

**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**

**24 NOVEMBER 2025**

**DAY 6**



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

**PROCEEDINGS ON 24 NOVEMBER 2025**

**CHAIRPERSON:** Good morning, everyone. Good morning, Re Chauke. Thank you. Advocate Mohlamonyane?

**ADV MOHLAMONYANE SC:** Good morning, Madam Chair.

**CHAIRPERSON:** Good morning. I do not see your witness on the stand. Is she here?

**ADV MOHLAMONYANE SC:** She is here. I have sent for someone to go and call her. She has just been sitting in the other rooms.

10 **CHAIRPERSON:** Good morning, Advocate Batohi.

**ADV BATOHI:** Good morning, Chairperson and the panel. My apologies. I am normally called. I did not realize that you had come in. And good morning to Advocate Chauke and his team as well.

**CHAIRPERSON:** We understand. Advocate Mohlamonyane?

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. I take the liberty to thank you, Madam Chair, and your fellow sisters for giving me the indulgence up till today. When we adjourned last week, we had dealt with a few aspects, among  
20 them certain relevant sections of the NPA Act, one of them being, that deals with the powers of the NDPP and the powers of a DPP, a section 6 DPP. And when we adjourned, we had just dealt with authorization in terms of the POCA Act.

Now, Madam Chair, today we will proceed with the evidence of Advocate Batohi in accordance with the proposal

that was made to the Evidence Leader last week, in other words, we will indicate to the panel as and when we proceed to lead evidence which part or which paragraphs or the terms of reference relate to particular evidence. We will, Advocate Batohi will testify today and most of her testimony will be based on Dr Broughton's supplementary opinion to which we will refer later as and when we proceed.

**CHAIRPERSON:** Perhaps, Counsel, without interrupting your train of thought I should just maybe recap and take you where  
10 we ended. You were just about to deal with the second aspect of this enquiry relating to the Mdluli matter. It was at that stage that I thought that we should reflect very carefully and understand what brought us here insofar as the Booyens Cato Manor matter.

I raised this aspect with a view to understand the reason why Advocate Batohi approached the President and I will just quickly just give a bit of a context by referring to what you took us to with, hopefully to help the witness to clarify certain aspects to us. So just to clear the back, let us go  
20 back to basically where we ended as a matter of recapping and to refocus.

Paragraph 142, I raised it, because that seems to take us to the crux of the matter or the issue in relation to the Booyens matter. And perhaps the allegations there in paragraph 142 will take us to the logical conclusion of the

very issue in the Booyens matter and I will just quickly go through that. Paragraph 142 refers to the role of Advocate Chauke as the leader of the Prosecution team and it refers to the unlawful actions by him as the *de facto* DPP with regard to the Cato Manor matter, the Booyens matter.

Now when you touched through, on that aspect of the unlawfulness of his actions, something that I am very much interested in, because if we do not clear that aspect in relation to the terms of reference, we will lose the focus. Now  
10 when you look at paragraph 156 that paragraph give us the essence of the allegations against Advocate Chauke. It refers back to the *de facto* role that he played in the prosecution of the alleged crimes when he allegedly went out of his jurisdiction over the jurisdiction of another DPP in KZN.

The second aspect of paragraph 156 is that he exercised or purported to exercise prosecutorial powers. I need to hear more from the witness on that and I may just hasten to say, and correct me if I am wrong, Advocate Mhlamonyane, with the witness as to whether Advocate  
20 Chauke took the prosecutorial decision in relation to the Cato Manor matter.

Of course, the third aspect of that essence relates to him having settled the affidavit of Advocate Jiba. I am not sure to what extent that aspect is relevant to the two, to the issue of Booyens, the Booyens matter. You will just give

us clarity there.

Now from page, paragraph 156 let us go to the letter that Advocate Batohi wrote to Advocate Chauke. Counsel, I am giving you this context so that you can help us, because we are all here on a fact finding mission. We need to get the context right. If you do not, we are going to lose the focus of why we are actually here.

The letter, Advocate Batohi, if you remember, is attached to your affidavit. That letter that you wrote to  
10 Advocate Chauke is the letter of 2021. It is at page, or rather it is marked SB5 231. It is a letter by yourself dated 13 May 2021.

**ADV BATOHI**: Chairperson, I was not reminded that I am still under oath, if I ...[intervenes].

**CHAIRPERSON**: I beg your pardon. I beg your pardon.

**ADV BATOHI**: I do acknowledge that.

**CHAIRPERSON**: Let me remind you, madam, that you are still under oath.

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

20 **SHAMILA BATOHI** (still under oath)

**CHAIRPERSON**: And fortunately you have not spoken.

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

**CHAIRPERSON**: Remember, you are still under oath.

**ADV BATOHI**: I do.

**CHAIRPERSON**: Thank you very much for that. That letter

that you wrote to Advocate Chauke is marked SB5 231 attached to your affidavit. In that letter you drew Advocate Chauke's attention to the decisions made by him. I am interested to understand the decisions that he took or allegedly took in relation to the Booyens matter. We will deal with the Mdluli decisions at a later stage.

But before we close this chapter on the Booyens matter we need to get the crux of the Booyens matter very clearly and understand precisely what is it that is alleged to have been done by him unlawfully as you say Advocate Batohi. It is the impugned decision that we need to understand the context thereof, at least for me to understand precisely why we are here. You will see on page 231 of that letter, you refer to 1.1.

**ADV BATOHI:** Sorry, Chairperson, which page?

**CHAIRPERSON:** It is that SB5 231, the letter. You have that letter. That letter seems to draw our attention to matters that concerned you, that culminated into the complaint to the President. You see in 1.1, you refer to Annexure A. That annexure is the affidavit of Mr Mlotshwa. It is marked SB5A 235. It is also attached to your affidavit.

**ADV BATOHI:** That is correct.

**CHAIRPERSON:** Now, Counsel, I am going to pause there. I thought that this sequence may help us to unravel the facts that culminated to the complaint and why we are here. The

next and final aspect that I think we should look at are the terms of reference, because it is this context that I have mentioned very briefly that seemed to have culminated in the terms of reference, Madam Batohi.

**ADV BATOHI**: That is correct.

**CHAIRPERSON**: I will just briefly, Counsel, just raise a few aspects in the terms of reference quickly, very briefly, so that when you lead the witness, she will help us understand those issues arising from the terms of reference. And might I say,  
10 Advocate Batohi, although this is not a prosecutorial process, it seems to me that the terms of reference are akin to a charge or indictment in a criminal case. Is my understanding correct?

**ADV BATOHI**: Chairperson, broadly I would agree, but it is not restricted to that, because I think the terms of reference say, I do not have it in front of me, but it is not limited to. That is my understanding.

**CHAIRPERSON**: Yes. Let us look at the term as they are and I am just juxtaposing, juxtaposing the terms of reference  
20 with what we normally refer to the indictment in a criminal prosecution.

**ADV BATOHI**: I understand.

**CHAIRPERSON**: Not that we are in that zone.

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

**CHAIRPERSON**: Am I correct, though?

**ADV BATOHI**: Yes, that is so.

**CHAIRPERSON**: So if the terms of reference gives us the essence of the charge, for the lack of a better word, I call it a charge, we should actually zoom into the charge itself, the terms of reference, so that we can unravel all the facts that we seem to establish. That will make us understand why we are here.

So quickly, if you look at the terms of reference, I think they can borrow you a copy. Your junior Advocate can  
10 assist you and give you the terms of reference, the copy of the terms of reference. Okay, my Clerk is behind you, he is going to give you, help you there. Yes, thank you very much.

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

**CHAIRPERSON**: Now, if you look at the terms of reference, and Advocate Mohlamonyane, please indulge me.

**ADV MOHLAMONYANE SC**: I have, Madam Chair, in my heart.

**CHAIRPERSON**: I am raising these things, because we are working together to unravel all the facts that are relevant to  
20 the issues before us and I am doing so briefly so that we can have a structured understanding of what the evidence is. Now, if you look at paragraph 3 of the terms of reference, 3.1, maybe we can start reading from 3. It refers to the fitness of Advocate Chauke to hold office and we are expected to enquire into his conduct.

Now, 3.1 talks about his direct or indirect conduct regarding those two matters. The first is 3.1.1. It reads:

“The institution of the racketeering charges.”

I am more interested in that concept, the institution of the racketeering charges, whether he, Advocate Chauke, instituted the racketeering charges, be it directly or indirectly. I would like to understand that, if you can clear that aspect for me.

10           And then when you go to the subparagraphs, 3.1, it suggests that, or rather the allegations are that Advocate Chauke supported a decision to prosecute in the Cato Manor matter. The second one is that he recommended to advocate Jiba that the certificate should be issued.

          It is that recommendation that we need to understand very clearly, at least for me, whether it constitutes an illegality or an unlawfulness, because remember in paragraph 142 of your affidavit, you refer to the unlawfulness of his conduct. 3.1.1.3, it is alleged that Advocate Chauke sought  
20 to defend the institution of the racketeering charges in the review proceedings.

I am keen to understand the impropriety of that alleged conduct. And the next one, 3.1.1.4, is that he, Advocate Chauke, instituted an appeal against the judgment of Judge Gorven. Also there, to clear my mind, I need to

understand the unlawfulness of that aspect or the alleged unlawfulness of that aspect.

So I am mentioning these matters before we deal with the Mdluli matter so that we can wrap this chapter properly to know where we come from and where we are going to, otherwise we are going to lose focus. I may not have captured everything. I will ask my sisters if they have any comment to add to what I have raised. If not, then you can proceed, Counsel, if that structure can help us at least to understand the context of this very issue of the Booyens matter.

Thank you, Advocate. Maybe before you start, I hope that I have made myself clear, Advocate Batohi.

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

**CHAIRPERSON:** The concerns that I have so far as we have gone, because it does not appear that we have really gone to the crux of the matter to understand the illegality or the unlawfulness of his conduct, if any. So somebody must explain to us so that we can understand the charges correctly and also to understand the evidence or facts underpinning those charges. I thank you. Proceed, Counsel. You may proceed. [Indistinct]... [microphone off] Adv Hulley, good morning, welcome. We got your apology.

**ADV HULLEY SC:** Thank you very much ...[indistinct] [microphone off] intend to advise you last week of my

intention ...[indistinct].

**CHAIRPERSON**: Your junior did extend your apology to us and we understand. You may begin.

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

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

**EXAMINATION BY ADV MOHLAMONYANE SC**

**(CONTINUES)**: Thank you, Madam Chair. We, in fact, are going to proceed to lead evidence that will deal with the terms of reference and in so doing, Advocate Batohi will refer to Dr  
10 Broughton's supplementary opinion and its accompanying documents. We will, in so doing, be doing cross-references to certain documents that are particularly important in order to unravel what exactly we are alleging that Advocate Chauke has done.

At the beginning, Madam Chair and your fellow sisters, I will refer, before she gives testimony on particular aspects, to the terms of reference and as and when we go, we proceed, I will indicate yet again as to which paragraph in the terms of reference a particular aspect pertains to. In the  
20 course of her evidence, she will also, to some degree, refer back to what has already been on record without necessarily elongating on what has already been testified upon.

And, Advocate Batohi, go to page 66 of your affidavit where, as Madam Chair has correctly pointed out, the essence of the allegations against Advocate Chauke are dealt

with. Now, you will remember that we will deal with paragraph in the main, 156, together with its subparagraphs. It has four subparagraphs. And to begin, let me refer you to LO4 bundle, specifically page 1011, Madam Chair and your sisters, LO 01011. Are you there?

**CHAIRPERSON:** If you will just pardon me.

**ADV MOHLAMONYANE SC:** LO4 is the bundle. The page is LO 1011, which contains some exchanges of emails between Advocate Chauke and Advocate Cyril Mlotshwa. Are  
10 you there, Advocate Batohi?

**ADV BATOHI:** I am.

**ADV MOHLAMONYANE SC:** Let us go to LO4 on page LO 01012, in other words, 1012, 01012. Are you there?

**ADV BATOHI:** I am.

**ADV MOHLAMONYANE SC:** There is an email which has been sent to Cyril Mlotshwa. Do you see that?

**ADV BATOHI:** I do.

**ADV MOHLAMONYANE SC:** Can you explain the email?

**ADV BATOHI:** Yes, I can. So, Chairperson, perhaps to place  
20 this into context so that the panel understands how this came before me, very briefly, I had obtained opinions of Advocate Nalane initially, and it is referred to in my affidavit under the process leading up to the referral. And then that was sent to Advocate Chauke. He obtained the opinion of Advocate Manetse, and thereafter, because of certain gaps that were

identified, I asked Dr Broughton, who is a legal advisor in my office, to look into the matter and look at all of the evidence so that the gaps are then addressed and provide me with an opinion. He did so, and he supplementary, he gave me two opinions. The first one, I do not have the, I thought I would be led on this so that we could get the context in, but it is the first supplementary opinion and the second one, they are referred to in my bundle.

Chairperson, what I am going to refer to now was, in  
10 fact, the evidence that he provided to me when he provided his supplementary opinion to me and then attached a whole lot of annexures that support, or the evidence with regard to the opinion that he provided. So I think it is important for the panel to understand the context of how this came before me so that I can explain in sequence.

**CHAIRPERSON:** When you say he, you are referring to Dr Broughton?

**ADV BATOHI:** That is correct. And perhaps the Evidence Leader will give you the, at some point his, the reference to  
20 his opinion, which is in the bundle, together with all the annexures and this is part, forms part of that bundle, Chairperson. I may then proceed to answer the question?

**CHAIRPERSON:** You may proceed, mam.

**ADV BATOHI:** Thank you, Chair. Chair, so this, what we are referring to now, at page 112, for clarity, Chairperson, the

email chain starts from page 112 and then continues backwards to 1011. So you read from 112 to 111 for clarity, Chairperson.

So the first email is 12th of June, 2012, sent from Mamike Suping, who is the personal assistant of Advocate Chauke, and the evidence will show that, the subject line is “Indictment, Cato Manor”, that certain documents were sent to Cyril Mlotshwa. Now Cyril Mlotshwa, Advocate Mlotshwa, at the time was the acting DPP.

10 **CHAIRPERSON**: I think that is better. I think we can refer to him as Advocate Mlotshwa.

**ADV BATOHI**: Sure. Thank you, Chairperson.

**CHAIRPERSON**: I heard Advocate Mohlamonyane referring him to Cyril, and I did not know who is this Cyril. So it does help us.

**ADV MOHLAMONYANE SC**: My apologies.

**CHAIRPERSON**: Let us address people properly.

**ADV BATOHI**: Chairperson, Advocate Mlotshwa was, at the time, the acting DPP in KwaZulu-Natal. So Advocate  
20 Chauke's PA forward to him certain documents. Thereafter, you have the, if you turn over to page 1011, at the bottom, the second email in that chain is one from Advocate Mlotshwa to Advocate Chauke and he states the following:

“Dear Advocate Chauke, our telephonic conversation today refers. Kindly

furnish me with the Prosecutor's memo or report so that I can have a wraparound view of the matter. The report must also have the police stations and CAS numbers so that we can open the DPP's file. Thank you in advance.”

From that, it appears that at some point before this email was sent, there was a telephonic conversation between  
10 Advocate Mlotshwa and Advocate Chauke and my understanding from the Evidence Leader is that Advocate Mlotshwa will in likelihood be called.

Chairperson, in response to that email, we go still on 111, LO 1011, Advocate Chauke responds on the same day to Advocate Mlotshwa and states, I am not sure that I need to read the entire document, but perhaps I will read a few parts from it. But if the panel wishes the entire document, I am happy to do that.

20 “Dear Advocate Mlotshwa, who is the Prosecutor that you are referring to? I have forwarded you the indictment which has all the detailed summary by which you ought to be in a position to open your file. I also forwarded to you details of the inquest with the police

CAS numbers to which you referred to Advocate Thoko Majokweni for reasons that I do not follow and understand. The indictment, with respects, gives you the whole view of the matter.”

And I emphasize that the indictment, with respect, gives you the whole view of the matter. He then goes on to say:

10 “You are kindly and fervently requested to please discuss any issues, if any, with me. I really do not see any need for me to give you any report other than that which I have forwarded to you already.”

And this is important as well. It should become clear.

“Please, if I misunderstand you, make me understand. I do not want to play you or undermine your jurisdictional authority in any way whatsoever.”

20 It then proceeds, Chairperson, he then on the next paragraph says:

“I have also learned with utter dismay that you have now issued an instruction to Senior Prosecutors that all dockets that are with us must be brought to you.

What is not happening here, my brother? Please, if you have any issue again, talk to me or arrange that we see the acting National Director urgently.”

And that would be Advocate Jiba. And he then goes on to raise a concern. He states:

10 “Another concern to me is the delay in you issuing the instruction of reopening the inquest in view of the fact that you have been requested to sign the indictment, which must be preceded by your decision to reopen the inquest. If this makes you uncomfortable, please indicate so I may urgently take the matter up with the acting NDPP as well as the Minister.”

And I emphasize that as well for reasons that will become clear later.

20 “I do not want to step on your toes in the last paragraph. I was informed that you agreed and arranged with the acting NDPP for someone from outside to do the prosecution of these matters. If you now have a change of heart, please indicate so that we may resolve it as

soon as possible.”

That is the end of the letter.

**ADV MOHLAMONYANE SC**: Now, Advocate Batohi, we will later refer to these exchanges here, but for now, go to paragraph 60 in bundle L01 on page ...[intervenes].

**ADV BATOHI**: Six zero?

**ADV BALOYI-MERE SC**: Sorry ...[intervenes].

**ADV BATOHI**: Oh, one six.

**ADV BALOYI-MERE SC**: Sorry, Advocate ...[intervenes].

10 **ADV BATOHI**: I beg your pardon.

**ADV BALOYI-MERE SC**: Before Advocate Batohi steps off this letter, she read the letter, but at paragraph 2, she skipped a line and I am not sure whether it is not supposed to be in the record, but I think it is important when we quote someone, we quote the whole thing, unless if we feel it is not important. On paragraph 2, line 3, the sentence that starts with “there are”.

**ADV BATOHI**: If I may, Chairperson, yes, I had not intended to read the whole thing, but perhaps for, and I went on and  
20 read most of it. So perhaps I will just add paragraph 2, the last sentence, well, third line.

“There are serious issues of security in this matter, which, if necessary, you will be briefed about, which are not relevant to you, and I cannot expose you to such

at this stage.”

I think I read the rest of the letter completely, except for that. Thank you, panel.

**ADV BALOYI-MERE SC**: Thank you, Counsel.

**ADV MOHLAMONYANE SC**: Thank you, Madam Baloyi-Mere. Advocate Batohi, go to LO1 on page LO 00266. Therein, you will find ...[intervenes].

**ADV BATOHI**: 266?

**ADV MOHLAMONYANE SC**: Yes, 266 is a witness statement  
10 of Advocate Andrew Chauke, which was before the Judicial Commission of Enquiry into allegations of state capture, corruption, and fraud in the public service, including organs of state, colloquially known as State Capture Commission. It starts on page 243. Do you see that?

**ADV BATOHI**: Yes.

**ADV MOHLAMONYANE SC**: Go to paragraph 59, 60, and read it into the record.

**CHAIRPERSON**: Paragraph?

**ADV MOHLAMONYANE SC**: 60, six zero, Madam Chair.

20 **CHAIRPERSON**: Six zero. Yes, thank you.

**ADV BATOHI**: So, if I may proceed, Madam Chair.

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

**CHAIRPERSON**: Proceed.

**ADV BATOHI**: Paragraph 60 states as follows.

“Jiba requested me to assist with putting

together a prosecution team, which will guide members of the police and members of IPID (“the Cato Manor team”), on the investigation and prosecution of the matters. I agreed to be the coordinator of the prosecution team. The prosecution team was comprised of the following advocates.

- 10 60.1 Advocate Maema, DDPP (Team Leader) (Maema);
- 60.2 Advocate KR Mathenjwa, DDPP (Co-Team Leader) (Mathenjwa);
- 60.3 Senior State Advocate M Ntlakaza (Ntlakaza);
- 60.4 Senior State Advocate JJ Mlotshwa (J Mlotshwa);
- 60.5 Senior State Advocate F Futshane (Futshane);
- 60.6 Senior State Advocate P Moleko (Moleko).”
- 20

**ADV MOHLAMONYANE SC:** We know that Jiba is reference to the then Acting Director of Public Prosecutions.

**ADV BATOHI:** Acting National Director of Public Prosecutions.

**ADV MOHLAMONYANE SC:** Acting National, yes. Is that

correct?

**ADV BATOHI**: That is correct.

**ADV MOHLAMONYANE SC**: Now, go to the next page, which is ...[intervenes].

**CHAIRPERSON**: What is the relevance of this paragraph 60, before we forget about it?

**ADV MOHLAMONYANE SC**: The relevance of paragraph 60, Madam Chair, has to do with the request that the Acting National Director of Public Prosecutions made to Advocate  
10 Chauke to put up a team together that will go to KZN to deal with the Cato Manor incident.

**CHAIRPERSON**: Now, when you go back to the terms of reference, 3.1, does this aspect have any relevance to ...[intervenes].

**ADV MOHLAMONYANE SC**: This ...[intervenes].

**CHAIRPERSON**: I beg your pardon, let me finish. Does it have any relevance to the opening words in 3.1 of the terms of reference that Advocate Chauke directly or indirectly by his conduct instituted the racketeering charges? I mention  
20 that, Counsel, and please allow me to keep on going back and forth on the terms of reference because we are referred to the evidence without linking some of these allegations to the terms of reference. So, if you can help me to understand the relevance of that paragraph in relation to the terms of reference themselves.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. It is my omission. Let me hasten to say, paragraphs 3.1, 3.1.1, 3.1.1.1, 3.1.1.2, 3.1.1.3, and 3.1.1.4, for now, are relevant not only to this paragraph 60 and 62, but are relevant to the evidence that will indicate Advocate Chauke's involvement in the prosecution of the Cato Manor police officers.

