDPP the right to review  
10 the decision of the DPPs, and whether to prosecute or not. Now, our issue is whether an NDPP can come in after, and review a decision that was taken by the previous NDPP. Does the Act give, because once you get into that position, you assume all the powers? You are a successor entitled.

The decisions that were taken by the previous NDPP are your decisions now. So, and that is where the issue of reviewing your own decision comes in. Does the Act entitle you to review another NDPP's or the previous NDPP's position? Would that not result in some absurdity, where  
20 because the previous NDPP prosecuted someone that I like, when I come in, I reverse that? Would that not cause a situation like that? Thank you, Chair.

**ADV BATOHI:** Chair...

**CHAIRPERSON:** You can just list those questions in fairness to you, so that you can reflect, and then we will revisit that.

Ms Ramagaga would like to also ask a question?

**MS RAMAGAGA**: Ja, as you reflect, I think it will help a lot to look at the constitutional provision that empowers the NDPP to review. The reviewing powers, remember that the NPA is actually drawn on the basis or on the instruction of the Constitution. So, to go to the enabling provision in the Constitution, I think, helps a lot, because the NPA can never ever trump the Constitution. And if you are to look at that section 179 of the Constitution, and in particular, subsection

10 ...[intervenes]

**ADV BATOHI**: If the evidence leader can please give me a copy of the Constitution, I do not have a copy of it in front of me.

**MS RAMAGAGA**: Right.

**CHAIRPERSON**: I think you can donate that copy to counsel.

**ADV BATOHI**: We have a lot of these in my office, Chairperson. I should have brought one of them.

**CHAIRPERSON**: Yes.

**MS RAMAGAGA**: And in particular, subsection 5. Are you  
20 there?

**ADV BATOHI**: I am.

**MS RAMAGAGA**: Okay. It reads:

“The National Director of Public  
Prosecutions...”

Let me see, ABC, the reviewing powers are found in

subsection 5(d), nè? It says:

“The National Director of Public Prosecutions may review a decision to prosecute or not to prosecute after consulting relevant Director of Public Prosecution and after taking representations within a period specified by the National Director of Public Prosecutions from the following...”

10 Those just, they do not matter much. What matters much to the question that I have posed, the question that you are going to think about, and maybe even seek counsel to, is where the Constitution says, after consulting the relevant Director of Public Prosecutions. And that is all. And this in itself, I think will get attention during the engagement with counsel. Thank you.

**ADV BATOHI**: Chairperson, if I may make one point now. And that is, there is two provisions in the Constitution and in the NPA Act that deals with a National Director, let us say  
20 loosely getting involved in a prosecution process. We are not looking at section C of the Constitution, that is 179(5)(c), which says:

“The National Director of Public Prosecutions may intervene in a prosecution process when policy directives are not

complied with.”

That, we must not forget that that is also an important power of the National Director, to intervene when policy directives are not complied with. So if there is any prosecution process where the National Director, any National Director is of the view that policy directives had not been observed in a process, in my view, and we can still go and get the necessary legal opinions, this would also permit a National Director to intervene in a prosecution process under those  
10 circumstances.

In addition to paragraph D, which gives a very specific review power to the National Director and we must distinguish between the power of a National Director to intervene in terms of paragraph 5(c) of 179 of the Constitution and paragraph D, which is to review. So I think these are two important aspects. And in my view, even the intervention, if a previous National Director or any member of the prosecuting authority, it appears has not complied with policy directives, a National Director, provided that condition  
20 is met, a National Director may intervene in a prosecution process.

**CHAIRPERSON:** A post-ex facto, meaning you can intervene after the event.

**ADV BATOHI:** That is correct, Chairperson.

**CHAIRPERSON:** Even if it is 10 years later?

**ADV BATOHI:** If policy, if the interests of justice demand that because policy directives were not complied with, that it should be done, as I sit here today, I would think that then the National Director should be able to look into what happened, to assess whether there was something that untoward happened because policy directives were not complied with.

**CHAIRPERSON:** So I would like you to properly reflect on this, because if you look at the chilling effect of that kind of  
10 a conduct, if after several years, a new incumbent upsets what happened many years ago, that will be nonsensical and will affect the interests of so many people. It will affect the interests of the victims, of the accused people, and generally, the administration of justice in terms of finalising matters, timeously, because when matters run for many years, that has a chilling effect on so many people. So I am just saying to you, reflect upon it properly. We may be wrong, but I would like you to take a step back and reflect on these issues that we are grappling with.

20 **ADV BATOHI:** Chairperson, I will certainly do that, but to comment on your comment about a chilling effect, my view is that it could have the converse chilling effect if something, there was a grave miscarriage of justice, and if 10 years later, a National Director is not able to correct it, in my view, that can also have a chilling effect for victims, for the interests of

justice. So I think we need to, as you say, carefully apply our minds to it, but I think it could cut both ways. Thank you, Chairperson.

**CHAIRPERSON:** Thank you. Advocate Mohlamonyane.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair.

Advocate Batohi, let me then direct you to paragraph 61 on page 28 of your affidavit. You will recall that yesterday, you indicated that the prosecution policy directives, the Code of Conduct are in place, which have been framed by the NDPP

10 in consultation with the relevant authority, Executive authority. Can you explain the extent to which the prosecution policy and the Code of Conduct bind prosecutors? You may start with the prosecution policy.

**ADV BATOHI:** The prosecution policy, the policy directives, and the Code of Conduct, which have all been issued in terms of section 22 and 22(6) of the NPA Act, must be observed in the prosecution process. So this means that every

prosecutor in the country is obliged and must observe these important instruments. So for example, as I continue, 20 subjecting the prosecutorial powers of a DPP and prosecutors to the prosecution policy, would amongst others be that such a DPP and prosecutors are required to take into consideration all the factors that are delineated in, the factors delineated in the prosecution policy that must be taken into account when deciding whether to institute a prosecution or not.

And I do know that somewhere in my affidavit, I set out what these factors are. I am not sure if the evidence leader can lead, guide me in terms of what paragraph that is, but it sets out these factors that a prosecutor should take into account when making a decision to prosecute or not. It also means adhering to prosecutorial practices, norms and standards, professional and ethical conduct as delineated in the policy directives and the Code of Conduct. And as I said, they must be complied with by all members of the NPA.

10 There is a paragraph, it would be good to link it now to where these are set out in terms of the factors to be taken into account, but perhaps we will come to it later. I just do not have it on hand at the moment.

**ADV MOHLAMONYANE SC:** We will deal with it later on, but for the moment, let us go to paragraph 66.

**ADV BATOHI:** Perhaps, sorry, I think paragraph 78 might deal with the policy:

20 “Prosecution policy prescribes the various factors which must be considered by a member of the NPA, including a DPP when deciding to prosecute or not to prosecute. In essence, a DPP, as with all prosecutorial members of the NPA, must have regard to the contents of the case docket, that is the *prima facie* evidence and statements

contained in a docket, as well as any version proffered by the accused in what is called a warning statement or a confession or other statement made by the accused.

The DPP or prosecutor must evaluate such evidence, taking into account relevant factors, all relevant factors including how strong the case is for the state, whether the evidence is admissible, whether the state witnesses are credible, whether the evidence is reliable, whether the evidence is available, and how strong the case is for the accused or the defence.”

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**ADV MOHLAMONYANE SC:** Yes, that is dealt with when you are dealing with the responsibilities, powers of a section 6 DPP.

**ADV BATOHI:** That is correct.

**MR MOHLAMONYANE SC:** We will revisit it.

**ADV BATOHI:** Ja, okay, we can revisit, but it links to this point.

**ADV MOHLAMONYANE SC:** It relates to that.

**ADV BATOHI:** Sure.

**MR MOHLAMONYANE SC:** Now, let us get to paragraph 67, where you are dealing with section 23 subparagraph B. In fact, you have already read into the record section 23(a) and

(b), not so?

**ADV BATOHI**: [No answer]

**MR MOHLAMONYANE SC**: You have already read it into the record.

**ADV BATOHI**: I believe so.

**MR MOHLAMONYANE SC**: Yes. Now, explain how, as a National Director, you will exclude, expressly in writing or otherwise, certain offences where a Director of Public Prosecutions, a DPP, would not exercise in terms of  
10 paragraph B. It says:

“...any offences which have not been expressly excluded from his or her jurisdiction.”

We know that the DPP has a power and duty to institute criminal proceedings within his area of jurisdiction, unless they have been expressly excluded from his or her jurisdiction.

**ADV BATOHI**: So, as I mentioned in paragraph 67, this would happen where, for example, the IDAC is investigating.  
20 That is Investigating Directorate against Corruption, and they have jurisdiction over cases across South Africa. So, that would be a case where the DPP would not exercise jurisdiction in his or her area of jurisdiction, but the Investigating Director would exercise jurisdiction, but the NPA Act does require, and I do not have the section in front

of me now, that the Investigating Director, when doing this, is required to consult with the DPP of the jurisdiction where the case will be heard. There are ...[intervenes]

**ADV MOHLAMONYANE SC:** Yes, sorry to interrupt you, Advocate Batohi, but can you explain what IDAC is? What is IDAC, for the benefit of those who may not understand what IDAC is?

**ADV BATOHI:** Sure, I just mentioned it is the Investigating Directorate against Corruption. It is an entity that is within  
10 the National Prosecuting Authority, which was established by an amendment to the NPA Act that was effected last year, promulgated last year, I think it was in August of 2024, when the Investigating Directorate against Corruption was formed. It is part of the National Prosecuting Authority, and the Investigating Director is the head of the IDAC, as it is called, Investigating Directorate against Corruption.

So the ID, that is the Investigating Director, is on the same level as a DPP, is in fact, the rank level is the same as a DPP, and so when the IDAC, the ID exercises jurisdiction  
20 in terms of prosecuting cases in various parts of the country, those cases then will not be, it will be a case that the DPP in that jurisdiction will in fact not be exercising jurisdiction over. So...

**CHAIRPERSON:** Ja and am I correct that the matter we assist with does not fall within that category?

**ADV BATOHI:** That is correct, Chairperson, it does not. Even the other example that I have, which is Special Director of Public Prosecutions, if they do have prosecution powers, like was the case in the past, it could mean that the DPP will not exercise jurisdiction of a case where the SDPP has decided, but none, but this case does not, that scenario does not apply in this case.

**CHAIRPERSON:** And if you may, I beg your pardon, sir, if you may, counsel, not everybody understand the acronyms  
10 that you refer to. As you testify, try to obviate the use of acronyms, or if you do, give us the full name and constantly refer to that, if you choose then later to refer to an acronym.

**ADV BATOHI:** Certainly, Chairperson. The SDPP in this case is a Special Director of Public Prosecutions. Ja, I will leave it at that. But as I said, those scenarios do not apply in the current case or matter that the enquiry is looking into.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. The issue of IDAC investigators and IDAC itself to be brought into the current situation we are dealing with has been done for  
20 purposes of distinguishing and for purposes of clarity as to the difference, if any, between an ID and a DPP. Am I correct?

**ADV BATOHI:** That is correct, Chairperson.

**ADV MOHLAMONYANE SC:** Now, let us proceed to the next important topic which appears on page 30 of your affidavit,

where you are dealing with Directors of Public Prosecutions. You have already indicated what they are, who they are, and where they fit in in the structure, where DPPs fit in in the structure of the NPA. Now, in paragraph 68, you are saying that DPPs are appointed by the President. Is that correct?

