

**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**

**15 DECEMBER 2025**

**DAY 17**



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

**PROCEEDINGS ON 15 DECEMBER 2025**

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

**ADV BATOHI:** Good morning, Judge, and good morning to all.

**CHAIRPERSON:** Good morning, *Nthathi* Chauke. We have been informed that you ultimately managed to have the printing. We hope that they will replace these printers that are giving us problems.

Advocate Ngcukaitobi, did you manage, though?

**ADV NGCUKAITOBI SC:** Yes, Madam Chair, we have managed to print. If I could ask my colleague to hand them up? I think, I am not sure if there is one for Advocate Batohi.

**CHAIRPERSON:** You may start, Counsel. Advocate Batohi, you are still under oath.

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

**ADV NGCUKAITOBI SC:** All right. Thank you, Madam Chair. Advocate Batohi, good morning.

**ADV BATOHI:** Good morning, Counsel.

**ADV NGCUKAITOBI SC:** Ja. Could I start with a recap of your evidence from Friday, when I asked you questions about the email from Inspector Danikas data to the 7<sup>th</sup> of August 2019. You initially stated that you have no recollection of receiving the email. Later on, you stated that Advocate Mzinyathi should have brought the email to your attention

given the high profile nature of the matter. In fact, your actual answer is, well, it should have been brought to my attention given the high profile nature of this matter. You remember that?

**ADV BATOHI**: I do. I do.

**ADV NGCUKAITOBI SC**: Thank you very much. And then when I asked you again, you said:

“As I said, given the high profile nature of this matter, it should have been brought to my attention, but Advocate Mzinyathi thought it best to forward it to the DPP KZN.”

Correct?

**ADV BATOHI**: That is so.

**ADV NGCUKAITOBI SC**: Then I continued further, where I said:

“Was it appropriate or not, not to bring it to the attention of the NDPP?”

And then you said:

“Perhaps it was an oversight on his part.”

Correct?

**ADV BATOHI**: That is so.

**ADV NGCUKAITOBI SC**: Yes. Now, it is in that context that we asked, and we are grateful, actually, to, I think it is Advocate van Rensburg who has been able to find these

documents for us. It is in that context then that I want to ask you to look at page 354 of the bundle that has been handed up to you. 354 is the cover page.

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

**ADV NGCUKAITOBI SC:** Yes. Now, according to this, on the 8<sup>th</sup> of August 2019, Ms Bulelwa Makeke forwarded the email of Mr Danikas to you at 14 minutes past nine. Correct?

**ADV BATOHI:** Yes, I see that.

**ADV NGCUKAITOBI SC:** Yes. So, you would therefore accept that this email was brought to your attention?

**ADV BATOHI:** Yes, I see that.

**ADV NGCUKAITOBI SC:** Yes. Now, we can then see also that what we did not have in the document that we gave you, we gave you page 357 and 358 on Friday. But what Advocate van Rensburg has also been able to track is page 359. Can you see that?

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

**ADV NGCUKAITOBI SC:** Yes. Now, I do not want to read page 359 because it has a lot of expletives, but you would agree that it contains more abusive language from Major General Booysen directed at Mr Danikas?

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

**ADV NGCUKAITOBI SC:** Yes. Now, could you then explain yourself why a witness who is being threatened and intimidated and abused has reported it to you personally, you

have not taken action to protect that witness?

**ADV BATOHI:** I cannot recall what precisely happened at the time in 2019. I see that the email was forwarded to me as well as to Advocate Mzinyathi and Advocate Matzke, who was in the NPS at the time. And I cannot recall what exactly happened at the time and it will be speculative of me to try to answer that now. There are instances when matters are referred to me. And if the head, the Deputy National Director is copied in there, I allow – I expect that they will in fact attend to it, and I can only imagine that that is what happened in this case.

**ADV NGCUKAITOBI SC:** Now, you see, the problem with that answer is that we went through that on Friday. And on Friday, you said that there was an oversight on the part of Advocate Mzinyathi for not bringing it to your attention. You said that twice. And that is why Advocate Van Rensburg's discovery is very important because it shows that there was no oversight. The matter was brought to your attention directly, and that is why I have to ask you again, why did you fail to protect a witness who was being threatened and intimidated by a criminal accused?

**ADV BATOHI:** It was not a failure to protect. Because as I said, you know, I cannot even recall seeing these messages. I can only say that I would have expected Advocate Mzinyathi, given that it was sent to him as well, as a Deputy NDPP, to

deal with it, but I did not see the contents of these messages at the time.

**ADV NGCUKAITOBI SC:** I am not sure I understand. The email is sent to you. It attaches abusive content. It is criminal in nature because it amounts to witness tampering. You then claim that you did not see the contents. I find that remarkable. How could you not see the contents of an email that has been sent to you?

**ADV BATOHI:** As I said, I do not read all the emails when a Deputy National Director is copied or is also sent to him or her. I would often leave it to them to deal with the matter as appropriate. And that is why, in this case, I would imagine I would have done the same.

**ADV NGCUKAITOBI SC:** Are you saying that when you said on Friday that this should have been brought to your attention, and I was certainly of the impression that it was not brought to your attention, now we know that it was brought to your attention. Despite all of that evidence, today you are saying you did not read it.

**ADV BATOHI:** Today I am saying that I would have left it to the Deputy National Director to deal with it, and I did not look – as I said, I have not seen these messages, so I would not have read it at the time in 2019.

**ADV NGCUKAITOBI SC:** That I do find difficult to understand. If you look at page 354, it is clear there:

“Good afternoon, Ms Makeke. Kindly pass this letter to the head of the National Director of Public Prosecution, Ms Shamila Batohi.”