**CHAIRPERSON:** Would you like the witness to confirm what you are saying, because it is her who must place that evidence before us.

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

**CHAIRPERSON:** Do you confirm that, Advocate Batohi, what your, Advocate Mohlamonyane has just placed before us?

**ADV BATOHI:** Yes, Chairperson, if I may explain as well that all the evidence has to be seen together because they explain what happened over a period of time and gives the full picture of what happened. So, the Evidence Leader started with the setting up of the team, and they will all speak to, I confirm, what is mentioned in paragraph 3, right, in fact, to 3.1.1.5, which is on page 7 of the terms of reference. So as

20 ...[intervenes].

**CHAIRPERSON:** [Indistinct]... [microphone off] Counsel, I think, let us just try to take it one step at a time, because what you are now saying is the broader picture, but we are addressing the essential terms of the, or rather the chapters of the terms of reference. But if you give such a broad

overview, we will get lost. And if you can try to answer a pertinent question so that you do not give a long answer that takes us back, and then we lose the focus. What I wanted you to confirm, so that it is not Counsel who is kind of testing from the bar, then you say it yourself, because it is your affidavit that we are concerned with here.

And what I wanted clarity from you is whether, in relation to the question that I posed to Counsel, the very, very subparagraph of the terms of reference, that seems to suggest that Advocate Chauke misbehaved, and I would like us to understand the context relevant to that allegation in the terms of reference and that is what he was saying to us, that all those paragraphs in the terms of reference, 3.1.1 to 3.1.4, are relevant. And paragraph 60 supports those allegations in the terms of reference. And I wanted to ascertain with you whether you confirm that.

**ADV BATOHI**: Let me look at whether ...[intervenes].

**CHAIRPERSON**: Perhaps, Counsel, you can just repeat to Advocate Batohi, what you were saying in a simple way, the way you want to put it to her, so that we get this part of her evidence clearly.

**ADV MOHLAMONYANE SC**: Thank you, Madam Chair. Advocate Batohi, if I take you back to paragraph 60 on this page here, page 266, would you confirm that what is stated there is pertinent to paragraph 3.1?

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** It is also pertinent to paragraph 3.1.1.1.

**ADV BATOHI:** Well, Chairperson, I am a little confused because paragraph 60 deals with the team that was set up. And if we look at the particular sub-paragraphs of 3.1, they relate to different aspects of Advocate Chauke's conduct. And so I am a little confused about answering the question that paragraph 60, which simply deals with the team set up,  
10 how it links to each one of the sub-paragraphs that describe Advocate Chauke's conduct.

**CHAIRPERSON:** You remember, through you, Advocate Mohlamonyane, we zoomed into the terms of reference, 3.1. That talks about Advocate Chauke's direct or indirect conduct. 'And Advocate Mohlamonyane took us to paragraph 60, that speaks to the role played by Advocate Chauke, if I may put it that way.

**ADV BATOHI:** It is correct.

**CHAIRPERSON:** That is how he started getting involved in  
20 this matter.

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

**CHAIRPERSON:** So when you look at it in its sequence or chronologically, you start there. You start at the time when he was requested by the NDPP or acting NDPP then to do something, and this is where we are, paragraph 60.

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

**CHAIRPERSON**: Did I capture it correctly, sir?

**ADV MOHLAMONYANE SC**: You did, Madam Chair. You did capture it correctly.

**CHAIRPERSON**: And remember, we are addressing that aspect of your affidavit, Advocate Batohi, paragraph 142 that speaks of the unlawfulness of Advocate Chauke's conduct.

**ADV BATOHI**: Yes, that is correct, Chairperson.

**CHAIRPERSON**: That alleged unlawfulness that resulted,  
10 among other things, in you approaching the President.

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

**CHAIRPERSON**: Now, we are trying to get the factual matrix as we gather the evidence of that aspect and that we are trying to clarify.

**ADV BATOHI**: We understand, Chairperson.

**CHAIRPERSON**: Yes.

**ADV BATOHI**: And that is what we intend to do.

**CHAIRPERSON**: Yes, thank you.

**ADV MOHLAMONYANE SC**: Now, paragraph 60, Advocate  
20 Batohi, I indicated to you has to do with paragraph 3.1, paragraph 3 rather, 3.1 and 3.1.1 of the terms of reference. Of course, as you correctly pointed out, it has to be read with the totality of the evidence that will follow.

**ADV BATOHI**: Yes, it will speak to his role in, as we will explain as the evidence pans out, in terms of his role in

connection with those subparagraphs in the terms of reference, that is correct, that you mentioned.

**ADV MOHLAMONYANE SC:** Thank you. You may proceed to the next page, which is LO 00267 and read paragraph 62 together with its subparagraphs into the record.

**ADV BATOHI:** Paragraph 62 reads as follows.

“My role as team coordinator was:

10                   62.1 deal with the logistics and administrative matters of the prosecution team;

                  62.2 ensuring coordination between various stakeholders;

                  62.3 my involvement excluded taking prosecutorial decision whether to prosecute or not;

                  62.4 feedback and briefing on the team to Jiba, including the submission of documentation from the prosecution team.”

20                   Chairperson, if I may at this point explain that paragraph 62.3 refers to taking prosecutorial decision whether to prosecute or not. My evidence will include the fact that a prosecutorial decision is not one that is limited on whether to prosecute or not. But there are various prosecutorial decisions that are taken in the course of the

prosecution process.

**CHAIRPERSON**: Probably it is a matter of argument, but thank you for telling us what you are telling us.

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

**CHAIRPERSON**: But we do know from that paragraph 62.3, Advocate Chauke is saying I was involved, but my involvement excluded taking any prosecutorial decision.

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

**CHAIRPERSON**: That is the nub of his statement.

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

**ADV MOHLAMONYANE SC**: You may then proceed to paragraph 64 on the same page and read it into the record.

**CHAIRPERSON**: I beg your pardon, Counsel. I beg your pardon. I beg your pardon. And please correct me if I am missing something. That very aspect at paragraph 62.3 will probably take us to the statement or affidavit of Advocate Mosing.

**ADV MOHLAMONYANE SC**: It will.

**CHAIRPERSON**: It will.

20 **ADV MOHLAMONYANE SC**: It will, Madam Chair, as and when we proceed.

**CHAIRPERSON**: Thank you. Please flag it so that we do not forget.

**ADV MOHLAMONYANE SC**: Yes, I will do so. If you may, Advocate Batohi, read into the record paragraph 64 and I will

later refer you to paragraph 95 and 96, but for the moment, read paragraph 64 into the record.

**ADV BATOHI**: Paragraph 64 reads as follows.

“On 3 May 2012, I attended a briefing with Jiba during which it was arranged that the prosecution team brief her on the Cato Manor matter on 18 May 2012. On 15 May 2012, I attended a meeting with the prosecution team to prepare for Jiba's briefing.”

10

**ADV MOHLAMONYANE SC**: We are still on Advocate Chauke's affidavit that served before the State Capture Commission and go to page 273, LO 273 in this bundle LO1. Read paragraph 95 which ties to the one which paragraph 60 which you read earlier.

**CHAIRPERSON**: Paragraph 95?

**ADV MOHLAMONYANE SC**: Paragraph 95, Madam Chair.

**ADV BATOHI**: Paragraph 95 reads:

“I have read the affidavit by Advocate CS Mlotshwa dated 23 July 2015 under Silverton CAS which is annexed to the Rule 3.3 Notice. I refer to what is set out above with regard to how I came about to be involved in this matter as a coordinator of the prosecution team and

20

that the latter was giving briefing to Advocate CS Mlotshwa about the matters.”

**ADV MOHLAMONYANE SC:** Will you confirm that this paragraph pertains to paragraph 3.1 of the TOR, terms of reference?

**ADV BATOHI:** Yes.

**ADV MOHLAMONYANE SC:** Proceed to go to paragraph 96 on the same page and read it into the record.

10 **ADV BATOHI:** I confirm that I had the email

exchanges with Advocate CS Mlotshwa.

The issue was sorted out between me and him. I considered it resolved and did not take it any further. I held the view then and even now that he was sufficiently briefed by the prosecution

team about the matters. I realized the

omission of the memo which I thought

was part of the draft indictment for

20 which I apologized. This is born out of

the fact that he indeed received the

memo and the indictment. I even

indicated above with him and attended

meetings with him and the AJP on 18

June 2012 and the court appearances by

the suspects.”

**ADV MOHLAMONYANE SC:** Now, Advocate Chauke mentions Advocate CS Mlotshwa. I want us to hasten to get to Advocate Mlotshwa's affidavit that you referred to in, and Madam Chair has also referred to it, which is attached to your letter to Advocate Chauke which is marked SB6 on page 240 of your bundle where you were making a request for further information relating to decisions made by you as the DPP Gauteng, Johannesburg. Now go to ...[intervenes].

10 **CHAIRPERSON:** I beg your pardon again, Counsel. You said SB6. Is this not SB5A? That is the sworn affidavit by Advocate Mlotshwa attached to her affidavit.

**ADV MOHLAMONYANE SC:** Yes, I was still on SB6, Madam Chair, which is his, sorry, Advocate Batohi's letter.

**CHAIRPERSON:** Where is the letter, SB6?

**ADV MOHLAMONYANE SC:** It is SB6, 240.

**CHAIRPERSON:** 240.

**ADV MOHLAMONYANE SC:** Yes.

20 **CHAIRPERSON:** I am sorry for that interruption. Let us just get to that.

**ADV BATOHI:** That is Advocate Chauke's letter to me.

**ADV MOHLAMONYANE SC:** Oh no, it is, ja, my mistake. It is SB5, actually. Ja, it is SB5, Madam Chair. I made a mistake. I apologize for that.

**CHAIRPERSON:** SB6.

**ADV MOHLAMONYANE SC:** SB5. SB6 is Advocate Chauke's response.

**CHAIRPERSON:** Yes, I thought that you are now addressing or asking Advocate Batohi to deal with that affidavit of Advocate Mlotshwa.

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

**CHAIRPERSON:** Which is SB5 ...[intervenes].

**ADV MOHLAMONYANE SC:** A in 236.

**CHAIRPERSON:** 236.

10 **ADV MOHLAMONYANE SC:** That is so.

**CHAIRPERSON:** Yes.

**ADV MOHLAMONYANE SC:** Go to SB5A 236.

**ADV BATOHI:** Yes, I am there.

**ADV MOHLAMONYANE SC:** On top there, it is written Silverton CAS. It is not clear as to what number it is there, but it is of 10, it looks like it is 2014.

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** Explain this CAS, Silverton CAS, what was it all about? Why did he depose to an affidavit  
20 in this matter, Advocate Mlotshwa?

**ADV BATOHI:** So CAS numbers are granted when a docket is opened in a police station and so the CAS number, the police station would be reflected initially, and that is Silverton. In this case, it is Silverton Police Station. And then CAS is the CAS number. It is unclear what the number

is, but the second number reflects the month, and the third number reflects the year with relation to a criminal docket that would have been opened.

**ADV MOHLAMONYANE SC:** The affidavit that Advocate Chauke refers to in paragraph 95 of his affidavit on page 273, which you earlier referred to, affidavit of CS Mlotshwa, this is the same affidavit that we are now looking at, SB5A?

**ADV BATOHI:** I am not sure. Where is the other document? I need to check to see it is the same document, or are you  
10 telling me it is the same document? I apologize, Chairperson.

**CHAIRPERSON:** If I may, Counsel. Remember, SB5, which I mentioned, is mentioned for the first time in the affidavit of Advocate Batohi under the rubric of process leading to the referral to the President on page 69 of her affidavit. But, of course, that SB5 addresses also the issues relating to the Booyens matter. In other words, it refers to the broader issues of both the Booyens matter and the Mdluli matter. So if you can probably look at it, it is there, Counsel, SB5 is mentioned for the first time at paragraph 161.

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

**ADV MOHLAMONYANE SC:** Now, Advocate Chauke says, Advocate CS Mlotshwa's affidavit is dated 23 July 2015, and this one is dated 12 May 2015. It is not the one that he is referring to, not so?

**ADV BATOHI:** Sorry, can you repeat that?

**ADV MOHLAMONYANE SC:** Do you see on page 237 the date when it was deposed to it is 12 May 2015.

**ADV BATOHI:** Okay, just a moment. Yes, I see that.

**ADV MOHLAMONYANE SC:** Now, it is not the one that he is referring to, because this one is dated 12 May 2015, not so?

**ADV BATOHI:** Sorry, I am confused, sir. Which is the one he is referring to?

**ADV MOHLAMONYANE SC:** I will take you to the one that  
10 he refers to. It is on the next page. He says it is dated 23 July 2015. Go to the next page and look at 238, page 238.

**ADV BATOHI:** Yes, I am there.

**ADV MOHLAMONYANE SC:** There is another affidavit there by Advocate Mlotshwa. Do you see that?

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

**ADV MOHLAMONYANE SC:** Which is dated 23 July 2015.

**ADV BATOHI:** That is correct, I see that.

**ADV MOHLAMONYANE SC:** So that is the one that he is referring to.

20 **ADV BATOHI:** Sorry, I am confused, Chairperson. I am not sure which, who is referring to which statement.

**ADV MOHLAMONYANE SC:** Let me take you back to 95.

**ADV BATOHI:** Page 95 or paragraph 95?

**ADV MOHLAMONYANE SC:** Paragraph 95.

**ADV BATOHI:** Of?

**ADV MOHLAMONYANE SC:** Of LO1, which is the affidavit of Advocate Chauke in which he says he has read the affidavit of CS Mlotshwa, dated 23 July 2015.

**ADV BATOHI:** I am with you.

**ADV MOHLAMONYANE SC:** Yes. Now, I am saying to you, this one on page 238 is another affidavit deposed to by Advocate Mlotshwa. Do you see that, dated 23 July 2015?

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

**ADV MOHLAMONYANE SC:** Now, can you read it into the  
10 record?

**CHAIRPERSON:** Which one?

**ADV MOHLAMONYANE SC:** The one on page 238.

**ADV BATOHI:** -:

“I, Cyril Simphiwe Mlotshwa, hereby state in English that on 23 July 2015, the Investigating Officer, Major General Thalo[?], requested me to hand over the emails referred to in my statement dated 12 May 2016. Emails herewith.”

20 That is the content and then it is the oath after that. He had signed and there is the oath.

**ADV MOHLAMONYANE SC:** If you go back to the previous affidavit, you will see that the paragraph on page 27, which is the last paragraph of Advocate Mlotshwa's affidavit ...[intervenes].

**CHAIRPERSON:** I beg your pardon, paragraph?

**ADV MOHLAMONYANE SC:** It is not marked. It is not marked or given, numbered rather. It is not numbered but it is the only paragraph before the commissioning, before the ...[intervenes].

**CHAIRPERSON:** Is that the one with handwritten 491?

**ADV MOHLAMONYANE SC:** Yes, Madam Chair, with the old, bolded number 156. Do you see that one?

**CHAIRPERSON:** In the bolded number?

10 **ADV MOHLAMONYANE SC:** One five six. But the correct number, the paginated number is 237, SB5A 237.

**CHAIRPERSON:** Counsel, you are taking us all over the show. Where are you?

**ADV MOHLAMONYANE SC:** I want the witness to confirm the issue of emails and tie it with the exchange of emails between him, between Advocate Mlotshwa and Advocate Chauke.

**CHAIRPERSON:** Are you finished, are you done with SB5A 236? That is the affidavit of Advocate Mlotshwa. I thought  
20 that you were there.

**ADV MOHLAMONYANE SC:** I am there. I am there, Madam Chair, because it goes to the second page.

**ADV BATOHI:** Yes.

**ADV MOHLAMONYANE SC:** Yes, it goes to the second page 237.

**ADV BATOHI:** Yes.

**ADV MOHLAMONYANE SC:** Now, Advocate Mlotshwa in this paragraph says:

10 “I thereafter exchanged a number of emails with Advocate Chauke copying in Advocate Jiba, her personal assistant and Advocate Majokweni, requesting Advocate Chauke to give me the Prosecutor's memo or report as per initial agreement.”

**ADV BATOHI:** Sorry, which paragraph are you at?

**ADV MOHLAMONYANE SC:** 237, where the affidavit of Advocate Mlotshwa ends.

**ADV BATOHI:** Yes, I am there.

**ADV MOHLAMONYANE SC:** Where he has deposed, he has, where it is commissioned.

**ADV BATOHI:** Yes, I am there.

**ADV MOHLAMONYANE SC:** Now, he says:

20 “On 12 June 2012, Advocate Chauke's personal assistant, Ms Mamike Suping, emailed me only the indictment without the Prosecutor's memo or report.”

Can you read that into the record?

**ADV BATOHI:** -:

“On 12 June 2012, Advocate Chauke's

personal assistant, Ms Mamike Suping, emailed me only the indictment without the Prosecutor's memo or report. I thereafter exchanged a number of emails with Advocate Chauke, copying in Advocate Jiba, her personal assistant and Advocate Thoko Majokweni, requesting Advocate Chauke to give me the Prosecutor's memo or report as per the initial agreement. My acting appointment came to an end on 9 July 2012. I never had anything to do with the matter after 9 July 2012.”

**ADV MOHLAMONYANE SC:** Now, this ties with the exchange of emails you referred to earlier.

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** In page LO4, page LO 1011.

**ADV BATOHI:** Do you want me to go back there?

**ADV MOHLAMONYANE SC:** You do not have to.

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

**ADV MOHLAMONYANE SC:** I just wanted you to confirm whether it ties with that.

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** Thank you. Now, go to SB6.

**CHAIRPERSON:** And if I may, this aspect that you are asking

the witness to read into the record has a direct link to the terms of reference. If I am correct, which one?

**ADV MOHLAMONYANE SC:** Madam Chair, it has a direct link with paragraph 3, paragraph 3.1 - yes, paragraph 3 and 3.1.

**CHAIRPERSON:** The institution of the racketeering charges.

**ADV MOHLAMONYANE SC:** It will, yes, indeed. It will ...[intervenes].

**CHAIRPERSON:** I beg your pardon.

10 **ADV MOHLAMONYANE SC:** No, not that.

**CHAIRPERSON:** His direct or indirect conduct.

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

**CHAIRPERSON:** Please give me a second. If you may unpack that aspect for me to understand clearly this alleged indirect or indirect conduct, how and to what extent it impacts on the prosecutorial role of Mr Mlotshwa, Advocate Mlotshwa.

**ADV MOHLAMONYANE SC:** Mlotshwa or Advocate Chauke, Madam Chair?

**CHAIRPERSON:** Adv Mlotshwa. The indirect, the direct, or  
20 the alleged, the alleged direct or indirect conduct of Advocate Chauke's conduct, how it impacts on NDPP, Advocate Mlotshwa's jurisdiction or space.

**ADV MOHLAMONYANE SC:** It will become clearer as and when we proceed to lead evidence, Madam Chair. However, for now, Advocate Mlotshwa was the acting DPP in KZN.

**CHAIRPERSON:** No, I understand that.

**ADV MOHLAMONYANE SC:** Yes.

**CHAIRPERSON:** You are busy leading evidence and this evidence is really the crux of the case, because Advocate Batohi is laying the foundation of why we are here and we need to understand this foundation correctly, because other witnesses, as you referred to Advocate Mlotshwa, are going to either confirm their affidavit, the contents of their affidavit, or the evidence of Advocate Batohi.

10                    So I do not want us to have that disjuncture. We may just lose the connection. That is why I keep on taking you back to the terms of reference so that we understand the relevance of this evidence to the terms of reference themselves. I do not know whether it helps you, Counsel, but we get confused, because you keep on referring us to bundles or legal opinions and we just need to get it right to understand how you link this evidence to the terms of reference.

                    And I thought that as we address this evidence, as you go along, you will keep on telling us that this is the aspect  
20 that is relevant to the charge at paragraph 3.1, 3.1.1, etcetera. It will help me to understand the evidence of Advocate Batohi. I do not want to derail your line of the train of thought, Counsel, but it may also help me.

                    I am told that this is a tea break. If you feel that I am overbearing on you, it is fine. We will get clarity at a later

stage. Maybe you can proceed when you reconvene, and I will note all these questions on the side so that I do not interrupt you.

**ADV MOHLAMONYANE SC:** No, no, you are not overbearing. You are perfectly entitled to the clarification, Madam Chair. I thought I had made it clear that the evidence that she is leading pertains to 3.1, but I will take it apiece for a better understanding and for the comfort of everyone.

**CHAIRPERSON:** Yes.

10 **ADV MOHLAMONYANE SC:** Yes, I will try and take it apiece.

**CHAIRPERSON:** Thank you, Counsel. We will take, Advocate Batohi, we take a tea adjournment. It is already closer to half past eleven. We will adjourn now and reconvene at quarter to twelve.

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

**CHAIRPERSON:** Thank you. We adjourn for tea.

### **ENQUIRY ADJOURNS**

### **ENQUIRY RESUMES**

20 **CHAIRPERSON:** Advocate Batohi, remember you are still under oath?

**ADV BATOHI:** I do, thank you, Chair.

**CHAIRPERSON:** Advocate Mohlamonyane, please allow me, just to cut to the chase, to go straight to the point in relation to that aspect that we are talking about so that we make progress. The evidence before us, on record, and correct me

if I am wrong, in relation to the affidavit of Advocate Mlotshwa, is that Advocate Chauke had asked him to sign the indictment. Am I correct?