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** In terms of section 13 of the NPA Act.

**ADV BATOHI:** That is correct.

10 **MR MOHLAMONYANE SC:** If they are appointed by the President, does that mean they are answerable to the President?

**ADV BATOHI:** No, it does not mean that.

**ADV MOHLAMONYANE SC:** What does it mean?

**ADV BATOHI:** It means that the President appoints them. They are not answerable to the President because in terms of the Constitution and the NPA Act, the NPA's independence insofar as it is functional independence, operational independence is guaranteed. So that does not, that means  
20 that a member of the Executive cannot interfere in the work of the NPA insofar as its prosecutorial functions are concerned. But of course, the NPA requires the support and of the Executive in terms of the budget. And there is a reporting line in the Act to the Minister. But apart from that very limited scope, the President or a Minister cannot

interfere in the work of the, prosecutorial work of the NPA.

**ADV MOHLAMONYANE SC:** Thank you. Let us go to the next paragraph. Paragraph 69.

**CHAIRPERSON:** That paragraph answers the question that we have just asked her. And she has answered it. If you look at the last line. Maybe you can go to 70.

**ADV MOHLAMONYANE SC:** I just wanted to...

**ADV BATOHI:** Perhaps if I may, the important part of 69 is just to emphasise again that DPPs have original jurisdiction  
10 and responsibility for criminal prosecutions falling within their area of jurisdiction in which they have been appointed.

**ADV MOHLAMONYANE SC:** Yes, thank you, Advocate Batohi. I wanted you to deal with that tie into what is stated in paragraph 70 as far as the powers of the DPPs are concerned.

**ADV BATOHI:** So as I, sorry.

**ADV MOHLAMONYANE SC:** Ja, maybe before you proceed. It brings us to the issue of a DPP, a section 6 DPP of one jurisdiction exercising powers or functions in another  
20 jurisdiction. If you can explain that in full, the circumstances under which a section 6 DPP of one jurisdiction can exercise his or her functions in another jurisdiction.

**ADV BATOHI:** So as it is clear from the Act, the Constitution and the Act, a section 6 DPP has jurisdiction for all matters falling within his or her area of jurisdiction in which they have

been appointed. In fact, the Mokgoro Enquiry found that there is not a circumstance and that is in fact, if one looks at the Act, the Constitution, it does not permit that a section 6 DPP oversee prosecutions taking place in the area of jurisdiction of another. I pause here to add that there is one instance where the, I mentioned it yesterday, the centralisation of cases where you have different offences committed in different parts of the country.

Then it would be the situation where once the two  
10 DPPs apply to the National Director to centralise these matters in one of those jurisdictions. In that instance, of course, the DPP in respect of the jurisdiction where the matter is now going to be heard, there will be a case from another jurisdiction being heard in that jurisdiction. But that is by agreement and ultimately, the authority and approval of the National Director to centralise these matters into one area for the sake of convenience because there are offences in different parts of the country.

Section 70, then we do explain further that  
20 ...[intervenes]

**CHAIRPERSON:** Paragraph 70.

**ADV BATOHI:** My apologies, Chairperson. Paragraph 70, I state that:

“The relevant part there is there is no provision in the NPA Act that deals with a

scenario where a DPP from one jurisdiction can exercise powers in the area of another DPP. So it is not in the Act, it is not in the policy, it is not in the directives. A DPP cannot take decisions in respect of another DPP's area of jurisdiction. In other words, DPP of one jurisdiction cannot exercise jurisdiction over prosecutions of another.

10 It means that a DPP of one area cannot control, direct, run with, supervise, and coordinate a prosecution falling within the jurisdiction. It should...”

There is a slight editorial typo there, but falling within the area of another DPP's jurisdiction. I think we will get there, but I think section 30 of the NPA Act deals specifically with the powers of the DPP. I am not sure if that is covered, whether we specifically went to section 30, but I think that is an important section that we should highlight. If I have got that correct.

20 **MR MOHLAMONYANE SC:** Advocate Batohi, that you dealt with yesterday when we are dealing with centralisation.

**ADV BATOHI:** That is correct.

**MR MOHLAMONYANE SC:** But I want you to go to... ja ...[intervenes]

**ADV BALOYI-MERE SC:** Sorry, sorry, Advocate

Mohlamonyane, in as much as there is no provision in the NPA Act that deals with a scenario that you have explained, is there a provision in the Act that prohibits that action?

**ADV BATOHI**: Sorry, with respect, which action is that?

**ADV BALOYI-MERE SC**: What you describe at paragraph 70 where you say a section 6 DPP cannot exercise his powers in another section 6 DPP's jurisdiction.

**ADV BATOHI**: Yes.

**ADV BALOYI-MERE SC**: You say there is no provision in  
10 the NPA Act that deals with that scenario. My question is,  
is there a provision that prohibits that action?

**ADV BATOHI**: Chairperson, for clarification, and well, let  
me answer. Firstly, the powers of a DPP are set out in  
section 24 of the Act, and that makes it explicit that:

“A DPP, subject to the provisions of section  
179 and other relevant sections of the  
Constitution, the NPA Act, or any other law,  
a Director referred to in section 13 has, in  
respect of the area...”

20 And I emphasise;

“...in respect of the area for which he or she  
has been appointed, the power to institute  
and conduct criminal proceedings, carry out  
functions...”

And then;

“...to supervise, direct, coordinate the work and activities within all of the powers that are set out in sub-paragraph A to D of section 24(1) must be in respect of the area for which a Director has been appointed.”

And that is important, it means you cannot, these, you are required to exercise it in your area of jurisdiction.

So that is explicit, and that is why, in addition, the, well, I should not say in addition, but the paragraph 70, the  
10 part in paragraph 70 that says there is no provision in the NPA Act, specifically refers to the sentence before that, which is an NPA, an NDPP cannot ask a DPP from one area to evaluate the work of another DPP in another area, because the DPPs are appointed and exercise powers in their particular area of jurisdiction, and in respect of that evaluation, there is no provision in the NPA Act policy, prosecution policy or directives dealing with that scenario. But to answer specifically your question, section 24(1) will address that.

20 **ADV MOHLAMONYANE SC**: Thank you, Advocate Batohi.

**ADV BALOYI-MERE SC**: Yes, I do not see anything that deals with exclusivity in section 24, would that have been the drafters deliberate exclusion of exclusivity to create room for manoeuvre or to create an escape clause? Because it only says you can only exercise your powers in your area of

jurisdiction, but it does not take it any further. Or are you then extending it by interpretation or by a rule of practice?

**ADV BATOHI:** In my, well, I am not, the Act specifically states that a Director shall... do all of the, well, exercise all of the powers set out in A to D in respect of the area for which he or she has been appointed, and that is clear.

**ADV BALOYI-MERE SC:** Were you reading in which section?

**ADV BATOHI:** 24(1) of the NPA Act.

**ADV BALOYI-MERE SC:** Chair, unless if I am, maybe my  
10 reading here is wrong, I do not see shall, but it is fine.

**ADV BATOHI:** Oh, I apologise, yes.

**ADV BALOYI-MERE SC:** I will leave with it.

**ADV BATOHI:** Ja, no, there is no, I was just paraphrasing at the time, I was not reading at the time. Maybe I will, if the Chairperson wants me to read out the precise wording of the Act.

**CHAIRPERSON:** Not necessarily.

**ADV BATOHI:** Thank you, Chair, thank you, Chair.

**CHAIRPERSON:** My understanding of my sister's question  
20 is whether the legislator intended to expressly exclude that possibility. Am I right?

**ADV BALOYI-MERE SC:** Testify.

**CHAIRPERSON:** You see, the point is, let us assume, I am just thinking aloud, let us assume that all the prosecutors in KZN are conflicted and cannot handle a particular case, and

a need arises for the matter to be finalised in KZN, will any prosecutor from Gauteng be excluded from being sent to KZN?

**ADV BATOHI**: No, Chairperson.

**CHAIRPERSON**: To perform a prosecutorial function there?

**ADV BATOHI**: No, Chairperson, but there is a very specific difference between the jurisdiction that a DPP exercises in terms of section 24, and a prosecutor who may be required to perform a function in another jurisdiction. In that, that is, 10 that circumstance is actually catered for, and by practice, if prosecutors in KZN are, in fact, the scenario that you sketch, we could then, by agreement of the DPPs, move, take prosecutors from anywhere in the country to go to KZN to prosecute the matter there, but they would then act under the jurisdiction of the KZN DPP, and that is an important distinction. And they would then also get the relevant delegation, either from the DPP in KZN to prosecute in KZN, or potentially also from the National Director.

**CHAIRPERSON**: In other words, the Act does not 20 specifically exclude that kind of a possibility in the event it arises.

**ADV BATOHI**: It does not exclude what I am testifying about now, but it excludes a DPP exercising jurisdiction over a case in another jurisdiction.

**CHAIRPERSON**: No, that is clear.

**ADV BATOHI:** Yes, okay.

**CHAIRPERSON:** We are now dealing with a different scenario.

**ADV BATOHI:** That is correct.

**CHAIRPERSON:** If circumstances arise where people in KZN, prosecutors in KZN are conflicted in a particular matter, in a situation that necessitates someone from a different province to go in and execute that prosecutorial function in another, I think this is what my sister was trying to ask you, 10 about the exclusivity part of the legislation, whether there is any provision in the legislation that excludes that possibility.

**ADV BATOHI:** Chairperson, my understanding of what your sister was asking was about a DPP. And my understanding that the second scenario, you have now indicated that that is settled. The second scenario that you have now put before me is a scenario where KZN prosecutors are conflicted and you get prosecutors from elsewhere going to that province to prosecute. The second scenario is permissible, but there are certain things that must be done.

20 One is, the DPPs must agree and consent to this. Secondly, the prosecutors that actually go to KZN, because they are coming from another division, they must get a delegation from the DPP of KZN that allows them to prosecute in KZN. And there is also the possibility of the National Director giving delegation to prosecutors to prosecute in

areas outside of their own, of the division that they are stationed in.

**CHAIRPERSON:** Yes, I know that you are using the, you are using the words prosecutor and DPP, but in the simple language, they are all prosecutors.

**ADV BATOHI:** Chairperson, my view is that it is, there is an important distinction between a DPP's powers and a prosecutor, what a prosecutor can do. The DPP's powers are restricted to a particular area of jurisdiction in terms of  
10 the Act. The same does not apply to prosecutors.

**CHAIRPERSON:** I do understand, madam. Let us try to move forward. My question relates, we know that we are talking about Mr Chauke here. Let us not talk about this broader picture. It does not assist us. The question arises, can Mr Chauke leave South Gauteng area of his jurisdiction and go to KZN, if circumstances arises, to go and function as a prosecutor there or as a DPP there?

**ADV BATOHI:** That is not permitted, Chairperson. As a DPP, he cannot exercise DPP, he cannot exercise jurisdiction  
20 over a case that emanates from another division.

**ADV BALOYI-MERE SC:** Now, in the instance where the DPP in a specific area is conflicted, unless if we want to say DPPs may never be conflicted, but if a DPP is conflicted, how do we then deal with that scenario?