Your name is written even in bold. It is clear that it is intended for your attention. And you say, no, I did not read the email at all.

**ADV BATOHI**: There is a lot of matters that are sent for my attention that the deputies deal with. That is all I can say.

**CHAIRPERSON**: I beg your pardon?

**ADV BATOHI**: There are a number of matters that are sent for the National Director's attention that the various deputies would deal with.

**ADV NGCUKAITOBI SC**: Can I just ask you a few questions around the answer you have given? What the facts show is that the complaint by Mr Danikas was brought to your personal attention. Correct?

**ADV BATOHI**: That is correct.

**ADV NGCUKAITOBI SC**: Yes. What the facts also show is that you knew that Mr Danikas was a witness. Correct?

**ADV BATOHI**: That is correct.

**ADV NGCUKAITOBI SC**: What the facts also show is that you knew that Mr Booysen was an accused person.

**ADV BATOHI**: That is correct.

**ADV NGCUKAITOBI SC**: Yes. And therefore, what the facts

show us is that an accused person had contacted the witness which on Friday you conceded would have been illegal. Correct?

**ADV BATOHI:** That is correct.

**ADV NGCUKAITOBI SC:** We also know that you have an obligation as the NDPP, as the head of the NPA, to prevent the conduct of Mr Booyesen in potentially intimidating a witness. Correct?

**ADV BATOHI:** I have many obligations as a National Director, but it does not mean that I deal with all of them personally.

**ADV NGCUKAITOBI SC:** I do not think you are answering me. I am asking you whether or not you admit that you have an obligation as the NDPP to take action to stop the conduct of Mr Booyesen in intimidating and threatening a witness.

**ADV BATOHI:** As I said, the National Director has many obligations. It does not mean that he or she deals with it personally. In this case, in these circumstances, perhaps they should have dealt with it differently.

**ADV NGCUKAITOBI SC:** I do not think you are answering me. What I am putting to you is that you have a legal obligation to take action to prevent the intimidation of a witness by an accused person. Do you admit that or do you deny that?

**ADV BATOHI:** I am not denying it. All I said is there are a

number of obligations that a National Director has, but it does not mean that he or she will deal with it personally.

**ADV NGCUKAITOBI SC:** Yes, what is the answer to my question? Do you admit or do you ...[intervenes].

**ADV BATOHI:** That is my answer to the question.

**ADV NGCUKAITOBI SC:** Well, is the answer yes or no? You either have the obligation or you do not have the obligation, or maybe you do not even know that you have an obligation like this.

**ADV BATOHI:** That is my answer, and that is as far as I can take it.

**ADV NGCUKAITOBI SC:** No, I am afraid, Advocate Batohi, you cannot get away from answering whether you know the extent of your obligations. You have been the NDPP for too long for you not to know your obligation. I put to you again, do you admit or deny that you have a legal obligation to prevent the conduct of Mr Booysen in intimidating a witness?

**ADV BATOHI:** I would say that as prosecutors, we must do whatever is necessary to prevent intimidation of witnesses.

**ADV NGCUKAITOBI SC:** Again ...[intervenes].

**CHAIRPERSON:** I beg your pardon, Counsel. The question is directed to you as the head of the NPA, not directed to prosecutors. I think, answer the question directed to you as a head.

**ADV BATOHI:** Chairperson, as I said, if there is any

allegations of witness tampering or intimidation, then yes, as the National Director, you would be expected to look into it. But as I said, the National Director has many obligations. It does not mean that he or she has to deal with it personally.

**ADV NGCUKAITOBI SC:** So the answer to my question is yes, you admit that you have the obligation I have described?

**ADV BATOHI:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, on the facts, you did not take any action yourself. Any action. You did not even ask Advocate Mzinyathi to deal with anything. You took absolutely no action to fulfil this obligation.

**ADV BATOHI:** As I mentioned, if you look at it, Advocate Mzinyathi and Advocate Matzke, who was his immediate, who reported to Advocate Mzinyathi directly, were both – this was sent to all of them. All of us, I should say. And in the circumstances, I get many emails like this. And where the head, the Deputy National Director, it is also sent to him, I expect that they will deal with it.

**ADV NGCUKAITOBI SC:** You see, this is, and I do not want to constantly accuse you of giving evasive answers and lying under oath. On Friday, you told us that there was an oversight on the part of Advocate Mzinyathi for not bringing this to your attention. You also told us that given the high-profile matter, high-profile nature of this matter, it should have been brought to your attention. And for you today to

say that they were correct in not bringing it to your attention seems to me to be inconsistent. And I say, I do not want to go there again, and I want to just ask you again the question. I do not see any evidence on everything we have been sent by Ms Karen van Rensburg that you personally took any action to fulfil this obligation.

**ADV BATOHI:** I have to again state, a National Director has many obligations and it is not expected that he or she deals with everyone personally. In particular, when a Deputy National Director is – a communication is sent to him as well, I would often leave it to them to deal with the matter as appropriate.

**ADV NGCUKAITOBI SC:** Advocate Batohi, I must repeat my question. I have not come across anywhere in these documents that you personally took any action to fulfil the obligation you admitted you bear.

**ADV BATOHI:** I have answered that question.

**ADV NGCUKAITOBI SC:** Well, I am not sure if I understand the answer because you have answered it by evading it, and I repeat it again. I have not seen any evidence that you personally took any action to fulfil the obligation you admit you bear.

**ADV BATOHI:** I am not evading the question. I have responded that it is not expected of a National Director, particularly in these circumstances where a Deputy National

Director is sent to him as well to deal with the matter personally. So in this case, yes, I did not deal with the matter personally.