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

**CHAIRPERSON:** Let me confirm with the witness.

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

**CHAIRPERSON:** Advocate Mlotshwa, as I understand the affidavit, or the evidence in this record, is that he did not want to sign the indictment because he had not been provided  
10 with the memo and the dockets.

**ADV BATOHI:** Precisely, Chairperson, or a report as he indicates.

**CHAIRPERSON:** Yes. That begs the question, does that impact on the terms of reference in relation to Advocate Chauke's direct or indirect, alleged indirect conduct?

**ADV BATOHI:** Chairperson, if we go to the terms of reference, this aspect of the evidence will relate specifically to... Chairperson, let me, if I may explain something. I know I have been asked to keep it short and I really do, but I want  
20 to try to help the, I want the panel to understand the circumstances. So these terms of reference were drawn up. It appears that it was taken primarily from my letter that I sent to the President recommending an enquiry be held. The terms of reference were not discussed with the NPA, but it was taken from there.

At that time, I must say that I did not expect that those would become in fact the terms of reference. So I find it difficult sometimes to link specific aspects to it because, as I said earlier, there is a whole, this is events that took place over a period, and what we will demonstrate when all of the evidence is led, is that Advocate Chauke's conduct related definitely addresses the 3.1, issues in 3.1 of the terms of reference. So your short answer, Chairperson, is that it will affect the supporting a decision to prosecute the  
10 accused, 3.1.1, 3.1.2 in particular.

And if one looks at my affidavit, it will particularly relate to, if I can be referred to the essence of the case against Advocate Chauke, if... there is one aspect that is mentioned there, if one looks at paragraph 66, sorry page 66, paragraph 156, it would relate specifically to 1563, undermined or attempted to undermine the authority of the acting DPP KZN.

**CHAIRPERSON:** Thank you, Advocate Batohi.

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

20 **CHAIRPERSON:** It helps.

**ADV BATOHI:** Thank you, Chairperson, and if I may explain to the panel how racketeering certificates are authorised. With regard to racketeering charges, the National Director of Public Prosecutions is required to authorise these charges, and what happens in terms of the process is that the DPP of

the division where the charges emanate would submit a memorandum, a covering memorandum, generally with a prosecuting, with the indictment, with a prosecutor's memo, and many other relevant documents to the National Director for consideration of the application for racketeering charges to be authorised.

So in this case, what will emerge from the evidence, Chairperson, is that as you correctly stated, Advocate Chauke, and Advocate Mlotshwa will testify to this, is asking  
10 Advocate Mlotshwa to sign the indictment, and Advocate Mlotshwa is resisting, saying that I will not sign it unless I have these other documents, and he is correct in that regard because we need, he needs the evidence. The indictment sets out the charges and summary of facts. The prosecution memo generally will set out the evidence that actually supports the indictment. Thank You, Chairperson, I hope that helps.

**CHAIRPERSON:** It helps. Advocate, that settles my mind.

**ADV MOHLAMONYANE SC:** May I then proceed, Madam  
20 Chair.

**CHAIRPERSON:** Proceed, sir, you may proceed.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. Let me refer you to, before we revert to SB6, because we will revert to SB6 at the later stage, let me refer you to LO1, bundle LO1, LO-00178. It is Dr Broughton's supplementary

opinion, and I direct your attention to paragraph 26.

**ADV BATOHI**: A document in front of me, is it SB3 you were referring to, 00178. Am I in a different...

**ADV MOHLAMONYANE SC**: I am referring you to LO1, Advocate Batohi.

**ADV BATOHI**: Okay.

**ADV MOHLAMONYANE SC**: You have got it in front of you.

**ADV BATOHI**: Page number?

**ADV MOHLAMONYANE SC**: LO-00178.

10 **ADV BATOHI**: Yes.

**ADV MOHLAMONYANE SC**: Where Dr Broughton deals with, and he has a subheading there, a subtopic, which reads, above paragraph 25, it reads as follows:

“Advocate Chauke's *prima facie* involvement in taking prosecutorial decisions to prosecute Booyesen”

And I must mention that this has to do, and I want you to confirm, it has to do with paragraph 3.1, 3.1.1 of the TOR, the terms of reference.

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

**ADV MOHLAMONYANE SC**: May you proceed to read into the record, paragraph 25.

**ADV BATOHI**: Paragraph 25 reads:

“Besides endeavouring to compel Advocate Mlotshwa to sign the Booyesen indictment

without furnishing him with the case dockets or prosecutor's memorandum (or supporting documentation and evidence), which aspect I return to below, there is evidence that *prima facie* shows that Advocate Chauke was involved in taking prosecutorial decisions to prosecute Booyesen.”

That is paragraph 25.

10 **ADV MOHLAMONYANE SC:** Now I am going to ask you a specific question about an indictment. For a trained lawyer, we know what an indictment is. For the public out there, can you explain what an indictment is?

**ADV BATOHI:** Indictment is a document that is used generally in the High Court that sets out the charges against an accused person, and generally also has attached to it a summary of the substantial facts relating to the charges.

**ADV MOHLAMONYANE SC:** Thank you. Proceed to paragraph 26.

20 **ADV BATOHI:** Paragraph 26:

“It should be recalled that it was on 12 June 2012 that Advocate Mlotshwa refused to sign the Booyesen indictment sent to him by email by Advocate Chauke without seeing the supporting documentation and

evidence. The supporting documentation and evidence were never presented to Advocate Mlotshwa, even though the latter requested the same from Advocate Chauke.

The prosecution team also did not report to Advocate Mlotshwa, but to Advocate Chauke, and did not furnish Advocate Mlotshwa with supporting documentation and evidence for signing of the indictment,

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which he as the acting DPP of KZN, or a Deputy Director of Public Prosecutions, DDPP, in his office, or a DDPP acting under his control or supervision and direction of the KZN DPP contemplated in section 24(9) read with section 21(3) and (4) of the NPA, was lawfully required to sign.

As a result, Advocate Mlotshwa never signed the indictment. Indeed, after the exchange between Advocate Mlotshwa and Advocate Chauke in June 2012 regarding the signing of the indictment and the request from Advocate Chauke to Advocate Mlotshwa to consider reopening a series of inquests relating to the matter, he heard no

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more about the Booyesen and prosecution.”

And Chairperson, if I may say that to ask Advocate Mlotshwa to sign these, the indictment in these circumstances, would in fact be unlawful. And the exchange, the email exchange that we referred to earlier, we referred to two emails, but it is important that the other emails are also considered because it shows the response of Advocate Mlotshwa and what the impact was of what he considered to be an unlawful instruction that he was receiving from Advocate Chauke to  
10 sign the indictment without the evidence.

And the importance of this, Chairperson, is that when you put your signature to an indictment as a DPP or as any prosecutor, it means you are satisfying yourself that there is evidence that supports the charges in the indictment. And to require someone to do it without the evidence, is in fact asking that person to do something unlawful.

**ADV MOHLAMONYANE SC:** If I may refer you back to the emails, exchange of emails between Advocate Chauke and Advocate Mlotshwa, LO4-1011, which I referred to earlier,  
20 you do not necessarily have to read them into the record because you have already done so.

**ADV BATOHI:** I have read two of the emails into the record, or three.

**ADV MOHLAMONYANE SC:** The one on page 1011 at the bottom there from Advocate Mlotshwa to Advocate Chauke is

the one in which he was, Advocate Mlotshwa was requesting that he be sent the prosecutor's memo.

**ADV BATOHI**: That is correct. That is on the top of page 1012.

**ADV MOHLAMONYANE SC**: Was it ever sent?

**ADV BATOHI**: Well, I think Advocate Mlotshwa can testify to that, whether he received it or not. I do not know myself whether it was sent or not. I do want to state that after Advocate Chauke's... after Advocate Chauke's email, that is  
10 on page 1011, which I read into the record, Advocate Mlotshwa responded to that email and that response is then on page 1014. It is a rather long response from Sello Mlotshwa, as it is, but it is Advocate Mlotshwa to Advocate Chauke, dated 13 June 2012 at 9.12am and it is a very long email. As you can see, it spans almost the entire page, but I am going to, I think it is important for the panel to get the import of this email. I will read just a few lines from it. The first one is ...[intervenes]

**CHAIRPERSON**: I beg your pardon, is that LO-01011?

20 **ADV BATOHI**: No, Chairperson, we are on LO-01014 and the email continues on 01015.

**ADV MOHLAMONYANE SC**: Proceed.

**ADV BATOHI**: Thank you and, Chairperson, we should, we should remember the context. It is Mlotshwa asking for the indictment and the prosecutor's memo and reports. It is

Advocate Chauke responding, saying:

“Who is the prosecutor you are referring to? I have forwarded the indictment, which has all the details, summary by which you ought to be in a position to open the file. The indictment, with respect, gives you the whole view of the matter.”

Advocate Mlotshwa then responds on the 13th of June at 9.12am on page 1014, as I indicated, and I will read just a few lines, Chairperson, and you can see it is a really long email. It says:

“Dear Advocate Chauke, I operate from the premise that the mission of the NPA enjoins us to be guided by the Constitution. The last time I cast a glance on the Constitution, I gleaned that its preamble encapsulates that all the rights enshrined in the Constitution have to be respected, protected, and promoted. This includes the right to human dignity, which is affirmed in section 10 of the same Constitution.

He then goes on to, he gets quite philosophical in his email, in paragraph 2 and 3. In paragraph 2, he states, perhaps I can read from paragraph 2:

“You levelled serious allegations against

me. You did not repeat the same allegations from your behaviour. You did not repeat the same allegations when we met the ANDPP in her office. I maintain my cool through and through. The impression I derive from your behaviour is that you nourish a slavish mentality...”

I suppose I do not need to read the rest of it into the record, Chairperson, but then he goes on to become quite  
10 philosophical, and then in paragraph 4:

“It is a practice within the NPA that when we send the request to the NDPP's office...”

Which is what I explained earlier on, Chairperson;

“It is the practice within the NPA's office that when we send the request to the NDPP's office for the signing of the section 2 certificate...”

Which is the racketeering authorisation of the NDPP,  
20 Chairperson;

“...we also that the NDPP can have an idea of what is happening in the matter before appending a signature.

I explained to you when we had a short meeting in the Office of the Acting National

Director on 29 May 2012, I explained it when we met at the SOCA Indaba, and I explained it again when you contacted me yesterday, that the procedure in the KZN DPP office is that in order to enrol a matter in the High Court, we need two things, DPP's file and the judge's file.”

And then he goes on to explain what is needed for the DPP's file. He continues:

10 “You did not raise even your eyebrows during the rendition of this explanation to you. That is why my eyes popped out and my lower jaw dropped, shocked to the marrow of my bones as to what has happened now, because in your email you are now asking me for the first time who I am referring to when I speak of the prosecutor.

20 If you do not have issues with me, one would not expect you to resort to forensic ambush, but would expect you to ask me as a colleague and a brother, because with the respect I always give you, I would have explained to you again.”

And then he continues, Chairperson:

“In the third paragraph of your email...”

This is in on paragraph 5 of Mlotshwa's email;

“In the third paragraph of your email, you state in bold that you have learned with utter dismay that I have issued an instruction to the senior prosecutors that the dockets must be brought to me. I have been brutally honest with you. I never get excited over nothing. I am not a person in the habit of making a mountain out of a hillock.

10

Firstly, it was your suggestion that the inquest must be reopened. I fervently hope that you know, or ought reasonably to know, that we do not keep the inquest record in the DPP office, but they are kept by the criminal court clerks in the lower court.”

Chairperson, I am just trying to read the relevant parts that would be appropriate in this.

20

**ADV MOHLAMONYANE SC:** You may leave it at that, Advocate Batohi.

**ADV BATOHI:** Yes.

**CHAIRPERSON:** It might be helpful, counsel, just for completeness, to let the witness not choose what she wants,

she wants to put, I think put the whole letter there  
...[intervenes]

**ADV BATOHI**: Chairperson, if I may, sorry.

**CHAIRPERSON**: It may well be that we will refer to this letter in its entirety when we write, so let the witness speak.

**ADV BATOHI**: May I clarify, Chairperson, my understanding is that the letter will be part of the record, but I was highlighting for the purpose of time the relevant parts, but my understanding is that the entire, all of the documents that we  
10 have submitted, that is my understanding, Chairperson, is part of the record. I am happy to be guided by the Chair in this regard.

**CHAIRPERSON**: I understand what you say.

**ADV BATOHI**: Thank you, Chairperson. Chairperson, I should say that it was after this response, to complete the email chain, from Advocate Mlotshwa, if one goes to page 1014, the top is then a response to Advocate Mlotshwa from Advocate Chauke, saying:

20 “Dear Advocate Mlotshwa, I have noted your concerns below. I apologise to you to the extent that you feel I am not respecting you, and my communication with you was not what you expected. I also apologise for not having told you that I could not travel to KZN due to unforeseen circumstances. I

hope this meets with your approval. I have learned my lesson in this regard. Thank you for your assistance so far.”

Chairperson, the one other aspect before we move off the emails is on page 1011, which is Advocate Chauke's response to Advocate Mlotshwa when he asked for the prosecution memo or report. I want to draw the panel's attention to paragraph one, two, three, four, the fourth paragraph, second last one. Advocate Chauke says to Advocate Mlotshwa:

10            “If this makes you uncomfortable, please indicate so that I may urgently take the matter up with the acting NDPP as well as the Minister.”

Chairperson, for a DPP, to say this to an acting DPP, to threaten, I am not sure if that is the right word, but to report to the NDPP as well as the Minister, I am not sure what the purpose was because the Minister should not have any role

in this matter, in the prosecution of this matter. So it begs the question why Advocate Chauke mentioned that if  
20 Advocate Mlotshwa was not, was uncomfortable, that he must say so, so that he can take the matter up with the acting National Director and the Minister. Advocate Mlotshwa will testify to what he thought about that, Chairperson. Thank you.

**ADV BALOYI-MERE SC:** Advocate, before you proceed,

Advocate Batohi, you were asked a question whether the prosecutor's memo was ever made available or was ever sent to Advocate Mlotshwa and your answer is, I do not know. As the head of the NPA, one would assume, and please correct me if I am wrong, one would assume that before you took a decision to write the letter to Advocate Chauke and to the President, you would have familiarised yourself with all the facts of the issues that you want to bring to the attention of the President. And then the question that would crop into one's mind would be, how did then the racketeering charges were preferred against the Cato Manor group and what happened subsequently to the exchange between Chauke and Mlotshwa and you, I just assume that you should know the answer to this question, whether the memo was eventually made available to him or not and bearing in mind that his acting skin came to an end shortly thereafter, whether it was then given to his successor or what happened to it because I do not know, it leaves it hanging. Thank you.

**ADV BATOHI:** Chairperson, this matter will be dealt with in evidence but for maybe for present purposes I can explain that and now, Chairperson, to understand that I am referring to evidence, I am referring to documents and it is not my documents but it is evidence before the panel. According to Advocate Mlotshwa, I think he says in one of his statements that he did not hear anything further about this, but Advocate

Chauke in one of his documents states that he did send the memo. I could be mistaken but the process thereafter, we will explain how the racketeering authorisations came to be signed by Advocate Jiba. That is part of the evidence we intend to lead now. So that is why my answer to your question directly is whether it went to Advocate Mlotshwa, I am not sure because of what he says and what Advocate Chauke says. They need to explain that but I know what happened in the process after that and I will testify about that. We need  
10 to go through documents to explain that process.

**ADV BALOYI-MERE SC:** Advocate Batohi, I also need to understand, because my question is along these lines, did you investigate this matter further before you wrote the letter, did you take it further than Mlotshwa saying I did not have any further interactions or I did not hear anything further from Chauke from this date going forward, before you made the decision? Because in your letter, you are clear. You say, I have made the decision. I have come to a conclusion that there needs to be an enquiry or there needs to be further  
20 investigation on your conduct, so can you just clarify whether you still do not know or what happened?

**ADV BATOHI:** At this point, as I sit here, I do not know if Advocate Mlotshwa received the prosecution memo. What I do know is what happened subsequently and my decision to refer the matter to the President was not taken at this stage,

it was taken after – there is a lot of evidence in this bundle and as we proceed now, I will explain the next step insofar as how it came about that Advocate Jiba in fact signed the racketeering authorisation. I do not want to try to explain it now because we have got lots of documents to go through and I might get caught up in in that process but I do not know if Advocate Mlotshwa received it or not.

**CHAIRPERSON:** Should I take it that you are treating us, you are giving us information on a need-to-know basis, so we  
10 will know this information when the time comes, but for now we should just put it on hold?

**ADV BATOHI:** No, absolutely not. I want to give the panel all the facts as far as I am aware of. So I can run through what happened after that without referring to documents.

**CHAIRPERSON:** I did not mean that you should not be led. Thank you.

**ADV BATOHI:** Thank you very much.

**ADV MOHLAMONYANE SC:** Madam Baloyi-Mere, may I proceed?

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

**ADV MOHLAMONYANE SC:** Advocate Batohi, I am of the view currently that I should refer you back to Advocate Mlotshwa's email, which you earlier referred to. I am fortified in my view by what Madam Chair has indicated, that perhaps it is prudent to read the whole document, but for the moment,

do not read the whole document for the moment. Just go to paragraph 8 on page 1015.

**ADV BATOHI:** 1015?

**ADV MOHLAMONYANE SC:** LO-01015.

**ADV BATOHI:** Perhaps we should clarify to the panel, lest they get confused, that there is some duplication of documents. We were referring to 1010 and 1015, but they appear to be the same email.

**CHAIRPERSON:** I beg your pardon. I think counsel is  
10 referring you to something else.

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

**CHAIRPERSON:** If you can go to what counsel is taking you to ...[intervenes]

**ADV BATOHI:** 1015, Chairperson.

**CHAIRPERSON:** LO-01015. Correct, counsel?

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

**ADV BATOHI:** That is where I am, Chairperson. It is a duplication. That is all I wish to say. Of 011010.

**ADV MOHLAMONYANE SC:** Pardon me. It is the one that  
20 is embedded in my mind.

**ADV BATOHI:** Thank you.

**ADV MOHLAMONYANE SC:** Apart from the previous one.

**ADV BATOHI:** Sure.

**ADV MOHLAMONYANE SC:** But then, go to paragraph 8 and read the whole thereof.

**ADV BATOHI:** Paragraph 8 states:

“I have not changed my mind. I still need help from you because I want perpetrators of crimes to answer for their atrocious deeds. Only if we can respect each other and acknowledge that we all enjoy the right to human dignity. The AJP stated that he will meet us on Monday in Pietermaritzburg. I am still requesting you to give me a brief report so that I can also assure myself of what I am signing on. Again, humility and modesty will help us in this regard.”

10

**ADV MOHLAMONYANE SC:** Thank you. Go to LO1.

**ADV BATOHI:** LO?

**ADV MOHLAMONYANE SC:** Page 178.

**ADV BATOHI:** Yes.

**ADV MOHLAMONYANE SC:** You read paragraph 25, not so?

**ADV BATOHI:** I did.

20 **ADV MOHLAMONYANE SC:** Paragraph 26, may you read it into the record? We are still on Dr Broughton's supplementary affidavit, rather supplementary opinion. Not so?

**ADV BATOHI:** Yes. The Chair can assist. I think I read paragraph 26 into the record already.

**ADV MOHLAMONYANE SC:** Did you? My apologies.

**ADV BATOHI:** I can be corrected.

**CHAIRPERSON:** Which paragraph? Are you looking at LO-00149?

**ADV MOHLAMONYANE SC:** 178.

**CHAIRPERSON:** 178.

**ADV MOHLAMONYANE SC:** Yes. She said she has read it into the record.

**ADV BATOHI:** It is paragraph 26.

10 **CHAIRPERSON:** Yes, paragraph 25, 26 were read into the record.

**ADV MOHLAMONYANE SC:** Proceed then. Thank you, Madam Chair. Proceed then to paragraph 27 on the next page, 179.

**ADV BATOHI:**

20 “Advocate Mlotshwa was then removed as acting DPP KZN on 9 July 2012. Advocate Noko was appointed as the new acting DPP of KZN on 12 July 2023, which appointment would come into effect as from 16 July 2012. The removal of Advocate Mlotshwa as the acting DPP and the appointment of Advocate Noko as acting DPP, was on the recommendation of the acting National Director at the time, Advocate Jiba, as per

the latter's memorandum to Minister Hadebe dated 20 June 2012.”

Should I read the rest of it as well? It is the Mokgoro Enquiry.

**ADV MOHLAMONYANE SC:** You do not have to, go to paragraph 28.

**ADV BATOHI:** Paragraph 28:

10 “It is striking to note that the very next day after Mlotshwa’s appointment as acting DPP was terminated, an application dated 10 July 2012 in the name of Advocate Chauke for racketeering authorisation to be issued by Advocate Jiba, was submitted by the Booyesen prosecution team to the NPA National Office; VGM (VGM), this is according *inter alia* to the affidavit dated 17 May 2012 of Advocate Gladstone Maema (Advocate Maema), a DPP of the Northwest DPP division, who was the lead prosecutor on the Booyesen prosecution team. Advocate Maema’s affidavit was 20 deposed to for and presented to the SCC.”

That is the State Capture Commission.

“The said application...”

I continue;

“...is attached hereto in the evidence

bundle as Annexure C. The application is an exhibit that was annexed to Advocate Maema's affidavit, marked CM77. The application is unsigned. It should be emphasised that I conducted a diligent..."

I meaning Dr Broughton, who is writing this;

"It should be emphasised that I conducted a diligent search at VGM for the 2012 racketeering file pertaining to the Booysen prosecution, but to no avail. This file can seemingly not be located at the present time, which with respect is disconcerting.