**ADV BATOHI:** That scenario, Chairperson, and I am just

thinking through what you said about a prosecutor moving to another division. Let us assume, indeed, the DPP of Gauteng needs to go to KZN to prosecute a matter. There is two things that should happen. One is the DPP, if it is possible, and I am not even sure that it is legally possible, he should get a delegated authority from the DPP in that division, but if the DPP, him or herself is conflicted, which is the scenario that the panel member is putting forward now, then in that instance, the National Director should give that

10 DPP, if it is permitted, because I have not thought this, I do not know that it is happened that a DPP's gone to another division to prosecute a case. It may have happened. Then the National Director should issue a delegation to that DPP to prosecute in the jurisdiction, in another jurisdiction. So those delegated powers to prosecute in another jurisdiction are critical for any person coming, any prosecutor, coming from outside of that jurisdiction to prosecute a case in that, in the jurisdiction where the case is being held.

**CHAIRPERSON:** Advocate Mohlamonyane, I know that we

20 are dealing with the legislative framework and dealing with the powers of the DPPs, et cetera, but when we come to the crux of the case, these issues might arise. Therefore, I propose that we move forward.

**ADV MOHLAMONYANE SC:** Indeed, Madam Chair. Now, in trying to elucidate what you were explaining to the panel,

there is what is called a receiving DPP, and a requesting DPP. Can you explain that scenario?

**ADV BATOHI:** Take me to the, to the...

**ADV MOHLAMONYANE SC:** It is not in the... A DPP of another district, of rather, of another jurisdiction, are there instances when such DPP can make a request?

**ADV BATOHI:** Yes, that is correct. A DPP of one division can request assistance from another DPP in another, in another division for prosecutors to come and prosecute in  
10 their division. This is a scenario that I did deal with earlier on. In the event that that happens, the DPP of the receiving jurisdiction must issue delegation to those prosecutors to prosecute in the receiving DPP's area of jurisdiction.

**ADV MOHLAMONYANE SC:** Ja, we will later deal specifically with Advocate Chauke's issue. But it would appear to me it is an opportune moment. I am reminded that it may be an opportune moment to adjourn for tea recess.

**CHAIRPERSON:** Totally forgotten that there is something like tea that we must have and stretch our legs. We ought  
20 to have adjourned at quarter past 11, but we started late. We will take a tea break now until 12 o'clock. This means that we will have lunch a little bit later, later than half past one as we did yesterday. Let us adjourn for tea until 12 o'clock. We adjourn.

**ENQUIRY ADJOURNS**

**ENQUIRY RESUMES**

**CHAIRPERSON:** Thank you, counsel. You may begin. You may continue.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. Advocate Batohi, when we adjourned for tea recess, you were dealing with a DPP from another province who may do prosecutorial duties in another province. Can we deal with that and recap and let us continue.

**ADV BATOHI:** Thank you, counsel. Chairperson, it is really  
10 important for us, for this aspect to be clarified in terms of the extent of the jurisdiction of a DPP. So we have had time to reflect on it and I would first like to take the panel to section 13(1)(a) of the NPA Act. So section 13(1) states the following, this particular part of the Act deals with appointment of Directors and acting Directors. subsection 1 of section 13 states:

“The President, after consultation with the  
Minister and the National Director, may,  
subject to section 6(2), appoint a Director of  
20 Public Prosecutions in respect of an  
office...”

My emphasis;

“...in respect of an office of the prosecuting  
authority established by section 6(1).”

So we then go to section 6(1) of the NPA Act. Section 6(1)

of the NPA Act refers to offices of prosecuting authority at seats of High Courts. Section 6(1) states:

“The cabinet member responsible for the administration of justice:

- a. Must establish an office for the prosecuting authority at the seat of each division of the High Court provided for in section 6, in terms of section 6(1).”

And that is relevant for present purposes. And then if you  
10 look at section 6(2):

“An office established by this section shall consist of the head of the office, who shall either be a Director or Deputy Director, and who shall control the office.”

It shall consist of Deputy Directors, of prosecutors, et cetera. So if we then, it is clear from these two sections that a DPP is appointed to an office established in terms of section 6(1).

And then if we go to section 23(a), it states that:

20 “Subject to the provisions of the Constitution and this Act, any Director shall...”

And I want to emphasise the use of the word shall in this section;

“...subject to the control and directions of the National Director, exercise the powers referred to in subsection 1...”

And I am not going to read those powers out now;

“...in respect of:

- a. The area of jurisdiction for which he or she has been appointed.”

And I want to indicate that when Directors of Public Prosecutions are appointed, they are appointed to exercise jurisdiction. They are appointed to an office, and they are, in terms of section 23, which I have just read, they exercise jurisdiction over, let me get the language again, the area of  
10 jurisdiction for which he or she has been appointed.

The President appoints Directors of Public Prosecutions to a particular office, and I have obtained a letter of appointment that is sent to a DPP, as well as a presidential minute that is signed by the President. We do have copies, Chairperson, would the panel like copies of these now? I am not sure how we would deal with this. I do have them in front of me.

**CHAIRPERSON:** Through your counsel, the evidence leader, at the time he considers appropriate.

20 **ADV BATOHI:** Thank you. May I proceed, counsel?

**MR MOHLAMONYANE SC:** Ja, you may proceed.

**ADV BATOHI:** Thank you.

**MR MOHLAMONYANE SC:** May I get copies? I do not have a copy with me.

**ADV BATOHI:** The copies behind you, we will just hand that

to you now.

**MR MOHLAMONYANE SC:** With your permission, Madam Chair.

**ADV BATOHI:** We do have copies available.

**MR MOHLAMONYANE SC:** Oh, we do have copies, my apologies. I deem it appropriate that it be handed up. With your permission, Madam Chair.

**CHAIRPERSON:** Yes, sir, just make sure that whatever you are handing in, just label it as an annexure or just something.

10 If I may recap, these documents, what are they?

**ADV BATOHI:** The first one, Chairperson, is, well the first one is the President's minute, which relates to the appointment of the DPP Advocate Zungu, as she then was, as the Director of Public Prosecution in KwaZulu-Natal. It is an example of a presidential minute that is signed when the President appoints a Director of Public Prosecutions. The second document is a document signed by the Minister of justice at the time, Minister Lamola, to Advocate Zungu, informing her of her appointment as the Director of Public  
20 Prosecutions, KwaZulu-Natal. The first one is the President's minute. It is headed President's minute. If I may read into the record, Chairperson.

**MR MOHLAMONYANE SC:** Before you do that, advocate Batohi. Pardon me, Madam Chair.

**CHAIRPERSON:** I think when you look at a sequence of

events, you probably look at the dates. The first one is the presidential, I beg your pardon, is the Ministerial appointment, 25 October 2019. And the presidential minutes is 11th of October, November. Okay, I beg your pardon. 11th of October 2019.

**ADV BATOHI**: The Minister is the first one.

**ADV BALOYI-MERE SC**: The minute comes first.

**CHAIRPERSON**: So the minute comes first.

**MR MOHLAMONYANE SC**: Can I ask, Madam Chair, that  
10 they be marked as EXHIBITS 1 and 2, respectively. The first one being the President's minute.

**CHAIRPERSON**: The documents are marked accordingly.

**ADV MOHLAMONYANE SC**: Thank you, Madam Chair. You may proceed.

**ADV BATOHI**: Thank you, Chairperson. I will read into the record the EXHIBIT 1, it is President's minute number 432:

20 “I hereby under section 13(1)(a), read with section 6(2) and 9(1) of the National Prosecuting Authority Act 1998 (Acts 32 of 1998), and after consultation with the Minister of Justice and Correctional Services and the National Director of Public Prosecutions, appoint Advocate Elaine Zungu as Director of Public Prosecutions of the KwaZulu-Natal Division of the High

Court, Pietermaritzburg, with effect from 1  
November, 2019.

Given under my hand at Johannesburg on  
11th day of October, 2019.”

It is signed by the President and below the President's  
signature, the Minister of Cabinet. The second exhibit,  
Chairperson, is the letter from the Minister Lamola, dated 25  
October 2019. Should I read out the contents, Chairperson,  
or is it not necessary? But the Minister is communicating the  
10 decision of the President to appoint Advocate Zungu as the  
Director of Public Prosecutions, KwaZulu-Natal Division of  
the High Court, Pietermaritzburg.

**MR MOHLAMONYANE SC:** For completeness purposes, just  
read the whole content.

**ADV BATOHI:** I will. It is addressed, this minute is  
addressed to Advocate E Zungu.

“Dear Advocate Zungu,  
Appointment as Director of Public  
Prosecutions”

20 The subject line:

“Appointment as Director of Public  
Prosecutions, KwaZulu-Natal Division of the  
High Court, Pietermaritzburg.

It gives me pleasure to communicate to you  
the decision of the President to appoint you

as the Director of Public Prosecutions,  
effective from 1 November 2019.

Please find attached the approved  
Presidential Minute 432 in terms of section  
13(1)(a), read with section 6(2) and 9(1) of  
the National Prosecuting Authority Act 1998  
(Act 32 of 1998) dated 11 October, 2019.

I take the opportunity to wish you well on  
your appointment.”

- 10 It is kind regards signed by Minister RO Lamola, Minister of  
Justice and Correctional Services, on 25 October 2019.  
Chairperson ...[intervenes]

**CHAIRPERSON:** I suppose these exhibits are handed up  
merely to endorse the statement at paragraph 68, the first  
sentence, regarding the appointment of the DPPs. Is there  
any other reason why we have these examples?

- ADV BATOHI:** Yes, the fact that, Chairperson, they are  
appointed in a particular division of the High Court. In this  
instance, EXHIBIT 1, as Director of Public Prosecutions,  
20 KwaZulu-Natal Division of the High Court, Pietermaritzburg.  
And EXHIBIT 2, the subject line of the Minister states:

“Appointment as Director of Public  
Prosecutions, KwaZulu-Natal Division of the  
High Court, Pietermaritzburg.”

And the point being, Chairperson, that the DPPs are

appointed by the President to exercise jurisdiction to an office and shall exercise jurisdiction in the division to which they have been appointed. Thank you, Chairperson.

**CHAIRPERSON:** Proceed, please proceed, counsel.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. Now, I want you to recap on this aspect here, where, let us take this example. There were prosecutors from Gauteng who were tasked to do duty in KZN.

**CHAIRPERSON:** Counsel, may I please allow me to  
10 interpose? That is one of the crux of the issues that we have to deal with.

**MR MOHLAMONYANE SC:** Yes, Madam Chair.

**CHAIRPERSON:** Just leave that for later, please. Because it is going to attract a lot of questions from us. I do not want to interrupt with your way of presenting. But you were dealing with the role in terms of the affidavit. And as we progress, it seems as if you are jumping into another topic. Now, I request, with respect to you, that we leave it for later.

**MR MOHLAMONYANE SC:** Maybe I misunderstood your line  
20 of dealing with it. I thought you wanted us to jump into it immediately. I misunderstood.

**CHAIRPERSON:** Yes, I think you can tell us if you are doing that. Because if you want to jump everything else and zoom into the crux, that is going to be under the rubric...

**MR MOHLAMONYANE SC:** Under, where it starts from, 58.

**CHAIRPERSON:** I beg your pardon, just bear with me. You see, we were dealing with D, Directors of Public Prosecutions, their roles, et cetera. We are not yet into the meat of the issues before us. And I suggest that do not exhaust it now, unless if you really want to jump into the issues.

**MR MOHLAMONYANE SC:** Not exactly. I was under the impression that Madam Chair would want us to just get into the issue, the meat of the issue. But maybe I misunderstood.