**ADV NGCUKAITOBI SC:** Yes.

**ADV BATOHI:** But the Deputy National Director was, it was addressed to him as well.

**ADV NGCUKAITOBI SC:** Yes.

**ADV BATOHI:** So, he has the delegated authority to deal with these matters.

**ADV NGCUKAITOBI SC:** Yes. Now, I can ask you now about the Deputy National Director. He also took no action ...[intervenes].

**ADV BALOYI-MERE SC:** Counsel, before you proceed, sorry to interrupt. Advocate Batohi, you keep on saying the NDPP has a lot of responsibilities that he deals with. Just to satisfy my curiosity because we know from your evidence that you do not read dockets and now, this morning, we know that you do not read all the mails that you receive. Can you just maybe enlighten us on the type of work that the NDPP does that keeps an NDPP so busy that she cannot even read all her emails that are sent to her inbox? Thank you.

**ADV BATOHI:** I am not saying I do not read emails. I read my emails. But where a Deputy National is copied, I expect that they will deal with it. So, if you want me to set out what the functions and roles of a National Director are, it is it starts

from the strategy. And so, we have to look at what is the strategy of the NPA and, of course, the National Director is responsible for implementation of the strategy. The strategy has various different aspects to it and that would include whatever the strategic objectives are and they would relate to at a high level dealing with prosecutions, dealing with asset forfeiture, there are access to justice issues.

So, there is a whole lot of high-level strategic objectives and these are broken down into plans. And in addition to that, we have a number of the NDPP is responsible for, in addition to what is in the strategic plan in terms of performance of the organisation, et cetera, you also – there is a number of strategic initiatives that we undertake in terms of what we refer to as our IPAC values, independence, professionalism, accountability, and credibility. And there are a number of strands that fall under that, that we are, for example, under independence.

I can talk about a number of things that we deal with there. Professionalism captures, deals with staff-related issues, a whole range of issues relating to capacities, capabilities, integrity issues. And then there is the issue of your reporting obligations to Parliament. There is the issue of dealing with – sorry, I am just trying to think. the reporting obligations. Your stakeholder management is a big part of it, dealing with external stakeholders, attending to various

stakeholder and other meetings, and then, of course, dealing with reviews that may come upon your table, representations, and et cetera.

I think in order to be completely holistic, it might be advisable for me to write it down and send it to the Panel so that they have a good idea of what exactly occupies a National Director.

**ADV BALOYI-MERE SC:** As a follow-up, in all the duties and responsibilities that you have mentioned, I did not hear you once talking about anything to do with litigation. You talk about strategy. And maybe also assist me. You keep on talking about high level. I do not know what that high level means, if you can assist me.

**ADV BATOHI:** The NDPP does not get involved in litigation as such in the sense that the NDPP does not prosecute him or herself. Where the NDPP is cited as a party in litigation proceedings, we have a legal affairs division that deals with that. High level, I am not sure in what context to answer that. I do not understand the context of the question.

**ADV BALOYI-MERE SC:** You said strategic implementation at a high level, and this is not the first time that you use the term high level when you answer a question. So I am trying to understand what you mean by dealing with issues at high level.

**ADV BATOHI:** It is important for a National Director to

actually focus your initiatives at a strategic level generally. The operational matters are dealt with colleagues that are below the National Director and to the extent that you need operational reports, these will be submitted to the National Director.

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

**ADV NGCUKAITOBI SC:** Yes. Advocate Batohi, we are still dealing with Mr Danikas. Now, I put it to you that even Advocate Mzinyathi never addressed the allegations of witness tampering.

**ADV BATOHI:** It appears so.

**ADV NGCUKAITOBI SC:** Yes. Now, I come back then to this issue. On the common cause facts, you took it up yourself personally the whole matter of General Booysen and Cato Manor, including appointing a Panel and withdrawing the charges, writing a letter to the DPP telling them that there are no sustainable charges even on the predicate offences. Why were you not interested in allegations against General Booysen? To say I did not read the email strikes me as if you did not care.

**ADV BATOHI:** That is not the case. With regard to the Cato Manor matter, I dealt with it personally because there was litigation and I, as a National Director, needed to understand and take a decision in that litigation. So it was important that I dealt with it personally. As far as me sending it back to the

DPP ...[intervenes].

**CHAIRPERSON:** I beg your pardon, Counsel. Please repeat what you have just said now.

**ADV BATOHI:** Chairperson, there was litigation before the Court and there was a review of the decision of Advocate Abrahams, the authorisation for the charges. As a National Director, I needed to decide what our approach will be in those review proceedings. So I needed to therefore personally get involved in order to decide, make a decision about the position we will take in those review proceedings, and that is why I had to appoint a Panel and get involved in the matter personally because it was a decision I had to take myself. As far as the ...[intervenes].

**CHAIRPERSON:** Before you get there. If my recording, my writing is correct, you answered to my sister that the NDPP does not get involved in litigation, or something to that effect, because you have legal affairs. Now what you just said to me seemed to be inconsistent with that earlier statement. Am I correct?

**ADV BATOHI:** No, Chairperson. What I meant is that the NDPP has – there is a legal affairs division that deals with litigation, but there may be instances when the legal affairs division will need to get direction either from the National Director or from the ExCo in terms of what is the position that we take in particular litigation. It depends on what exactly

the litigation is about. So they do not always do it, but in some instances they would seek the view of the National Director or the ExCo. So to that extent, you will need to give direction to the legal affairs division. So the sense I meant is the NDPP does not actually get involved in the mitigation in terms of, you know, the processes that unfold in those litigations.

**CHAIRPERSON:** It is common cause that these matters, particularly the Cato Manor matter, has a checkered history. When you took office early in that year, 2019, these matters had been ongoing and you took office and found that there had been certain developments relating to the very matter that concerned Major General Booyesen. Correct?