10

So while it is so that Advocate Maema appended an unsigned version of the application to his SCC affidavit, it may be that a signed version was submitted at the time to the VGM. Why would such an important application be submitted to the VGM unsigned?

20

Needless to point out that in his undated but signed affidavit of November 20th and presented to the State Capture Commission, SCC in short, Advocate Anthony Mosing (Advocate Mosing), a DDPP of North Gauteng DPP Office

Pretoria, who at the time was the head of the Special Projects Division (SPD), in the Office of the NDPP (ONDPP), fulfilling *inter alia* a coordination function in the receiving and processing at VGM of racketeering authorisation applications and advising the NDPP on the authorisation of racketeering prosecutions.

10 He states that on about the 10th July 2012, he received the aforesaid application for racketeering authorisations from the prosecution team under cover of the letter from DPP South Gauteng. Relevant excerpts of Advocate Mosing's affidavit to the SCC are attached here too in the evidence bundle as Annexure D.”

Chairperson, I should for clarity state that the Annexure C and Annexure D that Dr Broughton refers to were marked as annexures to his supplementary affidavit.

20 **ADV MOHLAMONYANE SC:** Now, I want to take you to ...[intervenes]

**CHAIRPERSON:** Counsel, if I may, I am sorry, Advocate Batohi, I am sorry to interpose. It occurs to me, Advocate Mohlamonyane, that since we started, we have been referring to a list of documents which are not marked exhibits. What

we request you to do, or your colleagues to do, at the end of this testimony, please give us a list before we close, a list of all those exhibits properly marked, following from the last marked exhibits.

**ADV MOHLAMONYANE SC:** We will do so, Madam Chair. If perhaps the last one that I remember was EXHIBIT 2, we never had any subsequent, if my memory serves...

**CHAIRPERSON:** Had two exhibits.

10 **ADV MOHLAMONYANE SC:** Yes, we had two exhibits that were marked.

**CHAIRPERSON:** It means, I do not want to keep on interrupting you, that is why we request that you bear that in mind before the witness steps from that box. You place on record the list of all these exhibits, properly named, so that they can be properly placed on record.

**ADV MOHLAMONYANE SC:** In other words, if I understand Madam Chair correctly, before we adjourn these proceedings for today, it has to be placed on record, properly placed on record.

20 **CHAIRPERSON:** It will be helpful if you can do that with the assistance of your colleagues. I know your junior is not here, but it will help us so that we have a complete record for today. Because you are referring to this document as referred to in the affidavit itself, but for the purpose of this enquiry, we must mark them, so that they can be properly bundled as

exhibits. Will it be possible for you to do that at the end of business when you finish, before Advocate Batohi leaves the stand?

**ADV MOHLAMONYANE SC:** May I enquire from the NPA's team as to whether they will be able to do that? I am informed by the NPA team that they will attend to that, Madam Chair.

**CHAIRPERSON:** Yes, thank you.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. Advocate Batohi, what you were reading from that document  
10 has an impact on paragraphs 3, 3.1, and 3.1.1 of the terms of reference. Can you confirm that?

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** You referred to a date of 10 July 2012 where an authorisation certificate was applied for. We will revert later to that. For the moment, I refer you to L02-00376, which contains an affidavit deposed to by Advocate Anthony Mosing. It starts on page L02, LO-00340. Are you there?

**CHAIRPERSON:** Please take us to that bundle.

20 **ADV MOHLAMONYANE SC:** Bundle L02, Madam Chair.

**CHAIRPERSON:** L02?

**ADV MOHLAMONYANE SC:** L0-00340. That is the page. That is where it starts.

**CHAIRPERSON:** 340.

**ADV MOHLAMONYANE SC:** Yes, 340. That is Anthony

Mosing's affidavit that served before the State Capture Commission. Now, go to page 376.

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

**ADV MOHLAMONYANE SC**: Advocate Batohi, are you there?

**ADV BATOHI**: I am there.

**CHAIRPERSON**: We have to look for the bundle, counsel. You are referring us to L02?

**ADV MOHLAMONYANE SC**: Bundle L02, Madam Chair.

10 **CHAIRPERSON**: Please give us a second.

**ADV MOHLAMONYANE SC**: I will do that.

**CHAIRPERSON**: Thank you, counsel.

**ADV MOHLAMONYANE SC**: Thank you, Madam Chair. Advocate Batohi, for completeness sake, who is Advocate Anthony Mosing?

**ADV BATOHI**: So, Advocate Mosing, if my memory serves me right, held the position of a Deputy Director of Public Prosecutions.

**ADV MOHLAMONYANE SC**: Where was he stationed?

20 **ADV BATOHI**: He would have been stationed at the time of these events at the NPA Head Office, at the VGM Office, as it is referred to. And it appears he was in charge of Special Projects Section, and that I have gleaned from the other document. But perhaps to clarify what it appears his role was at the time regarding racketeering, and I stand to be

corrected, it is my understanding that he would have then received racketeering applications. He was in the office of the NDPP. He would have received applications from various parts of the, from prosecutors across the country. And then he would process the documentation and prepare it for submission to the National Director for his, for her consideration, the acting NDPP at the time. That is my understanding of his role.

**ADV MOHLAMONYANE SC:** And at the time, the acting  
10 NDPP was Advocate Jiba?

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** As of 2012?

**ADV BATOHI:** That is so.

**ADV MOHLAMONYANE SC:** Go to page LO-00376 of bundle  
LO2. Are you there?

**ADV BATOHI:** I am.

**ADV MOHLAMONYANE SC:** LO2, page LO-00376, Madam  
Chair. Go to paragraph 95. That is the affidavit of Mosing.  
Advocate Anthony Mosing. Please read paragraph 95 into  
20 the record.

**ADV BATOHI:** So Advocate Mosing states in paragraph 95  
of his affidavit:

“On or about 10 July 2012, I received an  
application for racketeering authorisations  
from the prosecuting team under cover of

the letter from DPP South Gauteng. After considering the application, it was concluded that the application must be made by the DPP KZN, as the DPP South Gauteng had no jurisdiction.”

Subsequently on page, paragraph 96, should I, sorry, counsel, should I stop there or continue?

**ADV MOHLAMONYANE SC:** Just read it and then we will go back to paragraph 95.

10 **ADV BATOHI:** Sure.

“Subsequently on or about...”

This is paragraph 96;

“Subsequently on or about 15 August 2012, I received the application for racketeering authorisations from the prosecuting team under cover of the letter from DPP KZN.

On or about the same time, I also received an application for centralisation under cover of a letter from DPP South Gauteng.”

20 **ADV MOHLAMONYANE SC:** Now go to the same bundle, LO2, to page 297, LO-00297. Therein you will find an application for authorisation.

**ADV BATOHI:** 297.

**ADV MOHLAMONYANE SC:** Indeed.

**CHAIRPERSON:** Paragraph?

**ADV MOHLAMONYANE SC:** It is an application for authorisation, Madam Chair. Yes, it is on page 00297 in bundle LO2. Are you there, Madam Chair?

**ADV BATOHI:** I am.

**CHAIRPERSON:** Thank you.

**ADV MOHLAMONYANE SC:** Now, this application on this page is dated 10 July 2012. Do you see that?

**ADV BATOHI:** That is so.

**ADV MOHLAMONYANE SC:** If you go back to paragraph 95,  
10 which you earlier read into the record. Is it the same ...

**ADV BATOHI:** It appears that ...[intervenes]

**ADV MOHLAMONYANE SC:** ...application that Advocate Mosing was referring to.

**ADV BATOHI:** It appears to be the same. When in paragraph 95, he says he received an application for racketeering authorisations under cover of letter from DPP South Gauteng. And this is, that is LO-00297. The document there is a memo from Advocate Chauke to Advocate Jiba, dated 10 July 2012. And the subject is application for authorisation in terms of  
20 section 2(4) of the POCA Act 121 of 1998, in the matter of the state versus Booyesen, Johan Wessel and others. And an application, Chairperson, in terms of section 2(4) of the Act is a racketeering application.

If I may, the body of that document states here with the following the application for the racketeering certificate,

I paraphrase 1.1. 1.2 is the draft indictment. 1.3 is the draft authorisations for section 21(3) and 21(f), respectively. And that would be in terms of the prevention of Organised Crime Act, which relates to racketeering offences. Paragraph 2 states:

“I have perused the documents and recommend the application.”

And paragraph 3 states:

10 “The accused have appeared in the Regional Court Durban. Matter has been postponed to 24 April 2012 for the racketeering authorisation. Eighteen of the accused persons are on bail. Other accused still need to be added to the charge sheet and or indictment.”

And there is a place for signature by Advocate KMA Chauke, DPP Johannesburg. The document is unsigned.

20 **ADV MOHLAMONYANE SC**: Now, in paragraph 1.2, it refers to the draft indictment. If you go to the next page, LO2, LO-00298, explain that document there.

**ADV BATOHI**: So, this document on that page as well as the following page would be the documents referred to in paragraph 1.1. Well, actually, it is 1.3. It would be the draft authorisations. So, if the National Director, Acting National Director and the time, Advocate Jiba was satisfied, she would

have signed these documents, which are the draft authorisations.

**ADV MOHLAMONYANE SC:** Go to the next page, LO2, LO-00299.

**ADV BATOHI:** Yes, that is also a similar document for a certification by the National Director that he or she is, in this case, Advocate Jiba, is approving the authorisation for racketeering charges.

**ADV MOHLAMONYANE SC:** Go to the next page, the  
10 following page is 300.

**CHAIRPERSON:** Before you do that, counsel, LO-00299, is that the page you have just referred to now?

**ADV MOHLAMONYANE SC:** It is a draft according to the witness.

**CHAIRPERSON:** It is a draft.

**ADV MOHLAMONYANE SC:** It is a draft. Let me find out from the witness who prepares these drafts.

**CHAIRPERSON:** No, no, no, no. I just want you to tell me because I see LO-00299 supposed to be an authorisation  
20 under the hand of Advocate Jiba, but it is not signed.

**ADV MOHLAMONYANE SC:** Indeed, Madam Chair, it is unsigned. Go to the next page where you find a prosecution memorandum. Explain what a prosecution memorandum is.

**ADV BATOHI:** A prosecution memorandum would normally set out the case against the accused persons, setting out the

charges as well as key aspects of the evidence.

**ADV MOHLAMONYANE SC:** In the normal course of events, Advocate Batohi, it is imperative that such a memorandum referred to as a prosecution memorandum should be annexed to authorisation applications in terms of section 2(4) of POCA.

**ADV BATOHI:** That is correct, and this is what this bundle appears to be. It appears to be the first document being the memo, which is always signed by the DPP of the jurisdiction  
10 where the case is taking place, and to that will be a bundle which will be attached the draft authorisations as well as the prosecution memo and the indictment.

**ADV MOHLAMONYANE SC:** I see on page 301, if I may refer you to it.

**ADV BATOHI:** 301.

**ADV MOHLAMONYANE SC:** 301, under paragraph D, subparagraph D, there is identification of the accused. Is that what you refer to as an indictment?

**ADV BATOHI:** No.

20 **ADV MOHLAMONYANE SC:** What is this?

**ADV BATOHI:** This is part of the prosecution memorandum, which starts, it appears, which starts on the page before that, LO-300, and continues, so that is the prosecution memorandum. It is part of that document, but it identifies the accused.

**ADV MOHLAMONYANE SC:** It identifies the accused.

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

**ADV MOHLAMONYANE SC:** You go to the next page, the page that follows the identification of the accused. On page 305, L0-305, there is analysis of evidence.

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** The next page contains a list of proposed charges.

**ADV BATOHI:** That is correct.

10 **ADV MOHLAMONYANE SC:** Is that the indictment?

**ADV BATOHI:** No, it is not. It is still part of the prosecution memo. If you look at the page numbers, they follow, and it appears that this prosecution memo proceeds right until page 43, which is L0-3339. So that is one document, the prosecution memo, and I should indicate that, no, I think that is all for now.

**ADV MOHLAMONYANE SC:** Now, what is contained in this letter, in this application for authorisation that you referred to earlier, dated 10 July 2012, together with the prosecution  
20 memo, memorandum...

**ADV BATOHI:** Sorry, just a moment. Take me there again.

**ADV MOHLAMONYANE SC:** I am taking you back to LO2, LO-00297.

**ADV BATOHI:** Yes, I am there.

**ADV MOHLAMONYANE SC:** I am saying, what appears

there, together with all the attachments to this application?

**ADV BATOHI:** Yes. As I indicated, it is a memo from Advocate Chauke.

**ADV MOHLAMONYANE SC:** Yes.

**ADV BATOHI:** The DPP of Johannesburg.

**ADV MOHLAMONYANE SC:** Yes.

**ADV BATOHI:** To Advocate Jiba, the acting National Director.

**ADV MOHLAMONYANE SC:** Yes, my question is, what  
10 appears there, the application itself, together with the memo, including what you have read in paragraph 95 and 96.

**ADV BATOHI:** Yes.

**ADV MOHLAMONYANE SC:** Of Mosing's, it is Advocate Mosing's' affidavit, pertains to paragraphs 3, 3.1, 3.1.1, and 3.1.1.1.

**ADV BATOHI:** That is correct.

**CHAIRPERSON:** Advocate Mohlamonyane, the memorandum is signed, or rather, is drafted by Advocate GS Maema.

20 **ADV MOHLAMONYANE SC:** Indeed, Madam Chair, and that appears on page 339.

**CHAIRPERSON:** Now, when you look at the terms of reference, paragraphs 3.1.1.4 and 3.1.1.5, of what relevance is this memo to all these, at least to the two paragraphs I have referred to?

**ADV MOHLAMONYANE SC:** 3.1.1?

**CHAIRPERSON:** 3.1.1.4 and 3.1.1.5 of the terms of reference.

**ADV MOHLAMONYANE SC:** I do not remember mentioning 3.1.1.4, Madam Chair. I do not remember. I said 3.1.1.

**CHAIRPERSON:** I am not suggesting you did. I am asking a question for my own clarity, just to understand the relevance of this memo, the pages that you have referred us to, insofar as the terms of reference are concerned.

10 **ADV MOHLAMONYANE SC:** For the moment, it does not pertain to paragraph 3.1.1.4 of the terms of reference, but it has a bearing and an impact on paragraphs 3, 3.1, and 3.1.1, as well as 3.1.1.1.

**CHAIRPERSON:** Thank you.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. We now know that this application was prepared by – it would appear it was prepared by Advocate GS Maema. Am I correct?

**ADV BATOHI:** That is correct.

20 **ADV MOHLAMONYANE SC:** Now, what was the role of Advocate GS Maema?

**ADV BATOHI:** According to the information, he was the team leader of the – he was the leader of the prosecution team.

**CHAIRPERSON:** Was the leader of the prosecution team not Mr Maema?

**ADV BATOHI:** Sorry, did you – what name did you – I apologise, Chairperson. What name did you...

**ADV MOHLAMONYANE SC:** Advocate GS Maema.

**ADV BATOHI:** Yes.

**CHAIRPERSON:** Advocate Maema.

**ADV BATOHI:** In terms of the team that is – so you have a DPP, and then you have the prosecutors that are actually the ones that are going to prosecute the matter in court, and that deal with the management of the case itself in terms of the  
10 evidence and managing the case. So you have – it appears from I think the paragraph 60 that you referred me to earlier on, Evidence Leader, Chairperson, that he was the team leader.

**CHAIRPERSON:** Advocate Maema.

**ADV BATOHI:** That is correct.

**CHAIRPERSON:** Yes.

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

**CHAIRPERSON:** Not Advocate Chauke.

**ADV BATOHI:** Not the leader of the – he was the DPP in  
20 charge of the team, and Advocate Maema was the prosecution team leader.

**CHAIRPERSON:** Yes, leader.

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

**CHAIRPERSON:** Thank you, counsel.

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

to page 00777, triple seven, in the same bundle, in which you will find an email trailing there.

**ADV BATOHI**: Sorry, which bundle?

**ADV MOHLAMONYANE SC**: The same bundle, LO2.

**ADV BATOHI**: 777.

**ADV MOHLAMONYANE SC**: Yes, 00777.

**MS RAMAGAGA**: Last page of LO2 seems to be page 64.

**CHAIRPERSON**: Which document are you referring to, if you could assist? 777 will be your Annexure A of Mosing. Maema  
10 email, 2012/08/15, Mosing affidavit: A12, close. Is that the document?

**ADV MOHLAMONYANE SC**: Yes, that is the document, Madam Chair. My junior has assisted me. She says it must be contained in LO3.

**CHAIRPERSON**: LO3.

**ADV MOHLAMONYANE SC**: Indeed, Madam Chair. That is correct. It is LO3. Advocate Batohi, have you located the document?

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

20 **ADV MOHLAMONYANE SC**: It is an exchange of emails between Advocate Maema and Advocate Mosing, not so?

**ADV BATOHI**: That is correct.

**ADV MOHLAMONYANE SC**: Can you read into the record the email on top of the page and go down the page?

**CHAIRPERSON**: The email from Advocate Maema, Sello

Maema, to Advocate Mosing.

**ADV MOHLAMONYANE SC:** Indeed, Madam Chair. Email trailing seems to confuse us. They start at the back. I should have started at the back, Madam Chair.

**CHAIRPERSON:** If you are confused, I am more confused.

**ADV MOHLAMONYANE SC:** Email trailing. It starts, Advocate Batohi, on page 779.

**ADV BATOHI:** Yes.

**ADV MOHLAMONYANE SC:** And then it means that the first  
10 one, the first email trailing was from Anthony Mosing at the bottom of page 778. Do you see that?

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

**ADV MOHLAMONYANE SC:** Dated 14 August 2012 at 4.21pm and it was directed to Mahlubi Ntlakaza and Sello Maema.

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** Are you able to explain what is contained there? What was the message?

**ADV BATOHI:** So this email, what I gather from what is here,  
20 is that it is, as you said, from Anthony Mosing to Advocate Ntlakaza and Maema. And if one notes the team earlier on, Advocate Maema is the prosecution team leader and Advocate Ntlakaza is one of the members. The subject is:

“Final Cato Manor indictment as modified  
by Advocate KR Mathenjwa”

And Advocate Mosing says:

“Colleagues, herewith more corrections to the summary of facts and the memorandum. Regards.”

So one can infer from that that he had made corrections to the documents that he had received earlier on under cover, as he said, of I think it is letter dated, the memo dated 10 August that we were referring to earlier on.

**ADV MOHLAMONYANE SC:** Go to the one following that  
10 one on the same day, the 15th of August.

**ADV BATOHI:** The next day.

**ADV MOHLAMONYANE SC:** The next day at 8.34am.

**ADV BATOHI:** So Advocate Ntlakaza responds to, well, he does not, it is a letter from, it is an email from Advocate Ntlakaza to Advocate Mathenjwa, Mlotshwa, Moleko, Futshane, Maphutha, and copied to Advocate Maema.

“These are minor changes to the enterprise only. I think we can get our certificates. I am not sure whether Advocate Maema has  
20 printed the hard copies. I will be at the Constitutional Court today.”

**ADV MOHLAMONYANE SC:** So the subject there was a final Cato Manor indictment.

**ADV BATOHI:** Yes, it is from this email it is clear that they were preparing for the, to get this racketeering certificate

from the acting National Director.

**ADV MOHLAMONYANE SC:** Go to the next one that follows.

It is up the page, in the middle of the page. At 12.02.

**ADV BATOHI:** It is an email from Advocate Maema to Advocate Mosing, Mathenjwa and copied to other colleagues in the team.

**ADV MOHLAMONYANE SC:** Can you read it into the record?

**ADV BATOHI:** It states:

“Dear colleagues, Anthony...”

10 And that would mean Anthony Mosing because his first name is Anthony. It would be Advocate Mosing;

“...Anthony, I had a look at the proposed changes. It is more to complete the participants of the enterprise to include the Port Shepstone organised crime accused. I have worked it into the indictment at the whereas, at the summary of substantial facts, and into the prosecution memo.

20 You asked whether we are not repeating the same paragraph at the summary of the case in the prosecution memorandum. I think it completes the introduction well and is not necessarily repetition, although it has been mentioned at the introductory part.”

He then goes on to say in paragraph 2:

“We have also added Lockham and Van Tonder as managers of the enterprise. I will make contact with you today or tomorrow to bring the hard copies.”

And this is important.

“I have also done the prosecution memo on the KZN letterhead, although our DPP...”

Which I assume is Advocate Chauke;

10           “...will sign as arranged with the acting  
DPP KZN. Thank you for your valuable  
contribution. We await your facilitation for  
the approval of the racketeering  
certificates. Remember, we require them  
next week. We apologise for putting you  
under pressure.”

So it was clear from that that there was a lot of pressure in terms of getting these certificates authorised.

**CHAIRPERSON:** With that assumption in mind, it strikes me,  
20 counsel, that Advocate Chauke does not appear in the list of  
the people who have been CC'd in that email.

**ADV BATOHI:** That is correct, Chairperson. This is the team, the prosecution team at the technical level.

**CHAIRPERSON:** Am I correct to assume that at this stage, Advocate Chauke played no role whatsoever?

**ADV BATOHI:** He has played no role in getting these documents together for the purpose of submission to the National Director. That is also an inference that I made, Chairperson.

**CHAIRPERSON:** The assumption.

**ADV BATOHI:** I beg your pardon, not an inference, the assumption. Thank you.

**CHAIRPERSON:** Thank you, counsel.

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

10 **Advocate Batohi,** you remember you were reading in LO1 that Advocate Mlotshwa, Mlotshwa's tenure ended. Do you remember that?