10 My apologies.

**CHAIRPERSON:** Have you, I know that we were at paragraph 68, 68, 69. You may want to deal with it. I think if you want to jump all those paragraphs regarding the Directors of Public Prosecutions, you may tell us so.

**MR MOHLAMONYANE SC:** Madam Chair, I was not intending to jump them. Allow me to proceed from where we ended..

**CHAIRPERSON:** You may do so. And obviously, counsel, you need not go into case law and too much into Mokgoro's  
20 report.

**MR MOHLAMONYANE SC:** I do not have to.

**CHAIRPERSON:** Mokgoro's report does not bind us.

**MR MOHLAMONYANE SC:** Indeed, I agree. It does not.

**CHAIRPERSON:** Do not go into jurisprudence. Let us deal with those aspects that we might just want clarity from,

because Advocate Batohi is better placed to inform us as regards the facts. And as you gather the facts, try to focus on those areas that will assist us.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. Advocate Batohi, we have dealt with – you have read into the record section 24(1) of The Act, of the NPA Act. We do not necessarily have to repeat that. Now, go to paragraph 76 and explain the powers of a DPP insofar as any appeal is concerned, which is, of course, contained in The Act.

10 **ADV BATOHI:** Paragraph 24?

**MR MOHLAMONYANE SC:** Not paragraph 24. We dealt with section 24, if I may.

**ADV BATOHI:** That is correct.

**MR MOHLAMONYANE SC:** It has been read into the record, and I am saying it is not necessary to go back to that.

**ADV BATOHI:** Yes, just for the purpose of the record, paragraph 73 deals with it, and paragraph 74 – well, right from paragraph 74 ...[intervenes]

20 **MR MOHLAMONYANE SC:** Yes, it has been dealt with. Let us not go back to it. I was directing your attention to paragraph 76, and you can read that and explain it in conjunction with what is contained in section 22 – no, no, I beg your pardon – 24, subsection 8.

**ADV BATOHI:** So paragraph 20 – sorry, section 24.

**MR MOHLAMONYANE SC:** Subsection 8.

**ADV BATOHI:** Subsection 8 reads:

“The powers conferred upon a Director under section 21 shall include the authority to prosecute in any Court any appeal arising from criminal proceedings.”

And if you read that with section 21, again, it must be with regard to a case that is in respect of the area of jurisdiction for which he or she has been appointed. So it is one of the functions of a DPP. Section 24 sets out a number of them.

10 And in paragraph 76, we explain that a power to prosecute an appeal is also a power given to a DPP if read with section 20... 20 in respect of cases emanating from his or her area of jurisdiction.

**MR MOHLAMONYANE SC:** Now, we have dealt – you have dealt with the prosecution policy. What are the duties of a prosecutor or a DPP in terms of a prosecution policy. Now, we will not spend much time dealing with paragraphs 79, 80, 81, 82, and 83, including 84, including 84, 85 as well, 86. We will not deal with that. Go to page 37 and look at the NPA's  
20 role in prosecuting crime, just in a nutshell, because you have already referred to, in extenso, referred to the role of the NPA. But just do it in a nutshell, briefly, so that we can move forward.

**ADV BATOHI:** So as we mentioned, prosecutors have a constitutional mandate to prosecute crime. And as per

paragraph 89, the importance of the state's duty to prosecute is implicit in section 179(2) of the Constitution, which is set out in that paragraph. And so paragraph 90, it flows from this section of the Constitution, that prosecution of crime is a matter of fundamental importance to the state. At paragraph 91, the Constitutional Court has recently affirmed, and we refer to the case of Corruption Watch, that the NPA is at the centre of any functioning – well-functioning democracy. At page 92, we again ...[intervenes]

10 **MR MOHLAMONYANE SC:** Paragraph 92, I beg your pardon.

**ADV BATOHI:** Paragraph 92, we again emphasise that prosecutors serve as gatekeepers of the system and we present cases in Court. These are all the role – this is the role of the prosecutors. We represent the interests of society throughout these proceedings. And a quotation there, and this is important because it is a quotation, but this is actually very important for prosecutors. It is what we do. The role of a prosecutor, which I mentioned in my opening remarks, comes with great responsibility, as prosecutors are vested  
20 with the power to charge the accused, to try accused. We must seek justice, do justice, protect the innocent, and charge the guilty.

And the – at page 95, at paragraph 95 ...[intervenes]

**MR MOHLAMONYANE SC:** Ja, just in paragraph 95, you are dealing with the integrity of the system, which is largely

dependent on the integrity of the prosecutor. Can you explain what an integrity ...[intervenes]

**ADV BATOHI**: That is correct.

**MR MOHLAMONYANE SC**: What integrity of a prosecutor entails?

**ADV BATOHI**: If as prosecutors we do not act with the requisite standards of integrity, it brings the entire system into disrepute. The integrity of a system is not something that can be assessed as if the system sits on its own  
10 somewhere. The integrity of a system is dependent on the integrity of the people who work within a system. And so, therefore, the integrity of a system is hugely dependent on the integrity of every single person who works within that system. And I go on to explain in paragraph 95 that the effect of prosecutorial decisions on people, on individuals, which is also what I mentioned in my opening remarks, we affect – the decision affects accused persons, their families, victims, witnesses, law enforcement agencies, and the public. I do not think I mentioned this part in my opening remarks.

20 “The prosecutor possesses the greatest power to take away the freedom of the person and the discretionary power exercised by the prosecutor in initiation, accusation, and discontinuance of a prosecution gives him...”

I should say, add or her;

“...more control over an individual's liberty and reputation than any other public official.”

So this is really what the impact of prosecutors' decisions are on people. I think I will skip over the quotations.

**MR MOHLAMONYANE SC:** Ja, leave the quotations and let us get to 99, unless there was something else that you wanted to explain.

10 **ADV BATOHI:** No, I just think that...

**MR MOHLAMONYANE SC:** Let us go to 99, and I would like you to look at the first sentence there where you are saying:

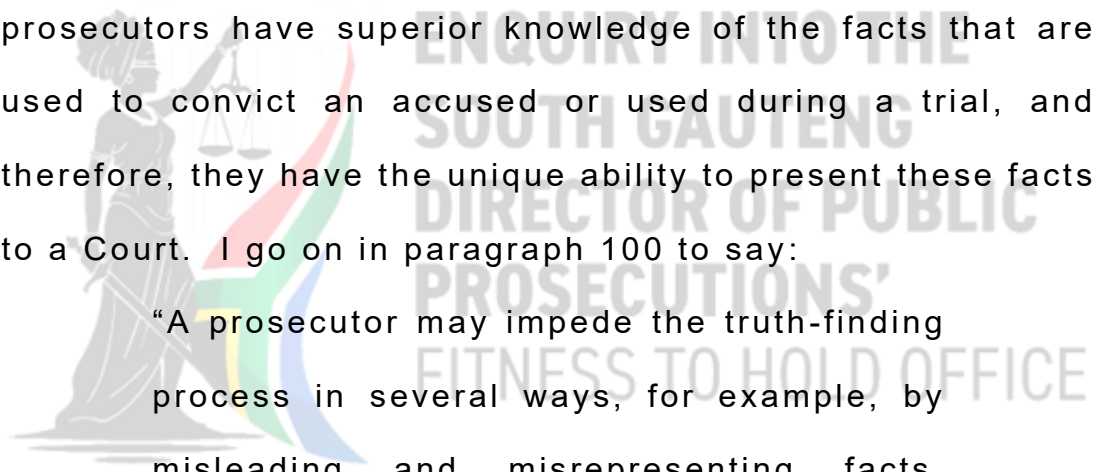
“All members of the prosecuting authority, moreover, have a legal and ethical duty to promote truth and to refrain from conduct that impedes truth.”

What does that entail?

**ADV BATOHI:** A prosecutor's role is to ensure justice in our society. And I want to emphasise that in terms of a duty to  
20 promote the truth, it is not a prosecutor's function to seek a conviction at all costs. It is a prosecutor's function to help the Court to come to a just decision and to seek the truth. And so the duty of truth, as I say in paragraph 99, it actually comes from a – it derives from a prosecutor's constitutional obligation not to use false evidence or to suppress material

evidence, material evidence favourable to the accused.

This duty of truth arises from various ethical structures and instruments that we have referred to earlier in my testimony that require prosecutors to ensure and to have confidence in the truth of evidence before bringing or maintaining charges. And then I explain – go on to explain further that more than any other party in the criminal justice system, prosecutors – well, I suppose the police, investigating officer would be – I should include that –  
10 exclude, actually. It should be the investigators and prosecutors have superior knowledge of the facts that are used to convict an accused or used during a trial, and therefore, they have the unique ability to present these facts to a Court. I go on in paragraph 100 to say:



“A prosecutor may impede the truth-finding process in several ways, for example, by misleading and misrepresenting facts, subverting the truth, or by making false statements or presenting false evidence.”

20 **CHAIRPERSON**: Might I interpose, counsel, with regard to paragraph 95, that sentence before footnote 47, the prosecutor possesses the greatest power to take away the freedom of a person. I think that should immediately be qualified by what you state at 99. The prosecutor also preserves or protects the innocent. Am I right?

**ADV BATOHI:** That is absolutely correct, Chairperson.

**CHAIRPERSON:** Just as your role here, Advocate Mohlamonyane, your task is to present all the facts favourable to NPA ...[intervenes]

**MR MOHLAMONYANE SC:** NPA or not.

**CHAIRPERSON:** ...or the other way around.

**MR MOHLAMONYANE SC:** Indeed, I agree. You dealt with what is contained in 100. You tie it with 101 because it is indeed the duty of a prosecutor to assist the Court to  
10 ascertain the truth, not so.

**ADV BATOHI:** Yes, I agree.

**MR MOHLAMONYANE SC:** And in 102, paragraph 102, you are saying:

“Where prosecution is used for ulterior purposes, this breaches the principle of legality.”

Can you expand a little bit about what that entails, the principle of legality?

**ADV BATOHI:** Yes, certainly. I think, firstly, before I go  
20 there, is that on the comment made by the Chairperson about a prosecutor possessing the greatest power to take away the freedom of a person, as I had mentioned, Chairperson, that that is the case, but the function of a prosecutor is to ensure a fair trial and to ensure that justice is actually seen to be done. So it is not a contradiction as such. It is explaining

that in as much as we have this power to take away the freedom of a person, it has got to be exercised within the confines of our role of ensuring that truth and justice prevails at the end of the day.

**CHAIRPERSON:** I understand that as a lawyer, but somebody out there who is watching this proceedings will not understand what juries and lawyers understand. When you put that statement in a public space, as you do, they will think that that is just your task, to make sure or to take away that  
10 freedom, the enshrined freedom in the Constitution. So as you qualify that in paragraph 99, I just wanted to make sure that that paragraph 95 should be read and understood in line with what you say, correctly so, in paragraph 99.

**ADV BATOHI:** Understood, Chairperson.

**CHAIRPERSON:** Remember, we are not talking to ourselves here. We are talking to the nation and people who may not necessarily understand the legalese and the complexities of the space in which you operate.

**ADV BATOHI:** Understood, Chairperson, thank you. So  
20 getting back to, sorry, counsel, what was the...

**MR MOHLAMONYANE SC:** The principle of legality.

**ADV BATOHI:** Yes, the paragraph.

**MR MOHLAMONYANE SC:** Paragraph 102 on page 42.

**ADV BATOHI:** Yes, so if –

“Prosecutors have a power that is given to

them in terms of the Constitution and in terms of the NPA Act, and in the event that this power is used, is not used for the purposes that it was intended, then it would indeed breach the principle of legality.”