**ADV BATOHI:** That is correct.

**CHAIRPERSON:** And as you got involved personally in that litigation, the review application, did you not then deem it fit to personally look into the history of the matter? That matter given rise to the very application that Major General Booyesen lodged?

**ADV BATOHI:** Chairperson, by appointing a Panel to deal with the matter, I was in fact dealing with it in a sense personally because I appointed the team to look at all of the evidence and to give me a report to enable me to make a decision. And in my view, that was dealing with the matter because I had to take a decision.

But it did not require in my view that I personally deal with it to the extent of reading every single docket in this matter and then personally attend to it in that way. In my view, I did give it the necessary attention in the circumstances.

**CHAIRPERSON:** The matter concerning the email communication from your communication officer, official, Ms Bulelwa Makeke, it arose last week.

**ADV BATOHI:** That is right.

**CHAIRPERSON:** My understanding, and correct me if I am missing the point, what you said was that you did not receive the email. Is that correct?

**ADV BATOHI:** As far as my recollection is, I could not recall having received it. Because when I saw the email, I could not remember it. So I assumed I did not receive it.

**CHAIRPERSON:** The issue concerning the involvement of Advocating Mzinyathi was mentioned by you when you said that there might have been an oversight on the part of Advocating Mzinyathi not to bring the matter to your attention. Am I correct?

**ADV BATOHI:** That is correct.

**CHAIRPERSON:** And if that is so, is it correct that had Advocating Mzinyathi brought it to your attention, you would have reacted to it? Because that answer, that gave rise to the need to have the emails was on the assumption that the

email had not reached you and that it was an oversight on the part of Advocating Mzinyathi not to bring that to your attention, which presupposes that had you been aware of the communication, you would have acted upon it?

**ADV BATOHI:** Chairperson, given what I was dealing with at the time, I would have asked him to look into this matter a little more closely perhaps. And I am trying to, you know, cast my memory back now and state now what I think I would have done at the time. And that is what I would likely have done, is asked him to look into it. Because as I said, I did not look at – I did not see these messages, I cannot recall anyway having seen it at the time. And given that the matter was being dealt with, I would have asked him for some response to this perhaps.

**CHAIRPERSON:** What are you saying, Advocate Batohi?

**ADV BATOHI:** What I am saying, Chairperson, is that had I been aware that there was witness tampering at the time, I would likely have asked him to have looked into this and sent me a report about this particular aspect.

**CHAIRPERSON:** How could you have known about that when you did not even read the email?

**ADV BATOHI:** That is correct, Chairperson, I did not know about it.

**CHAIRPERSON:** My question is, how could you have known about it when you did not read the email?

**ADV BATOHI**: I did not, Chairperson. That is why I said I have seen it now, these messages, for the first time.

**CHAIRPERSON**: And you have just answered that Advocate Mzinyathi himself did not do anything ...[intervenes].

**ADV BATOHI**: I do not think he did ...[intervenes].

**CHAIRPERSON**: I beg your pardon.

**ADV BATOHI**: I apologise.

**CHAIRPERSON**: He did not do anything about the issues concerning witness tampering.

**ADV BATOHI**: That appears to be the case, Chairperson.

**CHAIRPERSON**: What should we make of that as regards your leadership?

**ADV BATOHI**: As I said, Chairperson, there are a number of matters that come to a National Director's attention, and whenever a deputy is copied in it, I expect that he will attend to it appropriately, and that is what I did in this case.

**CHAIRPERSON**: I understand that, Counsel. What I am asking you, and you might assist us, what should we make of that, given the fact that, first of all, the email was addressed to you, secondly, nothing was done about what appears to have been witness tampering or constituted witness tampering, and nobody did anything about that? My question is, as the head of NPA, what should we make of that, particularly as regards your leadership of the NPA?

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

**CHAIRPERSON:** Because I am asking this question, Counsel, and I am asking it because the buck stops with you as the head. It may well be so that there is sometimes a delegation of powers, but the buck stops with you, particularly when an email of this nature is addressed to you. So what should we make of that?

**ADV BATOHI:** Chairperson, as I said, indeed, the buck stops with the National Director for everything that happens in a rather large organisation of over 5 000 persons. It is not expected of a National Director to deal with every single matter that comes across his or her desk. There are a number of people that have delegated authority, and in that sense, it is perfectly reasonable for a National Director to expect very senior people, and we are not dealing with junior people. We are dealing with very senior people, including DPPs who have legal authority to deal with matters in their divisions to address the matter. So it is not unreasonable of a National Director to expect that these very senior people will attend to matters correctly.

**CHAIRPERSON:** Is there a formal delegation of powers by you to prosecutors such as Advocate Mzinyathi to do certain functions that are supposed to be done by you?

**ADV BATOHI:** Chairperson, in terms of the Act, a Deputy National Director has the same powers and functions as a National Director, but with regard to particular functions,

there are specific formal delegations. Otherwise, they are responsible for everything that falls within his area of his business unit, should I put it, his or hers.

**CHAIRPERSON:** In terms of reporting and accounting to Parliament, if this matter were to arise in Parliament, were you going to tell Parliament that this function was delegated to somebody who did not do what he was supposed to have done, particularly when it is clear, as you indicated earlier, that there was witness tampering? Would you have said to Parliament, I do not execute such functions because these kinds of matters are normally within the responsibilities of the DPP or somebody, your subordinate, whoever it is?

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

**CHAIRPERSON:** And if this person failed to do what he ought to have done, as you indicated earlier, what would then happen to that advocate?