**ADV BATOHI:** Yes.

**ADV MOHLAMONYANE SC:** It ended on the 9th of July, if my memory serves me well. Yes, 9 July 2012, not so.

**ADV BATOHI:** Yes, that appears to be the case.

**ADV MOHLAMONYANE SC:** Thereafter, Advocate Noko was appointed as the acting DPP KZN, not so.

**ADV BATOHI:** That is correct.

20 **ADV MOHLAMONYANE SC:** From memory, can you remember when she took office?

**ADV BATOHI:** I know she was, I think it was mid-July. From memory, I think it was the 16th of July, but I stand to be corrected.

**ADV MOHLAMONYANE SC:** I beg yours?

**ADV BATOHI:** I said I think it is the 16th of July, but I stand to be corrected. It is in one of the documents.

**ADV MOHLAMONYANE SC:** Yes, let me refer you to a document contained in ZC11. ZC for Zondo Commission.

**ADV BATOHI:** Yes, I just need to find the bundle, please, counsel. ZC11.

**ADV MOHLAMONYANE SC:** I am told it is in one of your bundles, Advocate Batohi, ZC11. ZC11, page ZC-02708. I will repeat it for the benefit of everyone. I will repeat the  
10 page. Have you located it?

**ADV BATOHI:** I have, yes, thank you.

**ADV MOHLAMONYANE SC:** It is a letter ...[intervenes]

**CHAIRPERSON:** Please give me a second, counsel. Page?

**ADV MOHLAMONYANE SC:** Page, ZC-02708. It is a document prepared by the Office of the National Director of Public Prosecutions addressed to JT Hadebe, MP ...[intervenes]

**CHAIRPERSON:** Please give us a second to locate this document, ZC-02708.

20 **ADV MOHLAMONYANE SC:** Indeed, Madam Chair. Are you there? Advocate Batohi?

**ADV BATOHI:** I am.

**CHAIRPERSON:** Perhaps you must read the introductory part of that letter, because the marking here is obscured by something else. The numbering in our record is obscured by

some kind of deletions.

**ADV MOHLAMONYANE SC:** You have got the page?

**CHAIRPERSON:** Yes, thank you, counsel.

**ADV MOHLAMONYANE SC:** If you may read it, if you may write it by hand, maybe.

**CHAIRPERSON:** It is a document from Advocate Jiba to MP, to the Minister, I suppose, Hadebe, is that the document?

**ADV MOHLAMONYANE SC:** That is the document, Madam Chair.

10 **CHAIRPERSON:** Thank you.

**ADV MOHLAMONYANE SC:** May I proceed?

**CHAIRPERSON:** Yes, sir.

**ADV MOHLAMONYANE SC:** Please, Advocate Batohi, read the document into the record.

**ADV BATOHI:** The entire document. Okay, I will go ahead.

**ADV MOHLAMONYANE SC:** Yes, the entire document. It is important.

**ADV BATOHI:** Sure. It is a memorandum that is from Advocate Jiba as acting NDPP to Minister Hadebe, the  
20 Minister of Justice and Constitutional Development. It is signed by Advocate Jiba on the third page of 26 June 2012. That is ZC-2710. The subject line is:

“Request for appointment of an acting  
Director of Public Prosecutions:  
Jurisdictional are ...[intervenes]”

**CHAIRPERSON:** I beg your pardon, counsel. I am sorry, Advocate Batohi. You said, sworn to. Did you say sworn to or signed?

**ADV BATOHI:** Signed. I beg your pardon. Signed on the 26th of June 2012.

**CHAIRPERSON:** Yes. It is not an affidavit.

**ADV BATOHI:** No, it is a memorandum.

**CHAIRPERSON:** It is just a memo.

**ADV BATOHI:** That is correct.

10 **CHAIRPERSON:** Yes.

**ADV BATOHI:** A memorandum from Advocate Jiba to Minister Hadebe. The subject line is:

“A request for appointment of an acting Director of Public Prosecutions: Jurisdictional Area of KwaZulu-Natal High Court Division, section 13(3) of the National Prosecuting Authority Act, 1998, 32 of 1998.

The purpose

20 a. Purpose of the memorandum is to request the appointment of Advocate Moipone Noko-Mashilo as the acting Director of Public Prosecutions for the KwaZulu-Natal High Court Division.”

Paragraph 2:

2. “Section 13.3 of the National Prosecuting Authority Act provides as follows:

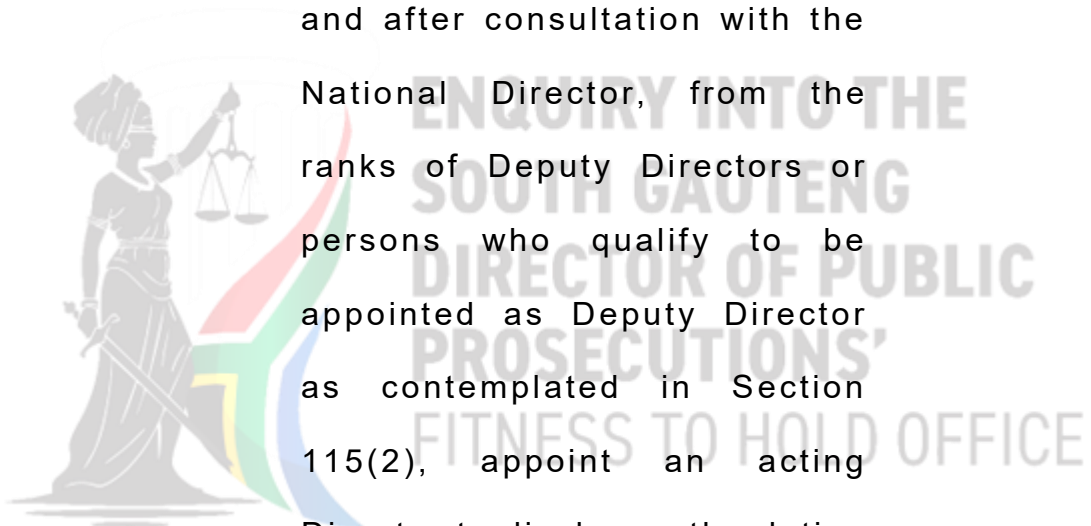
“Appointment of Directors and acting Directors:

Subsection 3

The Minister may from time to time, but subject to the laws governing the public service and after consultation with the

10

National Director, from the ranks of Deputy Directors or persons who qualify to be appointed as Deputy Director as contemplated in Section 115(2), appoint an acting



Director to discharge the duties of a Director whenever the Director concerned is for any reason unable to perform the duties of his or her office or while the appointment of a person to the office of Director is pending”.

20

And then below that it says request for appointment. I think

that is the subject of the memo. B is background. Paragraph 3:

10 “3. The Minister has due to Advocate Batohi’s appointment to the International Criminal Court in November 2009 and a subsequent resignation from the NPA, from the National Prosecuting Authority in April 2012, appointed various Deputy Directors to discharge the duties of Director of Public Prosecutions in KwaZulu-Natal, the most recent being Advocate CS Mlotshwa.

20 4. To ensure adherence to the prescripts of the Senior Management Service Handbook and that no expectation is created by an extended acting appointment, I deem it necessary to request the appointment of another senior Deputy Director to act as DPP for the period 16 July 2012 until further notice or until the vacant post is filled.

5. It is thus hereby requested that Advocate Moipone Noko-Mashilo be appointed to act as DPP for the

requested period.

Advocate Noko-Mashilo a level 14 Senior Deputy Director at the DPP office in Pietermaritzburg. She is a competent, committed, and dynamic person and I am of the opinion that she will be able to execute her duties of acting DPP.

C. Recommendation

10 It is recommended that Advocate Moipone Noko-Mashilo be appointed in terms of section 13(2) of the Act as acting DPP for the period 16 July 2012 until further notice or until the vacant post is filled.

Attached, find a draft appointment for your consideration, Annexure A.”

And it is signed by Advocate N. Jiba, Acting National Director of Public Prosecutions dated 26 June 2012. And below that the recommendation paragraph 6 is approved, draft  
20 appointment signed, comments none and it is signed what appears to be by Minister Hadebe on the, it appears to be 12th of July 2012. I am not sure if it is 02 July or 12 July, it is unclear. It might be 02 because if you look at the next, I am looking at the next document which is 02, ZC-02711. It is the appointment letter that is signed by Minister Hadebe

appointing Moipone Noko-Mashilo as Acting Director of Public Prosecutions for the jurisdictional area of Natal Provincial High Division, High Court Division or the High Court for the period of 16 July until 2012 until further notice or until the vacant position is filled. And this is signed clearly at Pretoria on the 2nd day of July 2012 by the Minister of Justice.

**ADV MOHLAMONYANE SC:** Ja, whilst you are still there, let us go back to the Act. The NPA Act, National Prosecuting  
10 Authority Act.

**ADV BATOHI:** Okay.

**ADV MOHLAMONYANE SC:** Go to section 13 and confirm whether this appointment of Advocate Moipone Noko-Mashilo was done in terms of section 13.

**ADV BATOHI:** That is correct, as the memo indicates.

**ADV MOHLAMONYANE SC:** Now, the appointment says for the jurisdictional area of Natal Provincial High Court Division.

**ADV BATOHI:** Yes, that is the appointment letter that is signed by the Minister.

20 **ADV MOHLAMONYANE SC:** Can you explain that jurisdictional area? What does that imply?

**ADV BATOHI:** Well, it means that Advocate Moipone Noko-Mashilo is appointed as the Acting DPP for the KZN division.

**ADV MOHLAMONYANE SC:** Go to LO3, page L0-00665.

**CHAIRPERSON:** Before you go to that bundle, counsel, what

is the import of that letter that has been read into the record? The appointment of Advocate Noko? Is it merely to place on record that Advocate Mlotshwa was replaced?

**ADV MOHLAMONYANE SC:** Not only that, but it will also show subsequently that what the role of Advocate Noko-Mashilo was. In the Cato Manor episode.

**CHAIRPERSON:** Thank you, counsel. You may proceed.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. Are you there, Advocate Batohi?

10 **ADV BATOHI:** I am.

**ADV MOHLAMONYANE SC:** You see that there is a letter. In fact, it is an application for authorisation in terms of section 2(4) of POCA.

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** May you kindly read it into the record?

**ADV BATOHI:** So this is an application. It is a memorandum from on the letterhead of the Director of Public Prosecutions, KwaZulu Natal.

20 **CHAIRPERSON:** Take us to that page.

**ADV BATOHI:** 00665, Chairperson.

**ADV MOHLAMONYANE SC:** Yes. Bundle LO3, page LO-00665, Madam Chair.

**CHAIRPERSON:** Thank you.

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

you proceed, Advocate Batohi, to read that letter into the record?

**ADV BATOHI:** It is a memorandum from, as I said, it is on the letterhead of the DPP KwaZulu Natal. It is from Advocate M Noko-Mashilo, the acting DPP of KZN. It is dated 16 August 2012. The subject is:

10                   “Application for authorisation in terms of section 2(4) of the POCA Act of 1998. State versus Booyesen, Johann Wessel and others.”

Then goes on to say the following:

“Herewith the following:

1.1 Application for authority in terms of section 2(4) of the Prevention of Organised Crime Act 121 of 1998 for your consideration and approval.

1.2 The proposed indictment.

1.3 The draft authorisations for section 2(1)(e) and 2(1)(f), respectively.”

20 Paragraph 2 is important. It states:

“2. I have perused the documents and recommend the application.

3. The accused have appeared in the Regional Court, Durban, and the matter has been postponed to 24

August 2012 for the racketeering authorisation. Eighteen of the accused persons are on bail, and 12 other accused persons will be added to the charge sheet.

The name of Advocate Noko-Mashilo as the acting DPP KwaZulu-Natal appears at the bottom, but the document is signed by Advocate Chauke. Chairperson, perhaps you state that this document is identical to the unsigned memorandum  
10 that was referred to earlier, which is on LO2-00297. And it appears from the evidence I have already tendered that after that communication between Maema and Mosing indicated that there must be a memo prepared by the, well, I do not have the language in front of me now, but prepared by the DPP KZN, but the email goes on to say, but it will be signed by our DPP. I assume referring to Advocate Chauke, and this document is indeed signed by Advocate Chauke. Thank you, Chairperson.

**ADV MOHLAMONYANE SC:** Advocate Batohi, are you  
20 identifying the signature appended on this page, 00665, as that of Advocate Chauke?

**ADV BATOHI:** Yes, that is correct. I know his signature. He submitted documents. On that basis, I say it is his signature.

**CHAIRPERSON:** Are you referring to LO-00665?

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

**CHAIRPERSON:** And above the name Advocate M Noko-Mashilo, there is a signature there.

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

**CHAIRPERSON:** Are you saying it is Advocate Chauke who signed this?

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

**ADV MOHLAMONYANE SC:** It is common cause that you took office in 2019.

10 **ADV BATOHI:** The current office, yes.

**ADV MOHLAMONYANE SC:** Yes.

**ADV BATOHI:** That is so.

**ADV MOHLAMONYANE SC:** As NDPP.

**ADV BATOHI:** That is so.

**ADV MOHLAMONYANE SC:** For how long have you ...[intervenes]

**CHAIRPERSON:** If you may remind me, why would Advocate Chauke sign and not Advocate Noko-Mashilo?

**ADV BATOHI:** Chairperson...

20 **CHAIRPERSON:** Because he does not seem to sign PP there.

**ADV BATOHI:** Chairperson, the evidence that we tendered earlier and the evidence leader will help me perhaps go to those documents, but I can paraphrase, Chairperson. What transpired from the documents we referred to is that if one

looks at in bundle LO2, 00297, there was originally a memorandum identical to this one prepared, but in the name of Advocate Chauke for signature. The communication then between Maema and Mosing, it was Mosing, in fact, I think, who raised in one of the documents that Advocate Chauke cannot sign this memorandum because he does not have jurisdiction. I am paraphrasing, Chairperson.

What then happens is that there is an email which we have already led evidence on and referred to the emails that  
10 Advocate Maema, I think, writes to Advocate Mosing saying that they will, this cannot, they will prepare the document in the letterhead of KZN, but it will be signed by our DPP. So, in effect, what is happening is the impression, this is my deduction, Chairperson, is created that this matter is, in fact, being dealt with by KZN, but is signed by Advocate Chauke as the DPP in this matter.

**CHAIRPERSON:** And that is when you made an assumption that reference to DPP in that document referred to Advocate Chauke. You remember I asked you that question, when you  
20 said you are drawing an inference, and I said you are making an assumption. Is that the document?

**ADV BATOHI:** I, my memory is not that great, Chairperson. I am just trying to make sure I respond, I am responding to the correct document. I do remember your question.

**CHAIRPERSON:** Yes.

**ADV BATOHI:** But I just want to make sure it is linked to this and I answer properly.

**CHAIRPERSON:** So, in that letter, if I am correct, counsel, it is Advocate Maema who was writing and saying they will refer those documents to their, our DPP ...[intervenes].

**ADV BATOHI:** Yes.

**CHAIRPERSON:** And then you, I beg your pardon, may I finish? And then you then said, you drew an inference, and I said you are drawing an assumption that DPP there refers to  
10 Advocate Chauke.

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

**CHAIRPERSON:** Now, I am asking you a question on LO-00665 where you have that letter from Advocate Noko-Mashilo, acting Director of Public Prosecution, KZN, to Advocate Jiba. Now, the document, that letter by Advocate Mosing is under his name or her name. I am not sure whether it is a lady or a gentleman. It is a lady, I suppose.

**ADV BATOHI:** It is a gentleman, Chairperson.

**CHAIRPERSON:** It is a gentleman. There is a signature  
20 there, but it does not appear to be PP. I would have imagined that Advocate M Noko-Mashilo would sign this document.

**ADV BATOHI:** It is not her signature, Chairperson. It is Advocate Chauke's signature.

**CHAIRPERSON:** Yes. It is not PP. It is not done PP.

**ADV BATOHI:** I cannot tell, Chairperson. That is his

signature.

**CHAIRPERSON:** My colleague is saying Advocate Chauke signed PP. Can you confirm that by a mere looking at that document?

**ADV BATOHI:** Chairperson, he is certainly signing for Advocate Noko-Mashilo. I do not know whether that is part of his signature. There is a, whether there is a PP, whether the arrow is meant to be PP or it is part of his signature. It could potentially be a PP, but, well, not but, Chairperson, but  
10 it is his signature, and it is Advocate Noko-Mashilo's name below.

**MS RAMAGAGA:** Advocate Batohi, you have indicated to the panel that you know the signature of Advocate Chauke. Now, according to your knowledge, does the signature of Advocate Chauke ordinarily entail that arrow that you say you do not know? That seems to be also confusing you, let me put it that way. Does it ordinarily entail that too?

**ADV BATOHI:** I do not know, Chairperson. I will have to look at another signature of his to compare, but I know that  
20 looks like his signature, and I do not think it is disputed that it is his signature, Chairperson.

**MS RAMAGAGA:** Ja, just focus on what I am asking. I am asking about the arrow, and your answer is that you do not know, you are going to ascertain and look at other signatures, is that correct?

**ADV BATOHI:** I can do that, Chairperson.

**MS RAMAGAGA:** All right, thank you.

**CHAIRPERSON:** Let me piggyback from that, just for my own clarity. Why would Advocate Noko-Mosing write a letter, put his names there, and his position as a Director of Public Prosecution, KZN, and he does not sign the letter, and he causes someone else who is a DPP, Gauteng South, to sign?

**ADV BATOHI:** That is an important question, Chairperson, and perhaps if we can refer back to the email, if counsel will  
10 help me, this might help us understand this, the email of Maema to Mosing.

**CHAIRPERSON:** May we refer to him as Advocate Maema, please?

**ADV BATOHI:** Sure, Chairperson. Advocate Maema to Advocate Mosing.

**ADV MOHLAMONYANE SC:** If I may assist, we have Moipone, Madam Chair, is a lady.

**CHAIRPERSON:** I beg your pardon?

**ADV MOHLAMONYANE SC:** I just wanted to assist in that  
20 regard, as far as her...

**CHAIRPERSON:** I cannot hear you, counsel.

**ADV MOHLAMONYANE SC:** I wanted to assist in regard to Moipone, Advocate Moipone Noko-Mashilo. She is a lady.

**CHAIRPERSON:** She is a lady?

**ADV MOHLAMONYANE SC:** Yes.

**CHAIRPERSON:** Thank you. Thank you, counsel.

**ADV BATOHI:** If we could go to that, the email, which will help me explain, answer the Chairperson's question about why would Advocate Chauke sign, if you could just direct us to that.

**ADV MOHLAMONYANE SC:** Yes, it is in 778. LO3.

**ADV BATOHI:** 778.

**ADV MOHLAMONYANE SC:** LO-00778, Advocate Batohi.

**ADV BATOHI:** Yes, thank you. Chairperson, again, it is an  
10 email from Maema to Mosing, where they are preparing the documents for submission to the National Director for the authorisation or the approval of the racketeering certificates. If you look at the middle paragraph:

“I have also done the prosecution memo on the KZN letterhead, although our DPP will sign as arranged with the acting DPP, KZN.”

That will perhaps assist in explaining that, Chairperson.

**CHAIRPERSON:** [Indistinct – 1:40:02]

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

**CHAIRPERSON:** [Indistinct]

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

**CHAIRPERSON:** Pardon? When one looks at the email at LO-00778, the date is 15 August 2012, and the letter that is written by Advocate M Noko-Mashilo is also dated 15 August

2012. It is on that basis that you made the assumption.

**ADV BATOHI**: That is correct, Chairperson. And if you look at the email that you referred to, it is from Sello Maema.

**CHAIRPERSON**: Yes.

**ADV BATOHI**: And if we go to LO-00703, which is attached to the memo at LO-00665, it is signed by Advocate Maema.

**CHAIRPERSON**: It is signed by who?

**ADV BATOHI**: Advocate Maema, the same person who sent the email that we just referred to, Chairperson.

10 **CHAIRPERSON**: LO00-778.

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

**CHAIRPERSON**: Yes, thank you.

**ADV BALOYI-MERE SC**: Advocate Batohi, if you can assist, Advocate Maema, from which jurisdiction is he?

**ADV BATOHI**: He is from, well, he was. He is now retired, but at the time, he was from the Northwest jurisdiction and was part of this team.

**ADV BALOYI-MERE SC**: Northwest Division.

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

20 **ADV BALOYI-MERE SC**: Now, if he says, I have also done the prosecution memo on the KZN letterheads, although our DPP will sign as arranged with the acting DPP, KZN. How do we place the DPP South Gauteng in this sentence when Advocate Maema is from Northwest?

**ADV BATOHI**: Chairperson, at the time, the evidence will

show this team was put together, and they were working from the VGM in the head office in Pretoria. So, the team was predominantly from Johannesburg, and I am not sure how many, Advocate Maema might have been the only one from Northwest, but they were all, they had come together in VGM Pretoria, and they were working from the VGM office, head office on these cases. So, he was not physically, at the time, working in Northwest province. So, he was part of the team that, at the time was, activities of this team was being  
10 coordinated by Advocate Chauke. So, the DPP Northwest did not have anything to do with this matter.

**ADV BALOYI-MERE SC:** The VGM offices, I take it they are in Silverton.

**ADV BATOHI:** That is correct, Chairperson. It is a head office of the NPA.

**ADV BALOYI-MERE SC:** And they would fall under the jurisdiction of Pretoria?

**ADV BATOHI:** That is correct, Chairperson. The office is in Pretoria.

20 **ADV BALOYI-MERE SC:** So, the DPP there would be DPP Pretoria?

**ADV BATOHI:** The VGM is in the jurisdiction of DPP Pretoria. That is correct.

**ADV BALOYI-MERE SC:** Advocate Batohi, I am trying to make sense of the use of our DPP and marry it to Advocate

Chauke. If you can assist me with that link.