So it emphasises the fact that these powers that we have must be used for the purpose that it has been, for the intended purpose as set out in the Constitution and the NPA Act.

- 10 **MR MOHLAMONYANE SC:** Let us now move over to paragraph 103, where you deal with an accused rights in terms of section 35(3), the right to a fair trial, where you say:
- “The fundamental purpose of the right to a fair trial, as already decided in one judgement in the Constitutional Court, is to ensure adequately that innocent people are not wrongly convicted because of the adverse effects which a wrong conviction has on the liberty and dignity and possibly
- 20 other interests of the accused.”

Now, in practice, such possibilities exist, if any, explain them. Possibilities that innocent people may be sentenced to jail.

**ADV BATOHI:** So, let me say that if a prosecutor acts with ulterior purposes, it is possible that innocent people may be sent to jail. There have been one or two cases where people

that have been convicted have later on, years later, perhaps because of new evidence that emerges, it has been found that perhaps they were wrongly convicted. But those are extremely rare instances, I know of less than a handful of those cases. But every single case where an innocent person is convicted is a case too many. It should never happen. And so, as prosecutors, we need to ensure that when we do bring cases, it must be done, as I state in paragraph 103, always in an even-handed, open manner, honest manner, always  
10 recognising the right of an accused to a fair trial.

As prosecutors, we should hold that right to a fair trial as sacrosanct, whatever it means. But in particular, the rights of the accused must be protected, but equally. And I hasten to add, because it is often in the context of a fair trial, one forgets or perhaps relegates the rights of victims to a fair trial to further down the ladder. And so one needs to recognise the rights of all those, the accused, the victim, to ensure that there is a fair trial. And as prosecutors, we are required to, if we have evidence favourable to an accused,  
20 we are required to present it to a Court, so that we do not have any adverse effects or the potential of a person wrongly convicted. So these are very, very important principles of a fair trial.

**MR MOHLAMONYANE SC:** Thank you, Advocate Batohi. We can now move over to paragraph F or section F of your

affidavit, where you deal with the independence of the NPA on page 43, the impartiality of its officials and the implications of these imperatives for the administration of justice. Now, in the majority of these paragraphs dealing with this topic of the independence of the NPA, the prosecutorial independence and the independence of prosecutors permeates almost all the paragraphs contained in this section.

**ADV BATOHI**: That is correct.

10 **MR MOHLAMONYANE SC**: Now, let us take 104 and read it with 105. Explain what you refer to as functional independence.

**ADV BATOHI**: In terms of the Constitution and the NPA Act, the functional independence which I will explain and the impartiality of members of the NPA in terms of carrying out their duties are provided for. And the functional independence refers or relates to the NPA's ability to conduct its work without any form of interference, hindrance, obstruction, or coercion. And so if there is any kind of  
20 hindrance, obstruction, et cetera, that will be impeding on the NPA's functional independence and its ability to perform its functions independently. And the Code of Conduct, well, 105 deals with the UN guidelines on the role of prosecutors, but these are incorporated into the Code of Conduct of the NPA, which is dealt with in paragraph 106, which again talks to the

independent exercise of the functions and powers in accordance with the prosecution policy, the prosecution policy directives, and be free from political, public, and judicial interference.

Paragraph C of the Code of Conduct further deals with the issue of prosecutors performing their duties without fear, favour, or prejudice and carrying out their functions impartially. And it sets out various requirements which fleshes out what this impartiality entails. And for present purposes, I will deal with some aspects of that. It provides that, well, item C of the Code of Conduct, C, subparagraph C, provides that:

“Prosecutors in acting impartially should take into consideration the public interest as distinct from media or partisan interests and concerns, however vociferously these may be presented.”

Item C, sub F, stipulates that:

“Prosecutors must act with objectivity and pay due attention to the constitutional right to equality.”

Item C, sub G, provides that:

“Prosecutors must take into account all relevant circumstances of a case at hand and ensure that reasonable enquiries...”

Reasonable enquiries;

“...are made about evidence, irrespective of whether these enquiries are to the advantage or disadvantage of the alleged offender.”

And sub H stipulates that:

“Prosecutors must be sensitive to the needs of victims and do justice between the victim, the accused, and the community according to the law and the dictates of fairness.”

10

And sub I provides that prosecutors, as we mentioned earlier, the Code of Conduct states:

“...must assist the Court to arrive at a just verdict and in the event of conviction an appropriate sentence based on the evidence presented.”

**MR MOHLAMONYANE SC:** May I take you a little backwards to paragraph 104 where you mentioned that?

**CHAIRPERSON:** Might I Judge, just for clarity for anybody who is listening, that we are all lawyers. Prosecutors, they act, advocates, some are attorneys, they are lawyers, but in terms of the law, they are public servants. Am I correct?

20

**MR MOHLAMONYANE SC:** You are, Madam Chair. You are correct.

**CHAIRPERSON:** They are disciplined in terms of the MMS

or they are guided by the principles of public service.

**MR MOHLAMONYANE SC:** It is correct, Madam Chair, because even the President has indicated in the terms of reference that we should take, we should have regard to the provisions of the SMEE.

**CHAIRPERSON:** It may be important, therefore, for anybody who does not understand this dichotomy, to clearly emphasise this independence, because when you are a public servant, it means you fall within the head of a particular  
10 department, which in this case is the Ministry for Justice and Constitutional Development. But that does not necessarily mean that in the execution of your duties as the public servant, you can be given instructions by the Executive.

It is a matter that should be made clearer out there in the public space. For those people who understand that prosecutors are public servants, they can be told by anybody in the executive position what to do or what not to do. The answer may not be for now, counsel. I do not want to take you by surprise, but I thought that some of these aspects, for  
20 the people who do not understand, may need to be clarified by ...[intervenes]

**MR MOHLAMONYANE SC:** DPP, yes.

**ADV BATOHI:** ...the Advocate Batohi, as she testifies.

**MR MOHLAMONYANE SC:** I am inclined to hasten to ask her at this particular moment, while she is explaining the

independence of a prosecutor and the independence of the prosecutorial, the prosecutorial independence and the independence of the NPA, she can then explain that independence of a prosecutor vis-à-vis the prosecutor's responsibility towards the Minister of Justice. But that is contained, I am advised by my junior here, but it is actually contained in section 112, paragraph 112, I beg your pardon. Advocate Batohi, in the Act, the reporting duties, your reporting duties as an NDPP to the Minister is contained here, 10 apart from your accountability to Parliament.

Section 33 deals with the Minister's final responsibility over prosecuting authority. We would request you to start dealing with this, start with the Minister's final, section 33, where it deals with the Minister's final responsibility over prosecuting authority and the prosecutor's responsibility towards the Minister, and whether the Minister can give direction, prosecutorial directions to the NPA or its prosecutors. Has that perhaps been properly articulated? Did I articulate it properly for you to be able to?

20 **ADV BATOHI**: Yes, thank you. I follow.

**MR MOHLAMONYANE SC**: Thank you.

**CHAIRPERSON**: Which paragraph in the affidavit are you directing her to?

**MR MOHLAMONYANE SC**: To paragraph 112, yes.

**CHAIRPERSON**: Thank you, counsel.

**MR MOHLAMONYANE SC:** You may proceed, Advocate Batohi.

**ADV BATOHI:** Thank you very much. Thank you, Chairperson. Chairperson, if I may, before we go to my affidavit, we go to section 33 of the NPA Act, which sets out the Minister's final responsibility over the prosecuting authority. Chairperson, the NPA Act, section 33, states, and should I read out section 33, given that it deals with the Minister's final responsibility, and then I can answer in that  
10 context. If I may, Chairperson, counsel.

**MR MOHLAMONYANE SC:** Please read section 33, the whole of it, into the record. I think that will enable you to. Section 33, 1 and 2.

**ADV BATOHI:** Yes, so section 33(1) states:

“The Minister shall, for purposes of section 179 of the Constitution, this Act, or any other law concerning the prosecuting authority, exercise final responsibility over the prosecuting authority in accordance with  
20 the provisions of this Act.”

Subsection 2:

“To enable the Minister to exercise his or her final responsibility over the prosecuting authority, as contemplated in section 179 of the Constitution, the National Director shall,

at the request of the Minister:

- 10
- a. Furnish the Minister with information or a report with regard to any case, matter, or subject dealt with by the National Director or Director in the exercise of their powers, the carrying out of their duties and the performance of their functions.
  - b. Provide the Minister with reasons for any decision taken by a Director in the exercise of his or her powers, the carrying out of his or her duties, or the performance of his or her functions.
  - c. Furnish the Minister with information with regard to the prosecution policy referred to in section 2(1)(a).
  - d. Furnish the Minister with information with regard to policy directives referred to in section 21(1)(b).
  - 20 e. Submit reports contemplated in section 34 to the Minister; and
  - f. Arrange meetings between the Minister and members of the prosecuting authority.”

So the matter of the Minister's final responsibility over the

NPA has been the subject of much discussion, and it was also dealt with in the Zondo Commission. And in terms of, in line with what section 33 states, and to answer your question, Chairperson, yes, it is important that it is understood what the Minister's final responsibility means in the context of the independent mandate of the NPA as set out in the Constitution and in the Act. It is certainly not akin to, the National Prosecuting Authority is a constitutional entity that resides within the Department of Justice, but it is a  
10 constitutional entity unlike the rest of the Department over which the Minister may direct, manage, or control.

I do not want to use incorrect words, but as you had indicated, Chairperson, the Minister can inform or tell people within the Department what needs to be done. But with regard to the NPA, because of its independent constitutional mandate, the Minister's final responsibility is set out, is limited to what is set out in paragraph 33. And in as much as the Minister can ask for, for example, a report with regard to any case, can ask for information about the reasons for a  
20 decision that has been taken, the Minister cannot tell or dictate to the prosecuting authority what prosecutorial decisions need to be taken.

And that is the difference between the Minister's oversight or the role of the Minister insofar as his or her final responsibility is concerned vis-à-vis the role of a Minister vis-

à-vis in respect of the Department. So the Act, and I deal with it, if counsel can guide me, you referred me to a particular paragraph.

**MR MOHLAMONYANE SC:** Paragraph 112, Advocate Batohi.

**ADV BATOHI:** 112.

**MR MOHLAMONYANE SC:** On page 46. And whilst you are doing that, allude also to the fact that prosecutors, including DPPs, are public servants and are subject to the SMMS.

**ADV BATOHI:** I do need to clarify that, actually. I am glad  
10 you raised that and reminded me, sorry, reminded me of it.

**MR MOHLAMONYANE SC:** Yes.

**ADV BATOHI:** Yes, prosecutors, we are all public servants. We serve the public. But I want to emphasise that the members of the prosecuting authority are appointed in terms of the National Prosecuting Authority Act, and they are not appointed in terms of the Public Service Act. So there is a distinction to be drawn in terms of the applicability of certain instruments in respect of public servants appointed in terms of the PSA, the Public Service Act, and the National  
20 Prosecuting Authority Act. So there is a distinction. I do not have all of it, but it is important to understand that the Public Service Act, the NPA staff appointed in terms of the NPA Act.