**ADV BATOHI:** Depending on what the issue is, the National Director should ensure accountability.

**CHAIRPERSON:** Now here, you have just mentioned that Advocate Mzinyathi failed to address issues of witness tampering. Is that not serious to warrant an action against such an advocate?

**ADV BATOHI:** I will look into the matter, Chairperson, and consider what steps I could potentially take to understand what exactly happened in this matter.

**CHAIRPERSON:** No, no, no. I am just asking, as a matter of principle, if such an official or an advocate failed to act or address serious issues where there has been witness tampering by an accused person, what should then happen ...[intervenes].

**ADV BATOHI:** The National Director ...[intervenes].

**CHAIRPERSON:** What ought to have happened?

**ADV BATOHI:** The National Director should seek, firstly, a report from the staff member concerned to understand what happened in the matter.

**CHAIRPERSON:** Now, between 2019 July or August, when this email was sent to you until today, what steps have been taken against Advocate Mzinyathi for failing to act?

**ADV BATOHI:** Chairperson, none, because I cannot recall that I was fully aware of what happened in this matter.

**CHAIRPERSON:** Are you saying that between 2019 August until today you have not acquainted yourself with the happenings in your office?

**ADV BATOHI:** That is not correct, Chairperson.

**CHAIRPERSON:** I beg your pardon?

**ADV BATOHI:** That is not correct.

**CHAIRPERSON:** What are you saying?

**ADV BATOHI:** Between 2019 and now I have certainly been acquainted with a lot of the happenings in my office, but in this particular case I was not aware of what had happened

with regard to this aspect of it. Yes, that is what I am saying, Chairperson.

**CHAIRPERSON:** And this aspect of it is contained in a communication to the NPA concerning, among others, serious allegations against Major General Booyesen, which impacts the administration of justice?

**ADV BATOHI:** It appears so, Chairperson.

**CHAIRPERSON:** Thank you.

**ADV BALOYI-MERE SC:** I have a follow-up.

**ADV BATOHI:** Chairperson, there was another aspect of Advocate Ngcukaitobi's question that I did not answer and I do not want to forget to deal with that.

**CHAIRPERSON:** Counsel will go back to that question.

**ADV BATOHI:** I have it written down, I just want to respond to it.

**CHAIRPERSON:** Yes, we are still asking you questions. You will go back to that question.

**ADV BALOYI-MERE SC:** When asked about the fact that Advocate Mzinyathi did nothing about the complaint that you received on the 8<sup>th</sup> of August 2019, you said clearly something should be done to deal with it. But I am wondering because your answer is where you receive an email and one of your deputies is copied, you do not read that email, meaning you will not know what the email contains and you will not know what steps were taken to remedy what is in the

email and therefore you will not take any steps if the remedy was not done or the email was just ignored because you do not know the contents of the email as per your previous answer.

**ADV BATOHI:** As I was saying, I am dealing with very high-level senior members in the NPA and with the number of matters that I get across my emails, often it would happen that a deputy, especially if a deputy is copied in, that I would expect that they would deal with the matter appropriately. And as senior members of the NPA, they are aware of when they need to bring something to my attention. That is what they are expected to do. So I expect that they will deal with it appropriately and if there is anything that they feel they need to bring to my attention, they will do that.

**ADV BALOYI-MERE SC:** You went back to the high-level and a concept that I indicated earlier that I do not understand. Would you mind explaining it in the context of how you dealt with it just now?

**ADV BATOHI:** Did I mention high-level now? I do not recall mentioning high-level now in my explanation of this, in my response. So I am trying to understand how to respond to that question in terms of context.

**ADV BALOYI-MERE SC:** If I misheard, I will withdraw. But my understanding was when the witness started answering me, she said, as I said, I deal with high-level. So for me, it

is really confusing, but I can leave it at that. The record will bear me out.

**CHAIRPERSON:** Yes, I think we are ...[indistinct]. Just the last part. Just the last part that is worrisome to me, Advocate Batohi. This Cato Manor cases, we all know by now that they involve racketeering. Correct?

**ADV BATOHI:** That is correct.

**CHAIRPERSON:** And in terms of the legislation, racketeering is within the exclusive jurisdiction of the head of the NPA when you look at section 2.4 and other provisions.

**ADV BATOHI:** That is correct.

**CHAIRPERSON:** Now, this matters being within your exclusive jurisdiction, you take over from a former NDPP beginning of February 2019, and you deal with this matters in the manner you did. Delegated a number of matters to some advocates on issues that are within your exclusive jurisdiction. I said this is worrisome to me because no one will account on these matters other than you. Am I correct?

**ADV BATOHI:** Chairperson, to explain this, I agree that the National Director is accountable.

**CHAIRPERSON:** No one will account on these matters within which you have an exclusive jurisdiction. Am I correct?

**ADV BATOHI:** Chairperson, if I may be allowed to answer that and explain what I mean by that. Indeed, the NDPP is accountable for his or her decisions. And this is an NDPP's

decision to authorise a racketeering matter, but it should not be worrisome that a National Director deals with this matter in this way.

**CHAIRPERSON:** You cannot answer for me. They do worry me because I have listened to the evidence, I have looked at the legislative framework and provisions. That is why I am asking you the question that being the head, who assists with these powers exclusively? And matters of this nature arise, who should really account? I do know and I do take note of the fact that you could have delegated certain powers to some of your advocates because of your busy schedule. But now, because we are dealing with matters within your exclusive jurisdiction, I get worried that you might have failed to do what you ought to have done in terms of the legislation. I may be wrong. That is why I seek your assistance.