**ADV BATOHI**: Sure. Chairperson, the understanding is that there was a team that was put together. And if we look at paragraph 60 that we referred to earlier on, that sets out the team, is that 60 of?

**ADV MOHLAMONYANE SC**: No, in Advocate, Advocate Chauke's witness statement.

**ADV BATOHI**: If we could just be directed to that part, I can, I will be helped to answer the question better. Because what  
10 practically happened is that prosecutors from Johannesburg and, this is my understanding, and I am sure there will be others that will be better placed because, as I said, I was not here at the time. I am gathering from other bits of evidence, so, it is not my direct evidence. But my understanding is that this team was put together. If we can be directed to that paragraph and the page number, it will help. But my  
understanding is that this team of prosecutors working on this case were working from the Pretoria of, the VGM office, under the DPP Gauteng, South Gauteng, that is Advocate Chauke,  
20 and dealing with these cases that actually emanated, this particular case emanated from KZN. That is my understanding of how this worked.

**ADV MOHLAMONYANE SC**: May I refer you, therefore, for purposes of understanding and for purpose of answering Madam Baloyi-Mere's question, to paragraph 60 of LO1 on

page LO-00266? Just to recap, you have already dealt with it, but for purposes of answering the question, it is appropriate that you should go back to it.

**CHAIRPERSON:** It is in LO1?

**ADV MOHLAMONYANE SC:** It is in LO1, Madam Chair, and the page is LO-00266. And if I may point out, my colleague informs me that it is almost lunch break.

**CHAIRPERSON:** Yes, I have noted that. I just want us to wrap this aspect so that we do not forget where we ended. Is  
10 it LO-00266?

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

**CHAIRPERSON:** Paragraph 60.

**ADV MOHLAMONYANE SC:** Paragraph 60 thereof. This is a witness statement of Advocate Chauke that served before the State Capture Commission.

**CHAIRPERSON:** Yes. That he was asked by Advocate Jiba to put together the team.

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

**ADV BATOHI:** He says, according to that paragraph 60,  
20 Advocate Chauke states:

“Jiba requested me to assist with putting together a prosecution team which will guide members of the police and members of IPID to the Cato Manor Team on the investigation and prosecution of the

matters. I agreed to be the coordinator of the prosecution team. The prosecution team was comprised of the following advocates:

Advocate S Maema, DDPP, Team Leader”

Now, he was at the time, my understanding is I am not here, and Advocate Chauke will be able to better testify to this, a DDPP in Northwest, but working now as part of this team. The team leader, in fact. Advocate Mathenjwa, DDPP, my  
10 understanding is that he was based in Johannesburg at the time. Advocate Ntlakaza, I am not sure which division he was from. Advocate Mlotshwa, I think was also from Johannesburg at the time. Advocate Futshane was from Johannesburg. And Advocate Moleko, I do not know from which division.

**ADV MOHLAMONYANE SC:** Whilst you are still there, let me interpose. When you refer to Advocate Mlotshwa, make a proper distinction between this Mlotshwa and the Mlotshwa in KZN.

20 **ADV BATOHI:** That is correct. They are not the same. They are different persons. Different people.

**ADV MOHLAMONYANE SC:** This one is referred to as Advocate JJ Mlotshwa.

**ADV BATOHI:** Yes, that is correct. The other one is Simphiwe Mlotshwa.

**ADV MOHLAMONYANE SC:** And the document on page 665, the memorandum that you referred to earlier, which was signed by Advocate Chauke, together with the documents attached there to have a ...[intervenes]

**ADV BATOHI:** So 665 on which bundle?

**ADV MOHLAMONYANE SC:** LO3, the memorandum of 15 August.

**ADV BATOHI:** Yes.

**ADV MOHLAMONYANE SC:** Signed by Advocate Chauke.

10 Have an impact on paragraphs 3, 3.1, 3.1.1, 3.1.1.1, and 3.1.1.2 of the terms of reference. Can you confirm that?

**ADV BATOHI:** That is correct. And I should mention that the second paragraph which states:

“I have perused the documents and recommend the application.”

The applications to the National Director for racketeering are submitted by the Director of Public Prosecutions from the jurisdiction where the case emanates, which is normally the case. And the DPP must be satisfied that there is sufficient  
20 evidence to support the application and then would recommend the application, Chairperson. And in this case, it appears that Advocate Chauke is recommending the application. Whether it is on behalf of Advocate Noko, I think she needs to explain, but that is the position.

**CHAIRPERSON:** Perhaps to answer the question by my

sister, Advocate Baloyi SC, a very pertinent answer could be at LO-00267, paragraph 62, 62.4, Advocate Mohlamonyane, where it reads, this is Advocate Chauke speaking, 62.4, and correct me if I am wrong:

“Feedback and briefing on the team to Jiba, including the submissions of documentation from the prosecution team to the NDPP.”

**ADV BATOHI:** Yes, that is correct, Chairperson. It would  
10 be consistent with this.

**CHAIRPERSON:** Yes, thank you. So that may, it makes sense why then on this issue that we have been wondering about as to why Advocate Chauke signed, he tells us in his affidavit, in the volume 1, LO-00267, that it was his role to make sure that those documents were then forwarded to the NDPP, Advocate Jiba.

**ADV BATOHI:** That is correct. It is in line with that, but the important part being that he recommends the application, which a DPP would normally do, in whose jurisdiction the  
20 matter resides.

**CHAIRPERSON:** Yes.

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

**CHAIRPERSON:** Thank you, counsel. I think this is an appropriate time to take a lunch adjournment. It is quarter to 2. We will adjourn now and reconvene at half past 2.

**ADV MOHLAMONYANE SC:** Thanks, Madam Chair. We will do that.

**CHAIRPERSON:** Yes, thank you. We will adjourn for lunch until half past 2.

**ENQUIRY ADJOURNS**

**ENQUIRY RESUMES**

**CHAIRPERSON:** Good afternoon, Counsel. You may proceed where you ended.

**ADV MOHLAMONYANE SC:** Good afternoon, Chairperson  
10 and your sisters and everybody else. Advocate Batohi, Madam Chair has referred you to, when we adjourned, just before we adjourned for lunch recess, to L01 paragraph 62.4. Paragraph 62.4, LO00267, that is the page. 62.4, do you remember?

**ADV BATOHI:** Yes, 267.

**ADV MOHLAMONYANE SC:** Yes, 267. I am going to ask you a very pertinent question regarding this subparagraph. And my question is, what Advocate Chauke is stating in this paragraph, has it to do with a prosecutorial decision or a  
20 prosecutorial – has it to do with a prosecutorial decision?

**ADV BATOHI:** Sorry, can you – I am not clear about the question.

**ADV MOHLAMONYANE SC:** What Advocate Chauke states in this paragraph, has it to do with him taking a prosecutorial decision?

**ADV BATOHI:** Yes.

**CHAIRPERSON:** Is that paragraph 62?

**ADV MOHLAMONYANE SC:** 62.4.

**CHAIRPERSON:** Point 4.

**ADV BATOHI:** In paragraph 62, Advocate Chauke sets out what he says his role was as team coordinator. And in 62.4, he says it included feedback and briefing to the team, including the submission of documentation from the prosecution team to the NDPP. Now, that on the face of it, 10 would not appear to be taking – it is just submission of documentation. But if you submit documentation where you recommend prosecution or recommend the authorisation of racketeering charges, that is taking a prosecutorial decision. And when Advocate Chauke signed the document we are referring to earlier, I do not have the reference now ...[intervenes].

**ADV MOHLAMONYANE SC:** LO03 on page 665.

**ADV BATOHI:** He was in fact taking a prosecutorial decision to recommend charges on racketeering to the National 20 Director.

**ADV MOHLAMONYANE SC:** Which goes to the root of paragraph 3.1.1.

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** Of the terms of reference.

**ADV BATOHI:** That is correct. And there will be various

other prosecutorial decisions that we will identify in the course of my testimony. Chairperson, if I may, we did check the signature of Advocate Chauke. It does not have an arrow in the ones we have checked.

**CHAIRPERSON:** My understanding, apart from the signature, was that 62.4 of LO00267 might do the trick to answer why Advocate Chauke signed instead of Advocate Noko.

**ADV BATOHI:** Chairperson, I am not sure what you mean by  
10 might do the trick. My apologies.

**CHAIRPERSON:** Well, the point was that what we asked you was why is it that the letter is signed by Advocate Noko.

**ADV BATOHI:** Which letter, Chairperson?

**CHAIRPERSON:** You remember the letters 26 – is it 265, Advocate Mohlamonyane? 266, 265. Let us check that letter again. Is it 265?

**ADV MOHLAMONYANE SC:** Let me just – 665, Madam Chair, if you are referring to that one which bears the names of Advocate Noko-Mashilo.

20 **CHAIRPERSON:** Yes. We asked you several questions about why Advocate Noko-Mashilo did not sign that letter herself and you said that the signature looks like the signature of Advocate Chauke.

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

**CHAIRPERSON:** And I ask further, if that is the case, why

did he not sign PP? Because he is signing as the DPP KZN, when he is not.

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

**CHAIRPERSON**: And then we went through the record and a letter, or rather the affidavit of Advocate Chauke in paragraph 62.

**ADV BATOHI**: Yes, Chairperson.

**CHAIRPERSON**: He explains his role there as the coordinator of the team.

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

**CHAIRPERSON**: And he explains at 62.1 what he did, 62.2 what his role was, 62.3 exclusion that he was not taking any prosecutorial decision whether to prosecute or not, and 62.4. He then explains that it was his responsibility to give a feedback and briefing on the team to Advocate Jiba, including the submissions of documents from the prosecution team to the NDPP.

**ADV BATOHI**: Correct, Chairperson.

20 **CHAIRPERSON**: Which seems, and I emphasise, which seems to support the proposition that he signed that letter following what Advocate Maema said.

**ADV BATOHI**: That is correct, Chairperson, because it includes submission of documentation.

**CHAIRPERSON**: Yes.

**ADV BATOHI**: So that is correct, Chairperson. But the same

document before we move off it, that 665, does not support what he says in 62.3 as not taking, excluding prosecutorial decisions because recommending a racketeering charge is taking a prosecutorial decision.

**CHAIRPERSON:** Recommending a prosecutorial charge in the letter ...[intervenes].

**ADV BATOHI:** Racketeering, in this instance. That is correct.

**CHAIRPERSON:** That he purportedly signed, he said that  
10 he took that decision. He recommended.

**ADV BATOHI:** He does, paragraph 2:

“I have perused the documents and recommend the application.”

**CHAIRPERSON:** Let me, let us unpack that. A recommendation is a recommendation. A decision, taking a decision per se is a decision. Am I correct that the two concepts and the legal meaning thereof might differ? In other words, you recommend for someone to take a decision.

**ADV BATOHI:** I understand, Chairperson. In the context of  
20 prosecutions, a DPP, when there is a case that involves racketeering and the DPP then makes a recommendation to the National Director, the DPP cannot take a decision to prosecute racketeering without – it is the National Director's authority. But when a DPP recommends a prosecution, that DPP is taking a prosecutorial decision to recommend the

prosecution.

In that sense, you must be satisfied that the evidence supports your recommendation and prosecutorial decisions. There is a range of decisions that prosecutors take in the course of a prosecution process that are prosecutorial decisions. And in this case, although it is a recommendation, it is a decision to recommend, a prosecutorial decision to recommend to the National Director and also saying that, by saying I have perused the documents and recommend the  
10 application, you are satisfied that there is sufficient evidence to support the application. So that is the distinction, Chairperson.

**CHAIRPERSON:** In my mind, let me clear my mind. My understanding is that following the request by Advocate Jiba to him, Advocate Chauke, to coordinate the team, his involvement was to that extent as a coordinator of the team. But we do know, when we look at that list that you referred us to earlier, of all those advocates from different jurisdictional areas, including Advocate Maema from the  
20 North West, who was the head of the lead of the prosecution team, how then do we suggest that Advocate Chauke could take a prosecutorial decision when he is merely a coordinator?

**ADV BATOHI:** Chairperson, Advocate Chauke says he is merely a coordinator, but the evidence does not bear that out.

And if we refer, it is – Chairperson said, and I hope I am correct, Chairperson, you mentioned that Jiba asked him to coordinate. But if you look at Advocate Jiba's affidavit that she made, and I would ask the leader of the evidence to guide me in that regard because I do not have it here. I think that will make it clear what Advocate Jiba's view was that he was not merely a coordinator, that he was, in fact, the *de facto* DPP. The DPP in charge are the words that she uses in that affidavit.

10           If I can be guided so that we can direct the Panel to that particular aspect. And my point being, Chairperson, Advocate Jiba in that affidavit states that Advocate Chauke is the DPP in charge of this matter, and that is important to understand his role.

**CHAIRPERSON:** I am not sure what it means. That may be open to different interpretations. When you say he is the advocate in charge, it could mean many things.

**ADV BATOHI:** Chairperson, the evidence will guide what that can mean, and that will emerge from the evidence that  
20 will be placed before the Panel.

**CHAIRPERSON:** Yes. And the evidence of Advocate Mosing [?], to the effect that Advocate Chauke was a coordinator, a mere coordinator, seems to support his view that he was not involved as a decision-maker, prosecutorial or otherwise.

**ADV BATOHI:** I am not sure where Advocate Mosing said

that, but if that is what he said, he would definitely be supporting Advocate Chauke's case in that regard.

**CHAIRPERSON:** Yes, we will look at that page, and if you look at Advocate Mosing's evidence, I will pick up that page and refer you to it later. You may proceed so long.

**MS RAMAGAGA:** May I just come in here? From your evidence, and maybe also from the law, the Director of Public Prosecution does not have the power to institute action or criminal action relating to racketeering. I just want to  
10 understand exactly what your evidence is. Is it your evidence that when it comes to racketeering, the Director of Public Prosecution can only go as far as to make a recommendation to the NDPP? And the power to then take the matter further lies with the NDPP? Is that a correct understanding? If not, please correct me.

**ADV BATOHI:** That is a correct understanding.

**MS RAMAGAGA:** Now, when you say that Advocate Chauke was exercising the prosecutorial power when he wrote, or rather, when he signed this letter that was addressed to the  
20 NDPP, the one that is at L03, page 665, maybe I should draw your attention to paragraph 2 of that letter in particular, which reads:

“I have perused the documents and  
recommend the application.”

Now, recommend in the sense and in the context of this letter,

would you see it as a recommendation meeting the threshold that you are talking about, the threshold of the Director making a recommendation to the NDPP, or what is your understanding?

**ADV BATOHI**: So the first point would be, I did not say it is a prosecutorial power. I said because that is not the power that the NDPP has in respect of racketeering charges. I said that it was a prosecutorial decision that was taken by Advocate Chauke, and that is important because Advocate  
10 Chauke says he did, if we go back to it, he did not take prosecutorial decisions. And in this case, the point is that making a decision that there is sufficient evidence in a matter to recommend a prosecution to the National Director is a prosecutorial decision. And there are various other kinds of prosecutorial decisions that we take during a prosecution process.

**MS RAMAGAGA**: So just to have a clear distinction for my own better understanding, the distinction between the prosecutorial power and the decision to make a  
20 recommendation. You would say the Directors of Public Prosecutions do have the power to decide whether to prosecute or not to prosecute in respect of many other crimes to the exclusion of racketeering. Is that correct?

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

**MS RAMAGAGA**: That is fine, thank you.

**CHAIRPERSON:** If I may counsel, just to follow up on that proposition that I made earlier, that the evidence that you submitted is annexures to your affidavit, the opinion of Advocate de Kock, if you look at the record, your Annexure SB3132, the internal memo to you from Advocate RJ de Kock and Team of 27 June 2019. It appears it as SB3132, your annexure. If you look at page SB3138, paragraph 12, it speaks to the delegation of powers where Advocate de Kock and Team suggest that there was a delegation and  
10 authorisation issued to the prosecution team that was constituted by those people, Advocate Maema, Advocate Mathenjwa, Advocate Ntlakaza, Advocate Moleko, Advocate Mlotshwa, Advocate Putani, and Advocate Chauke does not appear there.

Then read paragraph 12 in conjunction with paragraph 13, where Advocate Mosing is referred to by Advocate de Kock. There it reads:

20 “Mosing states that his understanding of Advocate Chauke's role was that he was “merely to manage the team as they were mainly from his office, but would not be vested with any decision-making powers regarding prosecutorial decisions.””

Now, if you read this part with the delegation paragraph,

because I assume for Advocate Chauke to assume that role, the prosecutorial role in KZN, powers should have been delegated to him, as they did with the team of Advocate Maema. Is that correct?

**ADV BATOHI:** Chairperson, that is correct. And the way that could have been done is if he was appointed acting DPP for KZN.

**CHAIRPERSON:** [Indistinct]... I beg your pardon. I was drawing your attention to those amendments in the pages referring to what Advocate de Kock says in the opinion, referring to Advocate Mosing and the delegation of the powers to the team, excluding Advocate Chauke.

**ADV BATOHI:** Thank you, Chairperson. That is what Advocate Mosing says his understanding was of Advocate Chauke's role.

**CHAIRPERSON:** Yes. That said, what then do you make of this paragraph 12 and 13, where there is a delegation to a specific group, excluding Advocate Chauke, and the authorisation to prosecute to this team, excluding Advocate Chauke, and then Advocate Mosing, according to Advocate de Kock and his team, state very clearly that Advocate Chauke merely managed the team, but was not vested with any decision to make a prosecutorial decision. What should we make of that?

**ADV BATOHI:** Chairperson, paragraph 12 is clear, and I do

not have the evidence before me, but clearly if we accept Advocate de Kock's report, and we have no reason not to, and his team, this team mentioned were issued with delegations and the necessary authority to prosecute a case, because all of them were from outside KZN. So, my understanding is that there is a provision in the Act that allows a National Director to issue delegations to prosecutors to prosecute in a jurisdiction outside where they are stationed.

10 My understanding is, and I stand to be corrected, is that normally – well, I understand this, this is not what – well, let me be clear. Normally, if a prosecutor from one jurisdiction is prosecute – and I speak about a prosecutor, not a DPP, a prosecutor from one jurisdiction prosecuting a matter in another jurisdiction is not uncommon. I would not say it happens, but when that happens, the prosecutor that goes to the receiving DPP, let us call it that, that DPP must issue the prosecutor delegation to prosecute in his or her jurisdiction.

20 My understanding is that the NDPP has a similar power to issue delegations to prosecutors. So, in this case, whether it was the DPP, but there is no evidence to suggest that, or the National Director, but that is understandable. They were issued with the delegation, so they were properly delegated, although the case is something else, but they were

properly delegated to prosecute outside of the state, the areas that they were stationed.

With regard to paragraph 13, Advocate Mosing states his understanding was that this was Chauke's role to merely manage the team, but the evidence will suggest that that was not his role and that he was, in fact, the *de facto* DPP leading this team and, in fact, taking prosecutorial decisions.

**CHAIRPERSON:** If that were to be the case, it means you are presenting to us contradictory evidence.

10 **ADV BATOHI:** In what sense?

**CHAIRPERSON:** In the sense that Mosing says one thing and you say there is another evidence that presupposes that Advocate Chauke was vested with the prosecutorial decision-making.

**ADV BATOHI:** Chairperson, I am not presenting that evidence. The evidence is there in the docket. I am leading the Panel to evidence that demonstrates this in documents.

**CHAIRPERSON:** I may be wrong. Are you probably drawing an inference, making an inferential reasoning from the entire  
20 evidence, or there is a specific evidence to that effect?

**ADV BATOHI:** Chairperson, I would say there is specific evidence as well as an inference from all of the evidence when presented.

**CHAIRPERSON:** Inferential reasoning.

**ADV BATOHI:** But there is specific evidence, and that is the

evidence that I referred to is Advocate Jiba's statement where she says that Advocate Chauke is the DPP in charge of this matter. And that shows he was the DPP in charge of this matter. We can try to find out what in charge means, but I think the common understanding is in charge is you are the one responsible for this prosecution. That is my understanding, Chair. But that is direct evidence from Advocate Jiba.

**CHAIRPERSON:** Yes. With regard to paragraph 12, I would  
10 imagine that if the delegation was supposed to have included Advocate Chauke, it would have been easy for Advocate Jiba to include his name purely on the basis of the principle, *inclusio unius est exclusio alterius*. I am trying to figure out the right English interpretation. The inclusion of one is the exclusion of the other. The inclusion of one is the exclusion of the other. Right?

**ADV BATOHI:** Chairperson, I am not sure that I follow your question. I want to answer it correctly.

**CHAIRPERSON:** When you make a list of things and then  
20 you include certain things and then you exclude the others, that principle kicks in. That you decide to include a group, and that inclusion means there is an intentional exclusion of the others. Am I wrong?

**ADV BATOHI:** Chairperson, you are not wrong on the principle. But, Chairperson, in this regard, Advocate Chauke

was appointed specifically as DPP in Gauteng. He could not exercise his powers as DPP in any other division.

**CHAIRPERSON:** No, I understand that.

**ADV BATOHI:** Okay.

**CHAIRPERSON:** And I understand your evidence around that. What we are doing now, we are unpacking the facts that you are presenting before us to make a determination around those two bigger issues, whether he is fit and proper to hold office. Now, when you unpack that, it takes us to things like  
10 paragraph 12, whether he was indeed vested with the power to prosecute or not to prosecute.

What I am saying is when the list is made, where power is delegated, you would imagine that everybody to whom the power is to be delegated will be included in that list. And anybody who does not appear in the list means it was an intentional exclusion of that person because delegation is critical here. You do not just go to somebody's jurisdiction and exercise powers. You ought to have been delegated to do that.