**MR MOHLAMONYANE SC:** And Advocate Batohi, pardon me to intercept you. As the NDPP and ADPP, section 6 DPP, are you subjected to the same disciplinary processes in the same

way as an ordinary public servant would be subjected to, in the event it occurs?

**ADV BATOHI**: The presidential appointments in the NPA are not subject. They are subject to this process, that is a President's process to deal with, to address issues relating to presidential appointments. With regard to the non-presidential appointments, the disciplinary processes are guided by the public service disciplinary processes.

**MR MOHLAMONYANE SC**: Within the structure of the NDP,  
10 the ordinary, or non-presidential appointments?

**ADV BATOHI**: Yes, in the NPA.

**MR MOHLAMONYANE SC**: Thank you. Proceed.

**ADV BATOHI**: So the, you referred me to paragraph 112. The fundamental, the two principles borne out by the legislative framework. Chairperson, I should inform the enquiry that 112 also refers to the Mokgoro Enquiry. So I think we may be, I am in your hands, Chairperson. It does deal with two fundamental principles. But we could move on to other paragraphs.

20 **MR MOHLAMONYANE SC**: You do not necessarily have to deal with what Mokgoro has dealt with, Mokgoro Enquiry has dealt with.

**ADV BATOHI**: Sure.

**CHAIRPERSON**: In any event, I think it is just a regurgitation of those principles on autonomy.

**ADV BATOHI:** That is correct. It is, Chairperson. Perhaps I can highlight, Chairperson, that the importance of independence of a prosecutor being jealously guarded by prosecutors. As I mentioned earlier, we should withstand, you know, the possibility that various sectors, whether it is from the Executive, whether it is from the business sector, whether it is civil society, whether it is the media, there can be all amounts of pressure from external actors on a prosecuting authority.

10           And as the NPA, we need to make sure that we are not, our independence demands that we are not influenced by any of those factors, that the only thing that guides and determines our decisions are the evidence in the docket, the prosecution policy and directives, and that we act in terms of the Code of Conduct. So this is really highlighted. And as I mentioned earlier, an obstruction to the work of the NPA is in fact proscribed by the NPA Act. I think it is section 41 that makes it an offence to interfere in the work of the NPA.

20           And that, the fact that it is an offence to interfere in the work of the NPA, demonstrates the importance of the constitutional guarantee of independence to ensure that the NPA is functionally independent, is able to do its work without undue influence from any sector. Chairperson.

**MR MOHLAMONYANE SC:** Before you proceed any further, whilst you are on the, on offences and penalties, does it

happen in practice that, in your practices as a prosecutor or as a National Director of Public Prosecutions, that you come across hindrances that can impede your work?

**ADV BATOHI:** [No answer]

**MR MOHLAMONYANE SC:** Hindrances or interferences?

**ADV BATOHI:** Yes, I understand, I understand the question. Let me say that prosecuting in South Africa at this time is a very complicated and challenging job. We have to do our job, we have to ensure that our constitutional obligations are, that  
10 we comply, but the fact that people want to try to influence the work of the NPA, it happens. And it can come from various sources, but we have to, for example, even in the media, there is reports, there is, you know, sometimes you have had, and I must hasten to add that this must not be seen, the media is an important stakeholder and, you know, the investigative journalists have done incredible work.

But sometimes the pressure or what emerges in the media, I had thought could amount to an obstruction of justice, where for example statements, you know, come into  
20 the hands of journalists and these are published and detailed analysis of cases, et cetera, to the point where I have thought that this could amount to an obstruction in the work of the NPA. But it is, as I said, the media is an important stakeholder and it has an important job to do, and they have done incredible work in investigative journalism.

But I think we all need to be responsible, you know, in terms of how we conduct our functions in terms of strengthening the rule of law and not weakening it.

**CHAIRPERSON:** Might I interpose, counsel? Sometimes less said, much better.

**ADV BATOHI:** I agree, Chairperson.

**CHAIRPERSON:** Counsel, this is a delicate space, where we may say things which we do not want or are not intended to be said. What counsel, Advocate Batohi is saying about  
10 the alleged interferences or influences by certain institutions, so I suggest that you do not tread, not go there. Let us not go there. It does not bear much relevant or any, at least for the purpose of this case. Unless, of course, I am wrong. But what I am saying, sometimes less said, much better. Let us focus on what is relevant, because we may emerge out of here having tripped on the toes of other people unintentionally.

**MR MOHLAMONYANE SC:** I take it.

**ADV BATOHI:** Chairperson, if I may, I thank you for that. I  
20 do want to say, though, that there will be allegations of interference in these matters and improper influence, and so it is important for the context of this case. Evidence will be, at a later stage, led in that regard.

**CHAIRPERSON:** By the media?

**ADV BATOHI:** No, Chairperson, by the evidence leader.

**CHAIRPERSON**: No, no, no. You were mentioning instances of influences and interferences, and you used the media as an example.

**ADV BATOHI**: As an example, Chairperson. That is correct. I am not referring to ...[intervenes]

**CHAIRPERSON**: That is why I am saying to you, less said, much better. If it is not relevant for this case, let us not get there.

**ADV BATOHI**: Certainly. As far as the media is concerned,  
10 it is not relevant for these purposes. Thank you, Chairperson.

**MR MOHLAMONYANE SC**: Let us now proceed, Advocate Batohi, to the next issue. Go to page 48, paragraph 116. Are you there?

**ADV BATOHI**: I am.

**MR MOHLAMONYANE SC**: You deal with the status and role of prosecutors as contained in the criminal justice handbook series. You do not have to go into any detail about that. But I need to refer you to what is quoted there regarding  
20 functional prosecutorial independence. And it says:

“Prosecutorial independence refers to individuals as well as institutions, and one such institution is the NPA.”

Is that correct?

**ADV BATOHI**: That is correct.

**MR MOHLAMONYANE SC:** I think up to this stage, you have dealt more than enough with the – you gave an extensive explanation about prosecutorial independence. Let us move forward. Because all these paragraphs, most of them contain – we are dealing with prosecutorial independence up to paragraph 126.

**ADV BATOHI:** Yes, and it is set out in the Code of Conduct...

**MR MOHLAMONYANE SC:** It is set out fully in the Code of Conduct.

10 **ADV BATOHI:** That is correct.

**MR MOHLAMONYANE SC:** This then brings us to page 54, where the Mokgoro Enquiry is dealt with. I would suggest that we leave that. Paragraphs 128, 129.

**CHAIRPERSON:** I might just say for people, everyone to understand that basically these paragraphs tend to deal, subject to correction of course, seem to deal with the very autonomy that we have been talking about.

**MR MOHLAMONYANE SC:** That is so.

**CHAIRPERSON:** That is the substance of those paragraphs.

20 **MR MOHLAMONYANE SC:** Yes.

**CHAIRPERSON:** Am I right, counsel?

**ADV BATOHI:** That is correct, Chairperson. And if I may emphasise paragraph 124, where the Constitutional Court has emphasised the importance of the NPA in the administration of justice, and then again referring to the

constitutional guarantee of independence of the prosecuting authority, requiring that we, of course, exercise our functions without fear, favour, or prejudice, but the Court goes on to say that:

10           “The reason for this is not difficult to explain. With a malleable, corrupt, or dysfunctional prosecuting authority, many criminals, especially those holding positions of influence, will rarely, if ever, answer for their criminal deeds.”

Thank you, Chairperson.

**MR MOHLAMONYANE SC:** Let us then move over to page 58, where you deal with reasons for referring a complaint regarding Advocate Chauke to the President within the purview of section 12(6), read with section 14(3) of the NPA Act. Maybe, as a start, remind everyone else as to when you were appointed National Director of Public Prosecutions.

20           **ADV BATOHI:** I was appointed on – I took office, my appointment was announced in December, I took office from the 1st of February 2019.

**MR MOHLAMONYANE SC:** And you deal with that in paragraph 135 of your affidavit.

**ADV BATOHI:** That is correct. I should, perhaps for purpose of the record, I may have mentioned it, mention that I also served as a DPP in KwaZulu-Natal from 2002 to 2009. That

was for about seven years before I went to The Hague, to the International Criminal Court, and then returned in 2019 to take up the current position.

**CHAIRPERSON:** I beg your pardon, 2002 to 2009?

**ADV BATOHI:** That is correct, the DPP of KwaZulu-Natal.

**CHAIRPERSON:** DPP KZN.

**ADV BATOHI:** That is correct, Chairperson.

**CHAIRPERSON:** As a prosecutor or as a Director?

**ADV BATOHI:** As the DPP, as a Director of Public  
10 Prosecutions.

**CHAIRPERSON:** As a DPP.

**ADV BATOHI:** Ja, the same position that Advocate Chauke currently holds.

**MR MOHLAMONYANE SC:** Did you also prosecute in the lower Courts prior to that?

**ADV BATOHI:** Yes, I started prosecuting in 1986 and prosecuted in the lower Courts, dealing with the most – the least serious offences, and then proceeded to the High Court in 1992 in Durban, where I prosecuted in the High Court from  
20 dealing with murder cases, rapes, robberies, the serious cases that are dealt with in High Courts, and then was appointed a Deputy DPP in, I think it was 1997.

And then prior to that, Chairperson, for the purpose of record perhaps, I was appointed a Leader of Evidence in the – well, not Leader of Evidence. I was appointed as one

of two prosecutors in the unit that was set up by President Mandela to investigate atrocities committed during the apartheid era in 1995 to 1997, I was involved in that.

Became a Deputy DPP in 1998, I became the Head of Scorpions, the Directorate of Special Operations in, I think it was around 1999, I must check these dates, and then became the Director of Public Prosecutions in KwaZulu-Natal in 2000 until 2009 when I left to The Hague and then returned in 2019. Thank you, Chairperson.

10 **CHAIRPERSON:** Counsel, all of us, our profiles are in a public space. I know that her profile may be in a public space. Is it not possible to get her CV and present it to us?

**MR MOHLAMONYANE SC:** That may be possible.

**CHAIRPERSON:** With all the milestones that she has achieved, may we have copies of her profile?

**MR MOHLAMONYANE SC:** I will arrange for that, Madam Chair.

**CHAIRPERSON:** Will it be possible, madam?

**ADV BATOHI:** Yes, certainly, Chairperson.

20 **CHAIRPERSON:** Thank you. [Indistinct – 1:10:08]..., as my sister was just bringing to my attention, the first few introduction words, you were a prosecutor since December 1985.

**ADV BATOHI:** That is correct, Chairperson.

**CHAIRPERSON:** In KZN.

**ADV BATOHI:** That is correct.

**CHAIRPERSON:** I beg your pardon. I am being told that I am doing the wrong thing here. The introductory word to paragraph 133, you were a prosecutor since December 1985 as a prosecutor.

**ADV BATOHI:** That is correct, Chairperson.

**CHAIRPERSON:** In KZN.

**ADV BATOHI:** That is so.

**CHAIRPERSON:** Thank you. I beg your pardon, gentlemen.

10 **MR MOHLAMONYANE SC:** Madam Chair, may I at this stage ask as to what time are we expected to adjourn for lunch recess? It is almost half past one.

**CHAIRPERSON:** Because we had breakfast late, we could adjourn at two o'clock.

**MR MOHLAMONYANE SC:** That is in order.

**CHAIRPERSON:** Unless, of course, if someone would like to go to the clinic, you can let me know. For the clinic, we can take a five-minute break.