**ADV BATOHI:** And, Chairperson, this is what I am trying to do, is to explain to the Chair how these things are done so that it should, in my view, not in my view, not be a cause for concern. If you look at how National Directors deal with these authorisations. In fact, I think it was Advocate Nxasana's, Mr Nxasana's affidavit, where he says that when Advocate Jiba took the decisions that she did in the original authorisations, she relied on reports that were given to her from prosecutors, et cetera, and that is the correct thing.

She absolutely did what is expected of her. Even

though authorising is purely a National Director's function, she was correct in relying on reports from either Advocate Chauke or the prosecutors in that matter, and not reading the dockets and documents herself. Well, not documents, but the dockets and all the evidence because ...[intervenes].

**CHAIRPERSON:** It would be helpful – I am sorry to interpose. Let us not talk about what Advocate Jiba did. She is not before us. Let us talk about you. Because she may well have been here to answer the questions that I am asking you, but she is not here. And as the head, you are the only one at this point who can assist us to understand how your office functions.

**ADV BATOHI:** Chairperson, that is what I am trying to do. I am not answering for Advocate Jiba. What I am saying is this is the way National Directors deal with these matters. And I said she, in fact, acted appropriately in that matter when she took a decision and relied on reports from those that are her subordinates. That is the way a National Director deals with these matters.

Advocate Nxasana, likewise, decided not to appeal, and he can speak for himself if he is called. My understanding would be that he would not have looked at all of the dockets and read all of these in detail. And so all I am saying, Chairperson, is that, and there is sufficient case law on this, that a National Director is not expected to read every

single docket and all the evidence, and that you can rely on others in your office, even though it relates to a racketeering matter, to give you reports and to make sure that you have the necessary assurance and checks in place to make the right decision. So in this case, Chairperson, there was absolutely nothing wrong with the way in which I managed this matter.

**CHAIRPERSON:** I do note, and I do not want to have this exchange with you, but I do know that your earlier answer that you do not read all dockets. These questions revolve around the email which was directed to you personally. I am not talking about a general issue relating to all the commutations that are within the space of the NPA. I am talking about communication involving these serious allegations of witness tampering in matters revolving around racketeering, which is within your exclusive jurisdiction.

**ADV BATOHI:** Chairperson, I explained as I did, and I can take the matter no further.

**CHAIRPERSON:** Thank you.

**ADV BATOHI:** So getting back, if I may, Chairperson, to one of ...[intervenes].

**CHAIRPERSON:** Before you go back, let us just wait for Counsel to take us to where he was ...[intervenes].

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

**CHAIRPERSON:** Because we interrupted him with the

question.

**ADV NGCUKAITOBI SC:** Yes ...[intervenes].

**ADV BATOHI:** Chairperson, I had actually been interrupted, with all due respect. I was answering Counsel's ...[intervenes].

**CHAIRPERSON:** No, no, no. I am saying he can remind us of the question he asked you when we interrupted your answer.

**ADV NGCUKAITOBI SC:** I have the question written down, Chairperson, and I can ...[intervenes].

**CHAIRPERSON:** No, no, no. He can ask it.

**ADV BATOHI:** Okay.

**ADV NGCUKAITOBI SC:** Thank you. Advocate Batohi, I think just read what you want to read.

**ADV BATOHI:** I appreciate that.

**ADV NGCUKAITOBI SC:** Because you seem to be keen to read something.

**ADV BATOHI:** No, I am not keen to do it.

**ADV NGCUKAITOBI SC:** Just read it. I will move to the next question.

**ADV BATOHI:** Thank you very much. If I may, then. I understood Counsel to say ...[intervenes].

**ADV NGCUKAITOBI SC:** No, no. Do not read my question. Just read the answer you wanted to give. I have other questions.

**ADV BATOHI:** No, I have to answer it in the context of the question. So I want to remind myself, as well as the Panel. Gosh, so much has happened since then. I am trying to find where I wrote it down. If you will bear with me, Chairperson, just for a minute.

**CHAIRPERSON:** Advocate Batohi, my sister reminds me that it is long after tea time.

**ADV NGCUKAITOBI SC:** Okay.

**CHAIRPERSON:** As you are perusing your notes, looking for the question, Advocate Ngcukaitobi, I do not know whether you would like us to take a break or you wait for Counsel Batohi to look for the question and answer, or whether you would like us to adjourn.

**ADV NGCUKAITOBI SC:** No, Madam Chair, you gave the correct instruction that I need to continue asking the questions. The witness countermanded. So I am asking the witness, she must read what she wants to read. Now she is wasting time, paging through. So if she has found the question, she must just read it so we move on. And I will be happy after that has been answered to take the adjournment, but I was happy with your initial direction, but the witness protested. That is fine, but she is now not reading.

**CHAIRPERSON:** Would you please read what you said you wrote?

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

**CHAIRPERSON:** Because I thought I was guiding ...[intervenes].

**ADV BATOHI:** Chairperson, with all due respect, if I had been allowed to answer the question fully at the time, I would have dealt with the two aspects. But a lot happened after that, and I have written a lot of things down. And I am trying to go back to find it. So I am not trying to waste time, Chairperson. I am really trying to deal with this efficiently.

**CHAIRPERSON:** It is not helpful to be argumentative. It does not help any one of us, Advocate Batohi. I tried to assist by guiding, because I also wanted to recap where we ended. And I asked that Counsel could recap and take us where he ended, when I interposed, and you insisted that you want to read your answer and that is where we are now. Do you have the answer?

**ADV BATOHI:** Thank you, Chairperson. If you will give me a minute.

**ADV NGCUKAITOBI SC:** What is going on?

**ADV BATOHI:** Chairperson, if I may, I will try to find it during the break, but what I recall was put to me was that words to the effect that I had – there was no evidence, I had indicated to the DPP that there was no evidence in the racketeering and predicate offences. I could be mistaken, I need to check my notes carefully, but I want to say that I had indicated to the DPP that there was no evidence on the racketeering

matter and that she was to decide on the predicate offences in the matter. So I just wanted to clarify that.