20 **ADV BATOHI:** Understood, Chairperson.

**CHAIRPERSON:** Yes. Now, paragraph 12 tells us subsequently delegations and authorisations were issued to the prosecution team that was constituted as follows. It names those people, but excludes Advocate Chauke.

**ADV BATOHI:** That is correct.

**CHAIRPERSON:** And that is where I am.

**ADV BATOHI:** That is correct.

**CHAIRPERSON:** Thank you, Counsel.

**MS RAMAGAGA:** Just once more. Once more. You know, I am trying to settle this issue of jurisdiction. Trying to distinguish between the Director of Public Prosecutions, on the one hand, and the prosecutors, on the other hand. I am struggling to do that, and I know you will assist me to understand that better. It is the understanding – maybe let  
10 me start off this way. Let us talk about prosecutors just for a short while. The prosecutors get appointed by who? Is it the Minister? Who appoints the prosecutors?

**ADV BATOHI:** The Minister appoints Deputy Directors of Public Prosecutions. That is the one level below a DPP. The level from DPP upwards are Presidential appointments. The Minister appoints Deputy DPPs and Chief Prosecutors. They are on the same level. The one level below that, which are then your Senior State Advocates, it is not the Minister. And it would be – I do not know whether it is the DG that appoints,  
20 but the Ministerial appointment is only at the Deputy DPP level.

**MS RAMAGAGA:** All right. Do you know whether prosecutors are appointed for specific jurisdictions, or what is the position?

**ADV BATOHI:** Yes, they are appointed in specific

jurisdictions.

**MS RAMAGAGA:** So, for them to migrate to another jurisdiction, be it I think temporarily in the context of this matter, whose authority would be required to authorise that temporary operation from a different jurisdiction from the one which the prosecutor would have been appointed for?

**ADV BATOHI:** If that scenario happens, then what would normally happen is the two DPPs would speak and they would agree that a prosecutor from one division will go to the other  
10 division to assist or to prosecute. In that event, the receiving DPP will have to issue a delegation there that gives that prosecutor the power to conduct a prosecution in his or her jurisdiction.

**MS RAMAGAGA:** And finally, would the NDPP have the power to delegate the Director of Public Prosecutions?

**ADV BATOHI:** Chairperson, I seem to think there is a provision in the Act that allows for that. Perhaps the Evidence Leader can check and correct that, but I could be  
20 mistaken. I have not done that in my term. I cannot recall having done that, but I think there is a power. We can correct that.

**MS RAMAGAGA:** Would you like the Evidence Leader to give you the relevant information?

**ADV BATOHI:** I would appreciate that, Chairperson.

**MS RAMAGAGA:** So that you can refer. I would not want

him to be giving evidence.

**ADV BATOHI**: I would appreciate that, Chairperson.

**MS RAMAGAGA**: That is the NPA Act?

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

**MS RAMAGAGA**: You do not have it with you?

**ADV BATOHI**: I do have it, but I need to be referred to the section if there is one that in fact confers such a power to the NDPP.

**MS RAMAGAGA**: Okay.

10 **ADV BATOHI**: Otherwise, I would need to go through it to check if it is there.

**MS RAMAGAGA**: So what I am trying to avoid, you are saying it would rather be done that he then give information on the relevant enabling provision?

**ADV BATOHI**: If there was one, if they direct me to it, then I can testify to that effect, Chairperson, whatever it might be.

**MS RAMAGAGA**: Chair, through you, may he just present ...[indistinct]?

**CHAIRPERSON**: Yes. Counsel, are you in a position now  
20 to assist with the relevant provision of the Act so that Advocate Batohi can reflect on that? If not, your colleagues can flag that aspect and then later, when they are ready, including Advocate Hulley there, then we can then revisit this aspect. Is it possible to do that?

**ADV MOHLAMONYANE SC**: It is not possible ...[intervenes].

**CHAIRPERSON:** Unless if you are ready now.

**ADV MOHLAMONYANE SC:** No, I am not ready now to refer her to the specific section in the Act.

**CHAIRPERSON:** In that event, I beg your pardon.

**ADV MOHLAMONYANE SC:** Thanks, Madam Chair. The questions that have been posed to you, Advocate Batohi, brings into sharp focus, in our quest to unpack the issues here, brings into sharp focus as to what exactly is a prosecutor, and that is where I want us to start. A prosecutor  
10 is defined in the Act. Let us go to the Act and get a definition of a prosecutor before we get to your concern.

**ADV BATOHI:** The definition section?

**ADV MOHLAMONYANE SC:** Definition section, yes.

**MS RAMAGAGA:** Just may I just come in here? Are you on your way to enabling the witness to settle this issue that I have about the jurisdictional point, the distinction between Directors of Public Prosecutions and the prosecution?

**ADV MOHLAMONYANE SC:** Indeed, I am on my route to there, Madam Ramagaga.

20 **MS RAMAGAGA:** Okay, thank you. Then you can proceed.

**ADV MOHLAMONYANE SC:** With the help of my colleagues about the section, specific section. But I am on my route to there because it is important, Advocate Batohi, that we should understand what is a prosecutor. Is a DPP a prosecutor? How does a ...[intervenes].

**ADV BATOHI:** Not in terms of the definition in the Act ...[intervenes].

**ADV MOHLAMONYANE SC:** Just a minute, just a minute. Hang on. I am sorry to interpose. The unpacking of these issues, as I indicated, brings into focus what is a prosecutor. How does a prosecutor – how do you compare prosecutor with an NDPP? What is the role of a prosecutor vis-à-vis a DPP? Let us go to the definition section then and kindly read the definition section of what a prosecutor means.

10 **ADV BATOHI:** So, a prosecutor in section 5 ...[intervenes].

**ADV MOHLAMONYANE SC:** No, it is ...[intervenes].

**ADV BATOHI:** No, I am sorry, it is in the definition section?

**ADV MOHLAMONYANE SC:** Yes, go to the first ...[intervenes].

**ADV BATOHI:** Chapter 1, section 1:

“Prosecutor means a prosecutor referred to in section 16(1).”

**ADV MOHLAMONYANE SC:** Let us go to 16(1) and hear who a prosecutor is and what is a prosecutor.

20 **ADV BATOHI:** Section 16(1) states:

“A prosecutor shall be appointed on the recommendation of the National Director or a member of the Prosecuting Authority designated for that purpose by the National Director, subject to the

laws governing the public service.  
Prosecutors may be appointed to the  
Office of the National Director.  
Offices...”

B, sorry, 2:

“Prosecutors may be appointed to:  
a. Office of the National Director.  
b. Offices established by section 6(1).”

And that is the DPP offices:

10 “c. Investigating directorates.  
d. Lower Courts in the Republic.”

Paragraph 3, 16(3) states:

“A Minister may, from time to time, in  
consultation with the National Director,  
and after consultation with the  
Directors, prescribe the legal  
qualifications for the appointment of a  
person as a prosecutor in a Lower  
Court.

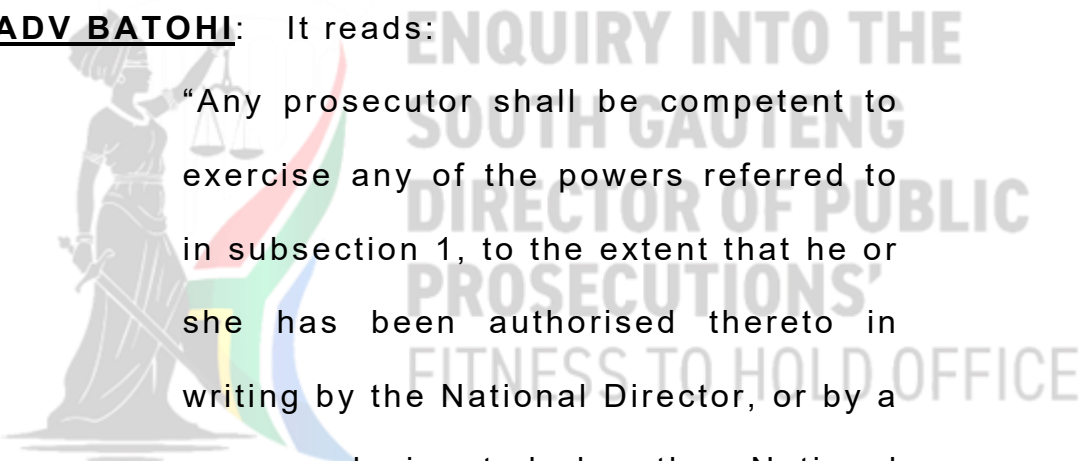
20 4. Insofar as laws governing the public  
service pertaining to Deputy Directors  
and prosecutors may be inconsistent  
with this Act, the provisions of this Act  
shall apply.”

Having said that, I want to correct something that I said

earlier on when asked about the appointment of prosecutors, and I mentioned the DG. The DG does not have a role in appointing prosecutors. The HR functions are with the Minister, but the Minister can delegate those functions. So I just want to clarify that, and I am not sure where it is delegated to, but we can check that in terms of who appoints below the level of NDPP.

**ADV MOHLAMONYANE SC:** Go to section 20 of the NPA Act. 20(5), read it because it deals with the competencies of  
10 a prosecutor.

**ADV BATOHI:** It reads:



“Any prosecutor shall be competent to exercise any of the powers referred to in subsection 1, to the extent that he or she has been authorised thereto in writing by the National Director, or by a person designated by the National Director.”

And if we go to subsection 1, sorry.

20 **ADV MOHLAMONYANE SC:** You want to go to subsection 1?

**ADV BATOHI:** No, just to explain subsection 5, because it refers to the powers in subsection 1. And those are the powers that are listed there, to institute or conduct criminal proceedings on behalf of the State, to carry out the necessary

functions incidental thereto – I am not quoting verbatim – and to discontinue criminal proceedings.

**ADV MOHLAMONYANE SC:** Thank you. To answer Madam Ramagaga's concern and question, I am informed by my colleagues that there is no provision in the NPA Act where a National Director of Public Prosecutions can delegate a DPP to another jurisdiction. It is not provided for.

**MS RAMAGAGA:** Is that the case? Do you confirm what the Evidence Leader is placing on record?

10 **ADV BATOHI:** Chairperson, if I could have a look later, and then I would be happy to confirm that at a later stage. I will discuss with my team, and I would like to check. I am under oath, and I want to make sure that that is the correct information. I have no reason to doubt them, but I want to make sure.

**CHAIRPERSON:** Yes, Madam, I think it is proper to take that posture. Advocate Mohlamonyane, you may be entering the zone of argument, legal argument, with the proposition that you have just made. Because the very evidence you are  
20 talking about is the evidence that your client, or rather Advocate Batohi has presented to us. The de Kock documents are part of her evidence, and it is that evidence, in paragraphs 12 and 13, whether it is in line with the law or not, the fact of the matter is that it is the evidence that Advocate Batohi presented to us. We will deal with the

veracity of that evidence probably later, if a need arises, remembering that we are in the fact-finding process. So I suggest that you do not get into legal argument. Let us concentrate on the facts.

**ADV BATOHI**: Chairperson, may I clarify something?

**CHAIRPERSON**: I beg your pardon ...[intervenes].

**ADV BATOHI**: May I clarify ...[intervenes].

**CHAIRPERSON**: Please wait a minute. Let Counsel confer with Advocate Mohlamonyane. We are having different  
10 conferences in this space. I think we will have time to revisit these topics at a later stage because I am not sure what the right answer is, but we are guided by the affidavit of Advocate Batohi, together with her annexures. We are working on that evidence as we are clarifying a few aspects by asking her questions.

**ADV BATOHI**: Chairperson, if I may clarify something on that aspect, because it is my affidavit, and I am listening very carefully to what you are saying. I want to explain that my affidavit firstly was drawn up at very short notice. We were  
20 under tight timelines. There may be things that are in here, there may be things that are not in here that should have been here. But of course, we tried to be as precise as possible in the very short time space that we had.

To explain that the annexures to my affidavit are not necessarily my evidence. I want to explain what I mean by

that. I explain the process that I, in my affidavit, I explain the process leading up to the referral. And in that process, if you bear with me for a moment, Chairperson, I am just trying to find my affidavit. This is – I have it right in front of me. Ja.

In the process, which is on page 69 of my affidavit, I have set out the steps I took leading up to the referral and I mentioned the various legal opinions that I received. So that is not – it is attached to my affidavit as opinions that I  
10 received. And Advocate de Kock's memorandum is one of the opinion, is a report that I received from the team. And because I refer to it in my affidavit, I have attached all these documents for ease of reference for the Panel. There may be parts of it that I may not agree with. There may be parts of the annexes that I agree with, but I wanted to clarify that. Thank you, Chairperson.

**CHAIRPERSON:** Of course, it is so that these documents formed part of the documents as a result of which you formed a *prima facie* view when you referred the matter to the  
20 President.

**ADV BATOHI:** Chairperson, let me explain that because it is important for the Panel to understand. I received these opinions. When I received Advocate Nalane's opinion, which is referred to in this process and is an attachment, there were – I then sent that document, this is all set out in my affidavit,

to Advocate Chauke and asked him to respond to that. He then submitted Advocate Mzinyathi's report, which is also attached to this.

As a result of those two legal opinions, it was clear that there were gaps in evidence. And I emphasise those are opinions. There were gaps. And so I then asked Doctor Broughton in my office to get all the evidence and then to prepare an opinion to me. He initially prepared one opinion, which I gave him just a week to do it, and it was too short  
10 notice. He came back to me and said he needed more time because he needed to look at a whole range of documents.

He then provided me with a supplementary opinion. But that supplementary opinion, in my view, is almost like a forensic analysis of the evidence. Because together with his opinion, he provided me a bundle of evidence. And my decision to recommend to the President was based primarily on the evidence that was provided to me, attached or  
forwarded as annexures to Doctor Broughton's opinion.

So I want to be clear about that because the others  
20 were opinions that I considered, but when I made the decision, I looked at the documents, many of which we are presenting now. Some of them may not be presented, but I will speak to Counsel about the entire bundle being handed in as evidence because that is what I base my decision on, looking at actual documents, statements, et cetera. I hope I

have clarified, Chairperson.

**CHAIRPERSON:** Yes, and I think you repeat what I am saying, but in different words. In other words, when you made a referral to the President, these very documents were part of the initial bundle.

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

**CHAIRPERSON:** In terms of which the President had to consider your request.

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

10 **CHAIRPERSON:** And these documents assisted you. All of them assisted you in formulating a view whether to refer or not to refer.

**ADV BATOHI:** They certainly assisted me, Chairperson, but I do want to emphasise that I looked at the underlying evidence. And that was the main – I came to a conclusion based on my own analysis of the underlying evidence together with the opinions.

**CHAIRPERSON:** You may proceed, Counsel.

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

20 **ADV BATOHI:** My apologies.

**CHAIRPERSON:** I heard you earlier saying VGM and ...[intervenes].

**ADV BATOHI:** My apologies, Chairperson.

**CHAIRPERSON:** I do not know what is VGM.

**ADV BATOHI:** It stands for the Griffiths and Victoria Mxenge

Building, which is the name of the NPA head office in Pretoria. VGM is Griffiths and Victoria Mxenge. That is the short form acronym for the name of the building, Chairperson.

**CHAIRPERSON:** Thank you.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. Perhaps it is an opportune moment, Advocate Batohi, to, whilst unpacking issues, explain to the ordinary person what racketeering is. So that it should be clear why prosecutors acted in the manner in which they did. What is racketeering?

10 How ...[intervenes].

**CHAIRPERSON:** [Indistinct]... topic, Counsel, please park it there. I just want to finalise a niggling issue concerning the role or the alleged role of Advocate Chauke in KZN. Assuming for now that Advocate Chauke did participate in the prosecutorial decision-making, in terms of which he would have then entered the jurisdictional area of another DPP, something that the law prevents unless certain prerequisites are adhered to. Am I right?

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

20 **CHAIRPERSON:** Would you please deal with that aspect as to what is it that ought to have been done if we assume that indeed Advocate Chauke, as Advocate Batohi said, did participate in the prosecutorial decision making? This is just a proposition that may not be correct. but on the assumption that what he says is correct, Then what ought to have

happened as a requisite or a prerequisite for doing that, leaving South Gauteng Division, going to KZN Division to do that? What does the Act require?

**ADV MOHLAMONYANE SC:** Madam Chair, that can be explained by Advocate Batohi. Maybe the law provides for that. I was of the view that because we are dealing with very serious offences, an offence called racketeering, I should start there so that racketeering can be explained as to what it is and the seriousness thereof before we could get into the  
10 issue of whether another DPP can get into the area of one DPP, can get into the jurisdiction of another DPP.

**CHAIRPERSON:** In other words, I ran ahead of you.

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

**CHAIRPERSON:** Thank you.

**ADV MOHLAMONYANE SC:** You pre-empted me.

**CHAIRPERSON:** You may proceed along those lines.

**ADV MOHLAMONYANE SC:** As it pleases Madam Chair. Advocate Batohi, may you explain what a racketeering offence is? It is a very complex offence. What does it entail?  
20 Bearing in mind what was earlier read into the record as far as the law is concerned on racketeering.

**ADV BATOHI:** Sir, I suppose you do not want me to give you the legal definition, in which case we have to go to the Prevention of Organised Crime Act and deal with the legal definitions. You just want me to explain in layperson's terms

what racketeering means.

**ADV MOHLAMONYANE SC:** Start with the legal definition and you can go to the layman's terms.

**ADV BATOHI:** We will need to go to the Prevention of Organised Crime Act. I do not have that in front of me. If I can be directed to the Prevention of Organised Crime Act, if we want the actual provisions of the law.

**ADV MOHLAMONYANE SC:** We will make a plan that you get a copy.

10 **ADV BATOHI:** We can deal with that later.

**ADV MOHLAMONYANE SC:** Ja.

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

**ADV MOHLAMONYANE SC:** For now, explain it in layman's terms. What is it?

**ADV BATOHI:** Thank you. So, racketeering is basically a charge where the prosecution needs to prove that there is an enterprise. That means there is a group of people that are associated. In fact, or it is a particular entity that can be identified. And that they are engaged in a pattern of  
20 racketeering activity. And it is not very easy to describe it in layperson's terms, but it means that this group has together engaged in various types of criminal activities, other predicate offences, and that they worked together in order to achieve the objectives of that group, which is normally a criminal objective.

But various people in this group have various roles. For example, you could be a manager, you could participate in the enterprise. And so there are various parts of the Act that criminalise various activities. And so, in a nutshell, it is a group of people working together to achieve a criminal outcome and engaging in various types of criminal activities.

**CHAIRPERSON:** I think, Counsel, I see Advocate Hulley's junior counsel, you can come closer, Madam, and assist Advocate Batohi with the documentation that she might need.

10 **ADV BATOHI:** Thank you. Thank you. I have the Prevention of organised crime, but is it okay if I went without – I do not know if the Panel has the Act in front of them. Should I proceed, Chairperson? I am guided by you.

**CHAIRPERSON:** We do have an Act somewhere in our bundles, but you may proceed and as subject to what Counsel says. If it is necessary to read verbatim what the Act says.

**ADV BATOHI:** This brought me to the first page of the Act, and I need to go through it so that I can get to, I think it is section 2 that deals with the offences.

20 **CHAIRPERSON:** Counsel, is it what you want the witness to do? To go through section 2 of the POCA?

**ADV BATOHI:** I am going – Chairperson, there is – sorry.

**ADV MOHLAMONYANE SC:** Maybe for current purposes, we may revisit it at a later stage if the need arises. Just read section 2(4) into the record.

**ADV BATOHI:** Sure. Section 2(4). Well, it is Chapter 2. Section 2 deals with the offences. 2(1), I am trying to get to 2(4). 2(4) deals with the authority of the National Director. It says:

“A person shall only be charged with committing an offence contemplated in subsection 1 if a prosecution is authorised in writing by the National Director.”

10 That is section 2(4).

**ADV MOHLAMONYANE SC:** Leave it at that for now. We can come back to it. But in your bundle, in your bundle, Advocate Batohi, Advocate de Kock and his team deal with racketeering offences. They explain it at great length as to what they entail.

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** Let us park it for now. Let us leave it at that for now and continue with your evidence. But he deals, they deal with it on page 215 of SB3 under  
20 subparagraph E. They deal in extenso with what racketeering is all about.

**ADV BATOHI:** Yes, that is correct. From paragraph 212.

**ADV MOHLAMONYANE SC:** I want to refer you to...

**ADV BATOHI:** Sorry, before we move on. Paragraph 212 deals with the particular cases. I am not sure whether it deals

broadly with what racketeering is about.

**ADV MOHLAMONYANE SC:** Ja, let us park it for now. It is all right. It is okay. Whilst you are dealing with prosecutorial decisions as to what exactly constitute prosecutorial decisions and the role of Advocate Chauke, may I draw your attention to LO3, page LO00782, and may I mention, Madam Chair and your sisters, that the document I referred the witness to is a document of dates of meetings. Page 00782, LO3 bundle. This is a document prepared by, I should believe  
10 by Advocate Chauke, in which he was indicating his role in the meetings he had with IPID, SAPS and the Judiciary until August 2012. Are you there, Advocate Batohi?

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

**CHAIRPERSON:** This is ...[indistinct]?

**ADV MOHLAMONYANE SC:** 782, Madam Chair. Now, it impacts on the TOR, paragraphs 3, 3.1, 3.1.1, 3.1.1.1 of the TOR. Now, please read that document into the record.