**MR MOHLAMONYANE SC:** To stretch our legs as well.

20 **CHAIRPERSON:** Yes.

**MR MOHLAMONYANE SC:** May we take a five-minute break?

**CHAIRPERSON:** Yes, sir. Yes, thank you, Advocate Mohlamonyane, we will take a very short break to go and take medicine. Thank you.

**ENQUIRY ADJOURS**

**ENQUIRY RESUMES**

**CHAIRPERSON:** Good afternoon, Advocate Batohi. I am sorry we got delayed a bit. There were some technical challenges that we were resolving with the IT people. Hence, we started a little bit late and ...[indistinct]. We begin, Counsel.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. Advocate Batohi, when we adjourned, you were dealing with  
10 paragraph 133, and you also give a short resume of yourself. And at the later stage, it will be made available in whatever form to the Panel and to everybody else. Now, let us begin by going to paragraph 135, which will lead us to your reasons for referring the matter to the Office of the President.

**CHAIRPERSON:** Proceed.

**ADV MOHLAMONYANE SC:** Proceed there.

**CHAIRPERSON:** The paragraph?

**ADV MOHLAMONYANE SC:** We are on paragraph 135. Page 58, Advocate Batohi.

20 **ADV BATOHI:** I am there.

**ADV MOHLAMONYANE SC:** When you arrived, when you took up office, let me rephrase, you discovered that there were certain matters, serious matters, that were affecting not only the integrity of the NPA, but also its functioning, how it functioned. Can you elaborate on that?

**ADV BATOHI:** Yes, thank you, Counsel. Upon taking office, well, even before I took office, there had been, for a number of years prior to that, allegations, and much in the public space, about allegations of capture of the NPA in the context of State Capture. When I took office, I discovered that there was a lot – this credibility of the NPA had been seriously dented because of these allegations.

There were serious allegations against members of the leadership of the NPA, including my predecessor,  
10 Advocate Abrahams, Advocate Jiba, Advocate Mrwebi, who served as National Director, Acting National Director, Deputy National Director, and Special Director of Public Prosecutions. That would apply to Advocate Mrwebi in the NPA.

And as a result of these allegations, the President had instituted an enquiry into the fitness to hold office of Advocates Jiba and Mrwebi, which was headed by Justice Mokgoro. In fact, when I took office in February of 2019, the Mokgoro Enquiry had sat, but had not rendered its report. Its  
20 report was rendered on the 1<sup>st</sup> of April in 2019. The allegations against Advocate Jiba related to, and I should, first before I say anything further, Chairperson, I should say that I found this when I came to the NPA. I was not in the NPA at the time. I do not have personal knowledge of this. I think I do mention it later in my affidavit, but I have – what I

will testify about are issues that I have gleaned from evidence and from other material that I have had access to.

**CHAIRPERSON:** Like you said in your opening address, when you were asked by Counsel that some of the facts pertaining to this matter, you do not necessarily have personal knowledge thereof.

**ADV BATOHI:** That is correct, Chairperson. So there were many allegations, and they included the matter of Major General Johan Booysen, who was the former head of the  
10 Directorate for Priority Crimes Investigation, known as the DPCI, or colloquially referred to as the Hawks in KwaZulu-Natal, and that those allegations were also other subject of this current enquiry.

So the allegations against Advocate Chauke in respect of the Booysen matter relate in large measure to the same issues that were in the Mokgoro, that the Mokgoro Enquiry was looking into. The allegations against Advocate Mrwebi in the Mokgoro Enquiry related to his decision to withdraw charges against Lieutenant General Richard Mdluli,  
20 who was the Head or the former Head of Crime Intelligence.

This present enquiry also relates to a decision to withdraw charges against Mdluli, I would refer to as Mdluli. However, the decision taken by Advocate Chauke to withdraw the criminal charges against Mdluli relate to different charges. The ones taken by Advocate Mrwebi related to fraud

and other related charges. This one relates to murder and other charges that I will deal with later.

The Mokgoro Enquiry concluded that in view of the totality of evidence, I paraphrase, Jiba and Mrwebi were found not fit and proper to hold respective offices. Separately at the time when I took office, the Judicial Commission of Enquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State, known as the State Capture Commission or the  
10 Zondo Commission, which was established on the 9<sup>th</sup> of February 2019, sorry, 2018, and chaired by the then Deputy Chief Justice Raymond Zondo had been enquiring into allegations.

Part of the enquiry of the Zondo Commission, part of the investigations at the time, I am aware, also related to allegations against various NPA officials and their involvement in the prosecution of Booyesen and also with regard to the withdrawal of the charges against Mdluli. We are on page, paragraph 140. Should I continue?

20 **ADV MOHLAMONYANE SC:** Continue, Advocate Batohi.

**ADV BATOHI:** From paragraph 140, Chairperson, the essence of the case against, well, the essence of the Booyesen matter is set out. As I say, it is what I have gleaned from evidence and other material. In early 2020, Advocate Jiba, in her capacity as Acting National Director

...[intervenes].

**ADV MOHLAMONYANE SC:** I beg your pardon? You must have misread it. It is 2012.

**ADV BATOHI:** I beg your pardon. Thank you, Counsel. In early 2012, in her capacity as Acting National Director, Jiba decided to set up a team of prosecutors from Gauteng and North West to conduct the prosecution of police officials in KwaZulu-Natal. These police officials were in the main from the Serious and Violent Crimes Unit in KZN. And I will refer  
10 to them as sometimes, perhaps, the SVC Unit. Advocate Chauke was the DPP of South Gauteng at the time ...[intervenes].

**CHAIRPERSON:** Could I interrupt you, Advocate Batohi? Advocate Mohlamonyane, I will still go back to that point of dealing with these bundles behind us. You just referred to the Mokgoro Commission of Enquiry. I know that we have bundles that we received, or the Enquiry received from the NPA. And of the bundles, the Mokgoro bundles constitute these two bundles. And as she agreed yesterday, we should  
20 be in a position to mark these bundles. Remember, when you finish, you must send the entire record to the President and it must be properly bundled, collated, and paginated. May we, and please remind me. I should not be reminding you again and again. May we refer to this bundle as identified in the index? I think it is called MC. MC, we should be Mokgoro

Commission.

**ADV MOHLAMONYANE SC:** That is correct, Chair.

**CHAIRPERSON:** And we will call it MC1 and MC2. MC1 is from page 1 to page 00556. I beg your pardon, it is MC1 from page 1 to 275. And then MC2 will be from 276 to 556. If you like, you can refer to it as exhibit, as you did with the former exhibit, EXHIBIT MC2. And the first one, EXHIBIT MC1. Yes, thank you, Counsel. I should remind you of that. When you touch on the evidence in respect of which bundles have been  
10 filed of record, please remember your junior counsel and senior counsel will also remember that to remind you, or to remind us so that we can do the right thing. You may proceed, sir.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. Advocate Batohi, we are on paragraph 141.

**ADV BATOHI:** Yes, that is correct, 142. Sorry, 142.

**ADV MOHLAMONYANE SC:** You got to 142, yes.

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** Yes.

20 **ADV BATOHI:** If I may proceed?

**ADV MOHLAMONYANE SC:** Yes, you may proceed.

**ADV BATOHI:** So Advocate Chauke was the DPP of South Gauteng at the time. And for all intents and purposes, he was appointed as the leader of the prosecution team and unlawfully acted as the *de facto* DPP in this regard as his

conduct will demonstrate. The allegations against Advocate Chauke in essence relate to the manner in which he and other prosecutors dealt with the prosecution of Booysen and other members of the Serious and Violent Crimes Unit. And ...[intervenes].

**CHAIRPERSON**: I am sorry, again, I just want us to do things right. Because the heading on page 59 in bold letters is the Booysen's matter. That will then require us to mark the bundles referring to this aspect of the case. And we have  
10 about 11 bundles in respect of ...[intervenes].

**ADV MOHLAMONYANE SC**: The Booysen matter.

**CHAIRPERSON**: The Booysen's matter. I will ask my clerk to come over to help me. We have 11 bundles in respect of the Booysen's matter. I beg your pardon, I see you are conferring. My apologies, I see you are conferring with the ...[intervenes].

**ADV MOHLAMONYANE SC**: My apologies.

**CHAIRPERSON**: No, no, that is okay. You can take instructions or confer with your colleague.

20 **ADV MOHLAMONYANE SC**: Thank you, Madam Chair. Thank you, Madam Chair, for the opportunity.

**CHAIRPERSON**: Thank you. Are you able to resolve something with your junior?

**ADV MOHLAMONYANE SC**: Yes, we are able to resolve something because very soon I was going to refer Advocate

Batohi to a bundle which is not the Mokgoro Commission Bundle.

**CHAIRPERSON:** You are not dealing with the Booyesen's Bundle?

**ADV MOHLAMONYANE SC:** Yes, but earlier on we referred to the Mokgoro Commission Bundle and there is also a Booyesen Bundle which you say is about 11, you are having about 11 volumes. But then in the course of her evidence, I was going in a moment to refer her to Legal Opinions Bundle,  
10 to a page in the Legal Opinions Bundle and I was finding out from her as to whether is it not an opportune moment before I refer Advocate Batohi to that bundle to then have it appropriately marked.

**CHAIRPERSON:** We will mark it when you come to it.

**ADV MOHLAMONYANE SC:** I am comfortable with that.

**CHAIRPERSON:** You see, now we are at Booyesen's matter at page 59, starting at page 60, that heading. So let us do it sequentially like that so that we do not confuse. When you reach the Legal Opinions Bundle it is written LO numbers, we  
20 will name it. Just remember that. So we are now at the Booyesen's matter, 11 bundles. We will name them B1 to the last number, B1 to B11. And I am sure the team for Advocate Chauke will remember the naming of those bundles because apparently there is still going to be more bundles coming. Otherwise we will all be confused here with the documents

that we have been referred to. Will that make it easier for all of us to follow? In accordance with the index.

**ADV HULLEY SC:** Thank you, Judge. It should be fine. I should note though that on the electronic version we only have eight and not 11 volumes from the Booyesen's matter.

**CHAIRPERSON:** Yes, that may be the case, but you can just confer with the clerk about the completeness of your volumes.

**ADV HULLEY SC:** Thank you, Judge.

**CHAIRPERSON:** Okay. It might just have happened with  
10 the binding, I do not know, but do check with our clerks.

**ADV HULLEY SC:** We will do so. Thank you, Judge.

**CHAIRPERSON:** Yes, thank you. We have marked the bundles accordingly.

**ADV MOHLAMONYANE SC:** And what about the pages?

**CHAIRPERSON:** The pages are in the bundle themselves. They are marked B number 001, 00 something. It is just the labelling as we spoke yesterday, that we are giving the bundles names to identify them. The contents are properly indexed in the document. That is page 1, page blah, blah,  
20 blah up to the end of the volume.

**ADV MOHLAMONYANE SC:** Ja, we will later find out as to which one is B1 and which one is B2.

**CHAIRPERSON:** Yes. Well, those are your documents. So we got them from the NPA. So we just did what we did to make our work easier. You may proceed.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. Let us go back, Advocate Batohi. Quickly tie 142 and 143. You were explaining that Booysen was a member of the Serious and Violent Crimes Unit. May you proceed?