**ADV NGCUKAITOBI SC:** That is the answer you wanted to give?

**ADV BATOHI:** Well, I am still going to check and make sure your question was precise, but that is the answer that I wanted to give. Yes.

**ADV NGCUKAITOBI SC:** Thank you.

**MS RAMAGAGA:** Counsel, may I just come in here? I know it is tea time. May I or not? Okay.

**CHAIRPERSON:** Advocate Ngcukaitobi, before my sister takes off, you want to follow up?

**ADV NGCUKAITOBI SC:** No, Madam Chair, I think we should take the adjournment. This has not been a productive five minutes.

**MS RAMAGAGA:** Advocate Batohi, after the Chairperson had asked questions, you insisted that you want to read the question. You insisted that you would like to read the question that Advocate Ngcukaitobi had asked you. And the Chairperson engaged you to say, no, no, but let us give him a chance to recap on that. And in your own words, you said, I have written the question and I would like to read that question. And now when you are given the opportunity to read the question, now you cannot find the question. You have to go through your notes. Is that the case?

**ADV BATOHI:** Yes.

**MS RAMAGAGA:** Thank you, Chair.

**CHAIRPERSON:** Thank you. Let us take a tea adjournment until 12 o'clock. You are still under oath, Madam. We will adjourn.

**ENQUIRY ADJOURNS**

**ENQUIRY RESUMES**

**CHAIRPERSON:** Yes, thank you, Advocate Batohi, you are still under oath.

**ADV BATOHI:** Noted, Chair.

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

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. Advocate Batohi, can we just go to the answer you gave before the adjournment? When I put to you that you told the DPP of KZN that the report of Mr de Kock did not find evidence of the predicate offences in relation to Major General Booysen, you said that is not what you said, is that correct?

**ADV BATOHI:** [Pause] I am not sure if I made a full note of your question, but I did find it, and I was trying to write quite fast, but it appears from my note here that what I said to the DPP was that there was no evidence, not just on the racketeering charges, even on the predicate offences, but I do not know if I mentioned the De Kock report, whether you mentioned the De Kock report when you put that question to

me at that time.

**ADV NGCUKAITOBI SC:** It does not matter, but I just want the substance of it, but what do you quibble with on the question I asked you, what do you disagree with?

**ADV BATOHI:** What I disagree with is that I would have mentioned that there was no evidence on the predicate offences as well.

**ADV NGCUKAITOBI SC:** Your letter to the DPP was limited only to the racketeering, is that your point?

**ADV BATOHI:** That I would have said that there was no evidence with regard to the racketeering offences, I am not sure if I said anything about the predicate offences.

**ADV NGCUKAITOBI SC:** No, but that is what I am asking you, because I had put to you that you had said that there was no evidence also on the predicate offences. Now you disagree with that, but I want to understand where do you and I disagree? Are you saying you never mentioned anything about the predicate offences in relation to General Booysen or you did?

**ADV BATOHI:** I am not saying I did not mention anything about the predicate offences, because I asked the DPP to look into the dockets and make a decision on the predicate offences.

**ADV NGCUKAITOBI SC:** Yes? I am asking you whether you expressed a negative view that there is also no evidence on

the predicate offences in relation to Major General Booysen. Is that correct or not? I mean, why are we ...[intervenes]

**ADV BATOHI:** Can I look at the letter? I do not think I would have. You can refer to the letter, because...

**ADV NGCUKAITOBI SC:** Okay, let us do this. Let me take you to the letter.

**ADV BATOHI:** That would help.

**ADV NGCUKAITOBI SC:** It is at SB4229.

**ADV BATOHI:** Yes, I see it.

**ADV NGCUKAITOBI SC:** Then go to SB4230, at paragraph 4, and look at the fifth line, which starts with, I bring to your attention.

**ADV BATOHI:** Yes, I see it.

**ADV NGCUKAITOBI SC:** Can you read that?

**ADV BATOHI:** Well, perhaps I would like to read the entire paragraph 4.

**ADV NGCUKAITOBI SC:** No, just answer my question. Not ask your own questions. Read from, I bring to your attention.

**ADV BATOHI:**

“I bring to your attention that the panel also found that there was insufficient evidence against General Booysen in respect of other charges preferred against him. Please take this into account in your evaluation of the evidence against him in

respect of those predicate offences in which he is charged.”

**ADV NGCUKAITOBI SC:** Do you accept that you said to them that there was insufficient evidence against General Booyesen on the predicate offences as well?

**ADV BATOHI:** No. There was insufficient evidence against General Booyesen in respect of the other charges preferred against him.

**ADV NGCUKAITOBI SC:** Yes, but those are the predicate offences.

**ADV BATOHI:** The charges, in my view, that is the racketeering charges, and that I was asking her to consider the predicate offences and make her own decision.

**ADV NGCUKAITOBI SC:** Can I tell you, Advocate Batohi, that your answer is a blatant lie?

**CHAIRPERSON:** Counsel, before that, from the reading of Paragraph 4, Advocate Batohi, mention of other charges preferred against him. Other charges. Which charges are those?

**ADV BATOHI:** Yes, I see that. I do say other charges.

**CHAIRPERSON:** Which charges are those?

**ADV BATOHI:** Well, he had racketeering charges against him. I am not sure that there were other charges preferred against him as well. My understanding is that there were only racketeering charges preferred against him, and... yes, that

is my understanding.