**ADV BATOHI:** So, Chairperson, if ...[intervenes].

**CHAIRPERSON:** To peach ...[indistinct]? To read the entire  
20 document, which is quite a long from 782, dates of meetings with the prosecution team of Cato Manor and briefing with Acting NDPP as well as meetings with IPID, SAPS and Judiciary until August 2012.

**ADV MOHLAMONYANE SC:** Let me direct her attention to specific dates without reading the whole document.

**CHAIRPERSON:** Thank you.

**ADV MOHLAMONYANE SC:** Start with the 3 May. Read the heading and go to 3 May 2012 at 13:00.

**ADV BATOHI:** Yes, if I may, Chairperson, this appears to be an annexure, and Counsel will guide me. At 781 is an email from Advocate Chauke to the team. Well, to various persons, and it says:

10 “Good day to all. Herewith dates of meetings and briefings I have recorded in my activities diary. I hope it meets with all that is required from me to extend that I was involved in the Cato Manor matter.”

And then it appears that that is attached to that email.

**ADV MOHLAMONYANE SC:** Yes, you are correct. You are correct. Proceed then to – the email was directed to the Cato Manor team. Is that correct?

**ADV BATOHI:** Yes, it appears so.

20 **ADV MOHLAMONYANE SC:** Yes. Now start with the 3<sup>rd</sup> of May.

**ADV BATOHI:** Amongst others, the Acting NDPP is also copied in there. It is addressed to her as well and others. I should say it also appears that the DPP of KZN is also cc'd and, it is Moipone Noko. I see her name there as well. And the date of this email is 30 September 2015.

**ADV MOHLAMONYANE SC:** 3 May.

**ADV BATOHI:** Should I read that?

**ADV MOHLAMONYANE SC:** Start with the heading.

**ADV BATOHI:** The heading is dates of meetings with the prosecution team of Cato Manor and briefings with Acting NDPP as well as meetings with IPID, SAPS and the Judiciary until August 2012.

**ADV MOHLAMONYANE SC:** Read the entry of 3 May.

**ADV BATOHI:** 3 May 2012. It is the first entry at 13:00:

10 “Meeting with Advocate Jiba, re, Cato  
Manor matter arranged for briefing for  
18 May 2012 at 08:00.”

**ADV MOHLAMONYANE SC:** Read the second one, 22 May.  
:22 May at 20:20. Meeting with  
Brigadier Mokoena (Hawks), Mr Angus  
(IPID), Maema, Ntlakaza, Moleko,  
Mlotshwa and Futshane. Mathenjwa in  
court.”

**ADV MOHLAMONYANE SC:** Go to the 24<sup>th</sup>.

20 **ADV BATOHI:**

“At 8am, briefing with Acting NDPP at Pretoria with the whole prosecution team/Cato Manor/Advocate Mathenjwa doing debriefing re, category of dockets.  
1. Conspiracy to kill members of Kwa

Maputo Taxi Association.

2. Conspiracy to kill ATM Bombings  
Syndicate.

3. Conspiracy to kill criminal gangs.

Security for the prosecution team/SAPS

National Office/delegations protection

Part 8 of Prosecution Manual and

section 17 of Inquest Act 58 of 1959 also

discussed.”

10 **ADV MOHLAMONYANE SC:** Go to the next one, the fourth,  
29 May 2012.

**ADV BATOHI:**

“At 15:00, Cape Town briefing with  
Minister of Justice and Acting NDPP.

Need to prepare the draft indictment and  
finalise the allocation of a judge to

preside over the matter. Need to speak

to South Gauteng DJP or JP of

Gauteng.”

20 **ADV MOHLAMONYANE SC:** Go to the 11<sup>th</sup>.

**ADV BATOHI:** At 13 ...[intervenes].

**ADV MOHLAMONYANE SC:** June, June.

**ADV BATOHI:**

“11 June at 13:00, meeting with Mr

Beekman of IPID and Mathenjwa.”

**ADV MOHLAMONYANE SC:** Go to the 18 June.

**ADV BATOHI:**

“18 June at 2012 at 12:00, meeting in  
Durban Magistrate’s Court with Cato  
Manor prosecution team.”

**ADV MOHLAMONYANE SC:** Go to the next page, 784,  
00784.

**ADV BATOHI:**

10 “18 June at 14:00, meeting with Acting  
NDPP and AJP. That is acting JP of  
KZN in Pietermaritzburg regarding Cato  
Manor matter.”

**ADV MOHLAMONYANE SC:** Go to the 20<sup>th</sup> of June, the  
second 20<sup>th</sup> June.

**ADV BATOHI:**

“At 16:00, Durban High Court urgent  
application for release of arrested Cato  
Manor members. Application dismissed  
and referred to Regional Court.”

20 **ADV MOHLAMONYANE SC:** Go to the next page. Go to the  
entry of the 6<sup>th</sup>.

**ADV BATOHI:**

“6<sup>th</sup> of August 2012, meeting with Cato  
Manor team. Editing the indictment and  
memo to Acting NDPP.”

**ADV MOHLAMONYANE SC:** And we say, Madam Chair, that this has an impact on the TOR, specifically paragraph 3.1.1.1.

**ADV BATOHI:** Chairperson, this, in addition to other evidence, will show that Advocate Chauke was not just a coordinator. He was deeply immersed in this particular prosecution.

**ADV MOHLAMONYANE SC:** Go to the 8<sup>th</sup> August.

**ADV BATOHI:**

10 “8<sup>th</sup> of August 2012, 18:00. Cato Manor indictment preparation and arranged to brief Acting NDPP.”

**ADV MOHLAMONYANE SC:** Proceed the second 8 August.

**ADV BATOHI:**

“At 11:00, VGM.”

That is the NPA head office:

“Briefing session with the Acting NDPP re, Cato Manor and certificate of centralisation.”

20 **ADV MOHLAMONYANE SC:** Go to the 9<sup>th</sup>.

**ADV BATOHI:** We will explain that in due course, the certificate of centralisation. The 9<sup>th</sup>:

“Durban at 15:00, 9<sup>th</sup> of August 2012. Durban KZN briefing with Moipone Noko, Acting NDPP KZN at 18:00.”

**ADV MOHLAMONYANE SC:** Go to the 10 August. There is no time specified.

**ADV BATOHI:**

“Meeting with KZN JP and Acting NDPP and handed draft indictment to him. Memo to be sent by Acting NDPP on Monday, 13 August 2012.”

**ADV MOHLAMONYANE SC:** 17 August, the second one.

**ADV BATOHI:**

10 “Meeting with Acting NDPP re-briefing regarding misconduct hearing and prosecution policy in Cato Manor matters.”

**ADV MOHLAMONYANE SC:** Go to the next page, 786, 24 August.

**ADV BATOHI:**

“Durban Regional Court appearance of General Booysen and others re Cato Manor matter.”

20 **ADV MOHLAMONYANE SC:** That is all, Madam Chair, as far as that is concerned.

**MS RAMAGAGA:** Just a minute. And these, to which came to the – are they relevant?

**ADV MOHLAMONYANE SC:** I indicate that ...[intervenes].

**MS RAMAGAGA:** You read the first batch, and now, or is it

just one continuous list?

**ADV MOHLAMONYANE SC:** It is one continuous list, Madam Ramagaga.

**MS RAMAGAGA:** Thank you.

**ADV BALOYI-MERE SC:** Advocate, if I may ask, all these entries that you were referring us to from LO00782 to LO00786, and you said they tied with the terms of reference at 3.1.1.1.

**ADV MOHLAMONYANE SC:** Indeed, that is so.

10 **ADV BALOYI-MERE SC:** We have heard evidence, well, at least corroborated by Advocate Mosing that Advocate Chauke played a role of a liaison between the prosecutorial team in the Cato Manor and the Acting NDPP. Now, these entries, these meetings, these briefings that are mentioned here, do they in any way result into Advocate Chauke taking a role of a prosecutor or taking prosecutorial decisions, or this is just a liaison person giving regular briefings on behalf – because in other instances he says he is with the whole team or he's alone or whatever, but can you clarify that, or can the  
20 witness clarify that?

**ADV MOHLAMONYANE SC:** Maybe I should not be seen to be testifying from the bar. The best way is to ask the witness to clarify that. To the extent to which you can, Advocate Batohi, can you clarify the role that Advocate Chauke is indicating in this document?

**ADV BATOHI**: Well, in this document, as it purports to be, dates of meetings and briefings and there is no indication in this documentation that there is any prosecutorial decisions that are taken. It is just a list of meetings and briefings. There is indication that Advocate Chauke is involved in activities that go beyond mere coordination. For example, if you look at the 6<sup>th</sup> of August meeting, meeting with the team, editing the indictment and memo. That is not just a coordination function. That is getting involved in the memo,  
10 it would be a prosecution memo, which would contain evidence in the matter.

The 8<sup>th</sup> of August at 8am, indictment preparation. Likewise, that is not simply a coordination function. And we will deal with the centralisation certificate. There is evidence that will be led about that shortly. The Evidence Leader will decide when to take me there. But certainly, what I said earlier, none of them referred to taking decisions. I should change that.

This particular one, that is the signing of a certificate  
20 of centralisation. Let me explain first perhaps, Chairperson, what a centralisation certificate is. I had explained earlier, but I will refresh our memories. This is where there are various offences committed in different parts of the country. And the National Director, upon application by the two – well, it depends. Let us assume it is in two provinces. The DPPs

of the two provinces would apply to the National Director for a centralisation of these matters into one area for better management of the case.

The taking of a decision on whether to centralise or not is a prosecutorial decision that the DPP will take in consultation with the others in terms of where the case should be heard, which jurisdiction, et cetera. Those all relate to taking prosecutorial decisions, and a decision to apply for a centralisation certificate from the National Director would normally be made by the DPP who has jurisdiction over the matter. So I leave it at that for now. That is the way the centralisation process works.

**CHAIRPERSON:** Does the NDPP get involved in the centralisation process?

**ADV BATOHI:** The NDPP authorises the centralisation ...[intervenes].

**CHAIRPERSON:** Authorises?

**ADV BATOHI:** That is correct.

**ADV BALOYI-MERE SC:** But maybe as a follow-up, because these notes are very cryptic. For example, where you talk about a certificate of centralisation, we are not sure whether it was – what was the purpose, what was happening with the certificate of centralisation. Was Advocate Chauke – had he approached the Acting NDPP to apply for a certificate of centralisation or they were just discussing the centralisation?

Well, it is so cryptic that one cannot make head or tail of exactly what was happening here.

**ADV NGCUKAITOBI:** Yes, Chairperson, these are Advocate Chauke's notes, but there will be evidence that he did indeed apply for centralisation.

**ADV BALOYI-MERE SC:** Thank you.

**ADV MOHLAMONYANE SC:** Thank you, Madam Baloyi-Mere. Maybe we should hasten at this moment to go to Doctor Broughton's supplementary affidavit, which is L01. I  
10 beg your pardon. It is not an affidavit. It is an opinion. It is a slip of the mind. I said affidavit, Doctor Broughton's affidavit.

**ADV BATOHI:** It is his opinion, yes.

**ADV MOHLAMONYANE SC:** Yes. It is in L01. Direct your attention to page 188, L00188. Madam Chair, you have located the ...[intervenes].

**CHAIRPERSON:** What is the page?

**ADV MOHLAMONYANE SC:** The page is L00188 in Bundle 1. L01 to be specific, L01. I direct your attention, Advocate  
20 Batohi, to paragraph 55. May you read paragraph 55 into the record? You may not read the whole of it, but read the first sentence and we will take it from there.

**ADV BATOHI:** Okay, thank you. Counsel, you tell me when to stop.

**ADV MOHLAMONYANE SC:** Ja, I will tell you when to stop.

Read paragraph 55.

**ADV BATOHI:**

“It is further to be noted that Advocate Chauke made an entry in annexure J...”

And, Chairperson, this would be Annexure J to his opinion:

“...that on 6 August 2012 he had a meeting with the Cato Manor team editing the indictment and memo to Acting NDPP in quotes.”

10 **ADV MOHLAMONYANE SC:** Wait a minute. Just allow me to interpose there. If you refer back to LO3 Bundle, LO00786, where Advocate Chauke held meetings with various authorities, is that what – on the entry of 6 August it says editing the indictment, is that what Doctor Broughton was referring to?

**ADV BATOHI:** Yes. It appears to be the same meeting that is being referred to in this paragraph.

**ADV MOHLAMONYANE SC:** Yes, proceed to read.

**ADV BATOHI:**

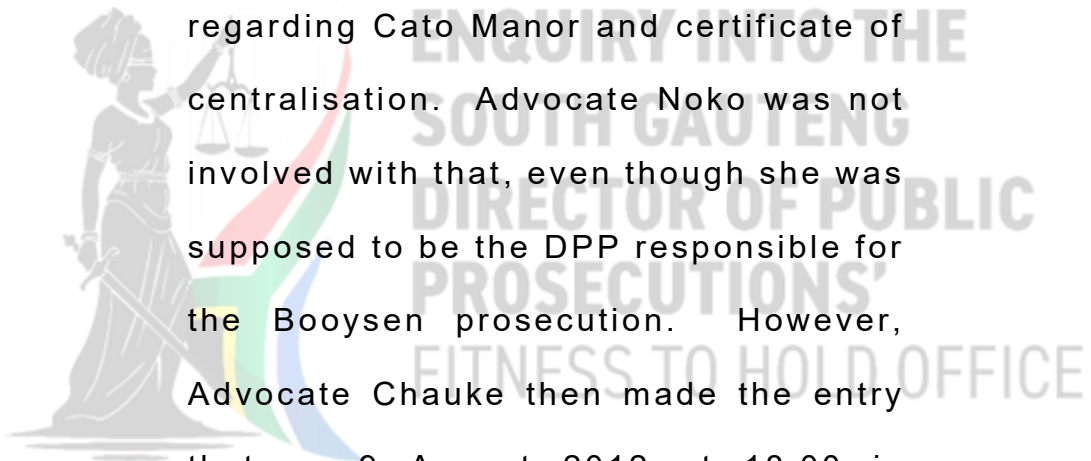
20 “Advocate Chauke thus records that he is involved in the preparation of the memorandum and the application for racketeering authorisations.”

Annexure E to his opinion. In the very next entry dated 8 August 2012 at 08:00, Advocate Chauke stated as follows:

“Cato Manor indictment preparation and arranging to brief Acting NDPP. Again, Advocate Chauke was recording his involvement with the preparation of the application for racketeering authorisations (Annexure E) to be submitted to Advocate Jiba. Advocate Chauke then records that on 8 August 2012 at 11:00 at VGM, he had a briefing session with the Acting NDPP, Jiba, regarding Cato Manor and certificate of centralisation. Advocate Noko was not involved with that, even though she was supposed to be the DPP responsible for the Booyesen prosecution. However, Advocate Chauke then made the entry that on 9 August 2012 at 18:00 in Durban, he had a briefing with Moipone Noko, Acting DPP, KZN. This is the first that Advocate Noko features in or is mentioned in the attachment of Annexure J. Advocate Chauke does not state what the nature of this briefing with Advocate Noko was. There is no mention that he provided the Booyesen

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Cato Manor case dockets to her. The very next entry records that on 10 August 2012 Advocate Chauke had “meeting with KZN JP and Acting DPP and handed draft indictment to him. Memo to be sent by Acting DPP on Monday, 13 August 2012.” Advocate Chauke does not state what memorandum was to be sent by Advocate Noko on 13 August 2012. It is to be observed also that Advocate Chauke records that he handed the draft indictment to him, which was referring to the Judge President of the KZN Division.”

Should I continue?

**ADV MOHLAMONYANE SC**: Continue.

**ADV BATOHI**:

“The impression is created that Advocate Chauke was in charge of the Booyesen prosecution and Advocate Noko was simply on the periphery to give a veneer of legitimacy to the process that ...[indistinct] did not have. The question arises why Advocate

Chauke was involved in this process of filing the indictment with the KZN High Court. Surely, the Booysen prosecution team, in terms of their special delegations, were required to be reporting to Advocate Noko, through whom the indictment was supposed to be filed.”

Should I continue, Counsel:

10                   “Although we do not know *ex facie* the attachment what the memorandum was to be submitted by Advocate Noko relating to the case, it speaks volumes, like with his affidavit to the State Capture Commission, Advocate B, that Advocate Chauke is silent in the attachment as to the events of 15 August 2012 with regard to the signing of the covering letter with the  
20                   recommendation of the application for racketeering authorisations (Annexure E).”

**ADV MOHLAMONYANE SC:** You may hold it there. This then takes us to the affidavit of Advocate Noko.

**ADV BATOHI:** Advocate?

**ADV MOHLAMONYANE SC:** Noko.

**ADV BATOHI:** Okay.

**ADV MOHLAMONYANE SC:** It is contained in Bundle L1 on page LO00241.

**ADV BATOHI:** Sorry, LO24? Sorry, can you repeat that, Counsel?

**ADV MOHLAMONYANE SC:** 241. May I proceed, Madam Chair?

**CHAIRPERSON:** Yes.

10 **ADV MOHLAMONYANE SC:** Thank you. It makes interesting reading. May you read it into the record and then explain under what circumstances – this is an affidavit by Advocate Noko. May you read it into the record, Advocate Batohi?

**ADV BATOHI:** It is an affidavit by Advocate Noko. It appears also in the Silverton CAS number, which is unclear. Paragraph 1:

20 “I am the Director of Public Prosecution in KwaZulu-Natal, Division of the High Court of South Africa. My ID number is...”

I will not mention it for current purposes, Chairperson:

“...and residing at Durban with my office at 301 Church Street, Pietermaritzburg, High Court Pietermaritzburg.”

I will not mention her cell phone numbers, Chairperson, that

are included here. Paragraph 2:

“[2] My mandate as the Director of Public Prosecution in KwaZulu-Natal in terms of the NPA Act 32 of 1998 and the Constitution of the Republic of South Africa 108 of 1996.

10 [3] Since the Cato Manor case came into being, I have not been directly overseeing it as the DPP. I have not been directly overseeing it as the DPP

until around March or April 2014, when the National Director of Public Prosecutions, Mr Mxolisi Nxasana, instructed me to start directly overseeing the case. This instruction was given during a meeting when the prosecution team was briefing him on

20 the developments of the case. Before this instruction, the Director of Public Prosecution South Gauteng Division, Johannesburg, Advocate Andrew Chauke, was directly overseeing the case, and he also supervised the prosecution team, and they also reported directly to him as far as the

case is concerned.

[4] The prosecution team was established before my involvement, and the following advocates are part of the team. Advocate Maema, Advocate Mathenjwa, Advocate Ntlakaza, Advocate Moleko, Advocate Mlotshwa, Advocate Futshane.”

I am just using the surnames.:

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“[5] During August 2012, while I was the Acting Director of Public Prosecutions KwaZulu-Natal, I was requested by Advocate Chauke, DPP South Gauteng, to sign a covering letter to a prosecution memorandum intended for the NPA head office. I signed this covering letter as procedure being the Acting DPP where the matter is pending, but not directly overseeing the case, DPP South Gauteng was. The matter is still pending in the KwaZulu-Natal High Court in Durban, and is *sub judice*. The matter appeared in this High Court again on 30 March 2015, and further postponed to later during this year.

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[7] That is all I want to say.”

And then the oath follows.

**ADV MOHLAMONYANE SC:** The next page, she signs it.

**ADV BATOHI:** Yes, I beg your pardon.

**ADV MOHLAMONYANE SC:** What date was it?

**ADV BATOHI:** Well, it appears to be her signature, I am not sure, I cannot recognise her signature.

**ADV MOHLAMONYANE SC:** No, no, I mean the date. The date there appears ...[intervenes].

10 **ADV BATOHI:** The date is the 31<sup>st</sup> of March 2015.

**ADV MOHLAMONYANE SC:** Ja, she makes mention of – she makes mention in her affidavit, specifically in paragraph 3 of the National Director of Public Prosecutions, Mr Mxolisi Nxasana. To interpose, maybe we should find out as to when Mr Nxasana took office, just to clarify this.

**ADV BATOHI:** I do not have the precise date when he took office.

**ADV MOHLAMONYANE SC:** We are having it here, it is written to us here. I am being given a document which says  
20 Mr Mxolisi, Advocate Mxolisi Nxasana was appointed with effect from 1 October 2013 and he vacated office on 14 May 2015. I am sure this will not be in dispute.

**ADV BATOHI:** I have no reason to doubt the correctness of that.

**ADV MOHLAMONYANE SC:** Now, what we have read here

is given on oath by Advocate Noko, pertains to paragraphs 3, 3.1, 3.1.1 of the terms of reference, not so?

**ADV BATOHI:** That is correct.

**ADV MOHLAMONYANE SC:** Madam Chair, we will now proceed to centralizations. It will become clearer as to what exactly a centralisation is. Go to page, let me see.

**CHAIRPERSON:** Counsel, just give me a second please. Advocate Mohlamonyane, it is 16:05 on that watch in front of me. Are you going to be long on this aspect? If it is going  
10 to be long, it will probably be better to defer it until tomorrow. But if it is a matter that can be disposed of quickly, then we can deal with it.

**ADV MOHLAMONYANE SC:** It cannot be easily disposed of as quickly as we would have loved. Maybe it is appropriate to leave it and roll the matter over to tomorrow morning.

**CHAIRPERSON:** We concede then that this is an appropriate time to adjourn. You will take it from here with regard to Advocate Nxasana's assumption of office. And we will begin  
20 at 9 o'clock tomorrow morning. If counsel can be here to meet us for five minutes, around 08:45, we so propose. In that event, Advocate Batohi, we will take an adjournment until tomorrow morning at 9 o'clock. We adjourn.

**INQUIRY ADJOURNS UNTIL 25 NOVEMBER 2025**

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20 DATE COMPLETED: 25/11/2025

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