**ADV BATOHI:** Yes, so the allegations against Advocate Chauke relate in essence to the manner in which he and other prosecutors dealt with this Booysen prosecution. Well, the prosecution, I am referring to it as the Booysen prosecution, but it is prosecution of Booysen and other members of the  
10 Serious and Violent Crimes Unit and their conduct in this process leading up to the two separate applications that were brought in the High Court relating to these racketeering certificates, and I will deal with these applications in a moment.

I will deal now with the essence of Advocate Chauke's conduct. On 17 August 2012, Advocate Jiba issued two racketeering certificates for prosecution of Booysen and members of the Serious and Violent Crimes Unit. Before I proceed any further, Chairperson, maybe I should explain  
20 that racketeering charges are brought in terms of the Prevention of Organised Crime Act and in terms of the Act, it is the National Director that must authorise prosecutions in respect of racketeering charges.

So, Jiba would have issued these certificates in her capacity as the Acting National Director at the time and these

certificates related to contraventions of section 2(1)(e) and 2(1)(f) of the Prevention of Organised Crime Act 121 of 1998 which is referred to as POCA, P-O-C-A. Chairperson, after these certificates were issued to proceed by the acting National Director to proceed on these racketeering charges, Booyesen instituted an application to review these charges and have them set aside, to review and set aside the racketeering certificates that were issued by the Acting National Director.

10 My understanding is that this was in early 2013, but we can easily verify that. Booyesen alleged in his review application that after the receipt of the indictment, he requested Jiba to make available all the documents on which the State intended to rely. In compliance as a result of this, 23 dockets were made available to him, and I should ...[intervenes].

**CHAIRPERSON:** Sorry to interpose. Is it deliberate that Advocate Jiba is referred to as Jiba while, for example, Advocate Chauke is referred as Advocate Chauke or is it a  
20 typo, or?

**ADV BATOHI:** Chairperson, we refer to Advocate Chauke everywhere as Advocate and everyone else is referred to by just the surname.

**CHAIRPERSON:** By just the surname?

**ADV BATOHI:** We can – yes, that is correct.

**CHAIRPERSON:** So it is a common...

**ADV BATOHI:** Everyone else is just the surname, but Advocate Chauke, who is the subject of this enquiry, who is referred to as Advocate Chauke throughout.

**CHAIRPERSON:** Thank you.

**ADV BATOHI:** But we are happy to, of course, refer to him as Advocate Jiba.

**CHAIRPERSON:** No, no, I just wanted to understand the why behind.

10 **ADV BATOHI:** Thank you.

**CHAIRPERSON:** Why did – thank you.

**ADV BATOHI:** Thank you. So if I may continue, Chairperson.

**CHAIRPERSON:** All right.

**ADV BATOHI:** After Booyesen requested the documents on which the State intended to rely in the prosecution of the racketeering charges against him, he received 23 dockets. According to Booyesen, he said that he is mentioned in only two of these 23 dockets. In one of the two dockets, he is  
20 mentioned in the statements of two witnesses. Both these witnesses stated that he arrived on the scene of a shooting in a helicopter after the event. Perhaps I should also clarify for the Committee.

Chairperson, in all of these cases, the deceased persons were suspects in various investigations, and the

details of this evidence will be provided by other witnesses, but just to give the Committee a context of these charges. So Booyesen mentioned that in the one docket, the two witnesses stated he arrived on the scene after the shooting. And in the second docket, the witness states that also he noticed Booyesen on the scene after the incident had taken place, the shooting had taken place.

**CHAIRPERSON:** Sorry, sorry, Madam. I suppose we have not been able to peruse through the 11 bundles sufficiently.

10 We carefully went through them. I do not remember seeing some of the statements. And perhaps if you are aware, or if Counsel is aware that the two statements that you are referring to, that Mr Booyesen refers two of the 23 are in the bundles.

**ADV BATOHI:** Chairperson, I ...[intervenes].

**CHAIRPERSON:** Counsel?

**ADV BATOHI:** Cannot confirm, but perhaps Counsel can.

**ADV MOHLAMONYANE SC:** Madam Chair, may I take this opportunity to refer you to documents that we referred to  
20 earlier yesterday, SB1, which constituted ...[indistinct]. Ja, they are part of her affidavit, actually. They are annexures to her affidavit.

**CHAIRPERSON:** They are annexures to her affidavit?

**ADV MOHLAMONYANE SC:** Indeed, yes. And ...[intervenes].

**CHAIRPERSON:** [Indistinct].

**ADV MOHLAMONYANE SC:** Yes.

**CHAIRPERSON:** [Indistinct]... I think there are ...[indistinct].

**ADV MOHLAMONYANE SC:** Yes. On page 088 of your bundle, there is a statement marked SB1B088.

**CHAIRPERSON:** That is what ...[indistinct].

**ADV MOHLAMONYANE SC:** Yes, that statement makes reference to what she is testifying about.

10 **CHAIRPERSON:** So it would be helpful ...[indistinct] because we are now ...[indistinct].

**ADV MOHLAMONYANE SC:** Yes.

**CHAIRPERSON:** I beg your pardon. It will be helpful as she testifies and she is speaking to this document, that you go to those documents, Counsel, and then otherwise they are going to be hanging. We would not remember why they are here. It will make our tasks more difficult. So as she is testifying,

referring to each of those annexures, do take us there. Even if you do not deal specifically with the contents, but at least  
20 we should be able to note the relevance of the availability in this record.

**ADV MOHLAMONYANE SC:** Yes. May I confer a bit? Thank you, Madam Chair. Before we proceed any further, may I indicate to the Panel that the statement contained in Annexure SB1B marked as NJ2, which is on page 088

attached to her affidavit, it is a similar, in fact, the same statement that is contained in SB1D. And it is marked, it is Ayer's [?] statement, one Colonel Ayer, General Ayer. These statements were made on the same day, the 3<sup>rd</sup> of August 2012. And the signature of the first one appears on page 090, SB1B090. Now, the other one, it is NJ4, which appears on page 097, SB1D097.

**CHAIRPERSON:** I thought you are going to ...[indistinct].

**ADV MOHLAMONYANE SC:** No, no, I did not want to. What  
10 I want to explain for the moment ...[intervenes].

**CHAIRPERSON:** [Indistinct].

**ADV MOHLAMONYANE SC:** Yes, to the two, that they are the statement of one person.

**CHAIRPERSON:** Pardon, yes. NJ4?

**ADV MOHLAMONYANE SC:** NJ4, yes.

**CHAIRPERSON:** [Indistinct].

**ADV MOHLAMONYANE SC:** 097 up to NJ, SB1D102. The one was signed on the 31<sup>st</sup> of August 2012. That is the one that ends on page 102. And the first one, with a different  
20 font, they are deposed to by the same Colonel Ayer. SB1B088 has been signed on the 3<sup>rd</sup> of August 2012. That is what I wanted to bring to your attention, that they refer to one and the same person.

**CHAIRPERSON:** This is helpful, Counsel.

**ADV MOHLAMONYANE SC:** Indeed. Thank you, Madam

Chair.

**CHAIRPERSON:** You may proceed. You may proceed.

**ADV MOHLAMONYANE SC:** As and when you proceed, Advocate Batohi, and you are referring to statements, put yourself together, put your mind to the fact that these statements are available, and refer to them, which are marked NJ2, NJ2, NJ3, NJ4, and 5, which are SB1 in your bundle.

**CHAIRPERSON:** We have marked them, as you did  
10 yesterday, accordingly as NJ2, which is SB1B088. The next one is NJ4, SB1D097.

**ADV MOHLAMONYANE SC:** Yes. Are you in a position to proceed on that basis, that reference should be made to the statements?

**ADV BATOHI:** Yes, I am. If you just allow me to gather my thoughts, because the statements that we are referring to now, Chairperson, I have not identified which one in my statements relates to, for example, I say both witnesses state that he arrived at the scene of a shooting after the event.  
20 Now, I need that to correspond to one of those statements, and I cannot give you that answer at the moment. So, I am not sure if we need to take an adjournment, or whether I can proceed, Chairperson, and if that is going to hamper moving forward.

**CHAIRPERSON:** Yes, my recollection upon the reading of

the bolded statement, I think one of those statements refers to that, but subject to correction by your counsel. If not, you can reflect. And before you step from that stand, you can then refer to that so that we can correct this part of the record. For now, we will speak of the two statements.

**ADV BATOHI**: Thank you, Chairperson. I will proceed on that basis.

**ADV MOHLAMONYANE SC**: You may proceed.

**CHAIRPERSON**: Your junior can check so long to help  
10 Advocate Batohi whether the two statements or either of them does do capture this aspect in relation to one of the witnesses having alleged that Mr Booyesen arrived at the scene in a helicopter. In other words, he was present at the scene. They will help you in that regard.

**ADV MOHLAMONYANE SC**: Thank you, Madam Chair. Madam Chair. I am informed, but may I request a short adjournment to clarify these issues? Because I get confused as to exactly ...[intervenes].

**CHAIRPERSON**: I can hardly hear you, Counsel. Are you  
20 requesting another adjournment?

**ADV MOHLAMONYANE SC**: I am requesting a short adjournment just to clarify these issues of these documents here because I am getting different messages.

**CHAIRPERSON**: Yes, counsel, we will take a short adjournment. We will wait, and then you will call us when you

are ready.

**ENQUIRY ADJOURNS**

**ENQUIRY RESUMES**

**CHAIRPERSON:** Good afternoon, everyone. Once again, we apologise. Let me speak Setswana a little bit ...[vernacular]. You know what it does. It moves very slowly. You see, when the train takes off from the station, it starts very slowly and it picks up momentum in the middle of the journey. And that is where we are that we encountering all  
10 these challenges because we are at the beginning of things, and we realise that we are grappling with getting our records in order. We adjourned to discuss these issues so that we can address them right at the outset. It is for that reason that we had to sit with Counsel and all concerned to discuss the best way of proceeding from tomorrow with a properly collated and paginated record.

We have agreed that to make things easier the teams will have copies of what we have, but I must place it on record that the NPA provided to us with documents online, a link  
20 containing the documents that we have behind us. Advocate Mohlamonyane should be having the same documents in the link, and so should the team of Advocate Chauke be having the same documents.

They have not printed those documents that is why they do not have the records that we have. They should have

made those copies. Therefore, we decided that we will adjourn and will facilitate the making of the copies because the Ministry has provided us with tools, printers, paper and everything in the building and therefore, this afternoon our PA's, our clerks, in collaboration with them, will seize the moment and make copies for themselves that are in line with the bundles that we have, and those documents will be marked accordingly.

Advocate Batohi, it was for that reason that we kept  
10 you waiting again because it makes it difficult for you to go back and forth being referred to documents that are not properly marked before you. So for that, we apologise. It is not the fault on our part. Every one of us is having what we have. We have been on it and made sure that we use the moment and copy the documents that the NPA provided to us, and so should the Evidence Leader and the Chauke team.

We will adjourn so that you can do what we agreed upon in the chambers and make sure that we have the document escalated and paginated, indexed and named, as  
20 we have done with our copies. We will adjourn until tomorrow morning. We will adjourn until tomorrow morning at 9 o'clock. We start at 09:00 tomorrow morning because we plan to adjourn at lunchtime until next week Monday. So let us start early tomorrow, 9 o'clock, and I hope by tomorrow you will be having the documents that we have been talking about.

Thank you very much. We adjourn.

**INQUIRY ADJOURNS UNTIL 21 NOVEMBER 2025**

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**ENQUIRY INTO THE  
SOUTH GAUTENG  
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