**CHAIRPERSON:** Is other charges in this context not referring to the predicate charges?

**ADV BATOHI:** Well, Chairperson, I am trying to understand what I was saying there. I bring to your attention that the panel also found that there is insufficient evidence against General Booyesen in respect of the other charges preferred against him. Now, you are correct. I mean, it would appear not to be the racketeering charges, but I am not aware of other charges preferred against him mmm... except in the context of mmm... I think it is charges 8 to 12 that are mentioned in the indictment.

**CHAIRPERSON:** The opening sentence of paragraph 4 refers to the predicate offences.

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

**CHAIRPERSON:** So, would other not charges within this context not be referring to the predicate offences?

**ADV BATOHI:** Yes, Chairperson, that is why I wanted to read the entire, to get the context, the entire paragraph 4. So, if one reads the whole thing, then yes, you are correct. It relates to the predicate offences, which is what I said I asked the DPP to make a decision on.

**CHAIRPERSON:** Thank you, counsel.

**ADV NGCUKAITOBI SC:** Advocate Batohi, the answer you have just given is a transparent lie. Your letter is clear that

paragraph 3 records that you have withdrawn the racketeering charge. Paragraph 4 is about the predicate offences.

**ADV BATOHI**: Yes, that is correct. And that is why I wanted to read the entire paragraph, so that I get an understanding of the context.

**ADV NGCUKAITOBI SC**: And to show that it is also a transparent lie, you now claim not to be aware that General Booyesen was facing charges other than racketeering. When your own affidavit before this panel says that you were aware of it.

**ADV BATOHI**: I am aware that he was facing racketeering charges, and they are predicate offences that relate to the racketeering charge.

**ADV NGCUKAITOBI SC**: No, Advocate Batohi, please, you are an advocate of the High Court. It is not nice for us to tell you not to lie. We do not enjoy it.

**ADV BATOHI**: I am not lying.

**ADV NGCUKAITOBI SC**: You are lying when you claim that you were not aware that General Booyesen was facing charges other than racketeering.

**ADV BATOHI**: I am not lying. I am saying to you there are racketeering charges, and in order to prove racketeering, you need to prove other predicate offences.

**ADV NGCUKAITOBI SC**: No one has asked you that

question. We are looking at your letter where you now say you were not aware there were charges other than racketeering in relation to General Booyesen.

**ADV BATOHI:** That is correct. What I am saying is that he was charged with racketeering, and that there were predicate offences that are elements of racketeering charge. That is my understanding, that he was charged with racketeering only, but that there were predicate offences that need to be, which is an element of the racketeering charge.

**ADV NGCUKAITOBI SC:** Advocate Batohi, you know when I started this cross-examination, I am going to ask the panel to stop, and I will go to the transcript. When I started this cross-examination, I asked you whether or not you were aware that Major General Booyesen was facing a murder charge, two murder charges. You said yes. I asked you whether or not you were aware that Major General Booyesen was facing charges about defeating the ends of justice, and I asked you specifically, separately from racketeering, when we were analysing the charge sheet. You confirmed all of that. It is the first time now, today, that you give evidence that you were not aware that Major General Booyesen faced charges other than racketeering. Very first time. It has never been said before by anyone.

**ADV BATOHI:** All I am saying is that there are predicate offences that are linked to the racketeering charge, and that

is why it is so intertwined, these predicate offences with the racketeering charge. So, yes, in order to be charged with racketeering, you need to have committed predicate offences, and that is why I would have said what I did. But it is in the context of racketeering.

**ADV NGCUKAITOBI SC:** Advocate Batohi, your paragraph four is clear that it is different to paragraph three. Paragraph 3 is about racketeering. Paragraph 4 is about predicate offences. When you refer there in that sentence, I bring to your attention, you are not talking there about racketeering. Is not that clear to you?

**ADV BATOHI:** That is correct. Having read the entire two paragraphs, that is correct.

**ADV NGCUKAITOBI SC:** Then why did we waste time of the panel on an exchange like this?

**ADV BATOHI:** I did not waste time. If I was allowed to read the context, it would have been clear.

**ADV NGCUKAITOBI SC:** Can we just come back then to where we were before the adjournment? Just to get the summary of what actually is your testimony. Number one, my understanding is that you admit that Mr Danikas brought the crime of witness tampering to your personal attention together with attachments which were evidence, correct?

**ADV BATOHI:** Correct.

**ADV NGCUKAITOBI SC:** Yes. Number two, on your version,

you did not read the email, correct?

**ADV BATOHI:** [Pause] That appears to be the case, yes.

**ADV NGCUKAITOBI SC:** Well, it cannot appear to be the case, Advocate Batohi. You were confident with the first answer that it was correct. You are now shifty on the second answer that it appears so. And you have done this so many times that you never give straight answers.

**ADV BATOHI:** And the answer for that is because I am trying to cast my mind back seven years. And it is not easy to do that. So that is the only reason why I am answering in this way, because I am trying to understand what happened at the time.

**ADV NGCUKAITOBI SC:** Yes. The problem with that stance is that there are other facts that you can answer clearly and there are inconvenient facts where you become shifty.

**ADV BATOHI:** I have got no comment on that.

**ADV NGCUKAITOBI SC:** Number three, the same crime of witness tampering was brought to Advocate Mzinyathi, correct?

**ADV BATOHI:** Yes.

**ADV NGCUKAITOBI SC:** Number four, he read the email because we know that because he responded, correct?

**ADV BATOHI:** That is so.

**ADV NGCUKAITOBI SC:** But Advocate Mzinyathi failed to address the claim of witness tampering or even to respond to

it, correct?

**ADV BATOHI**: That is what appears from the emails that we have.

**ADV NGCUKAITOBI SC**: We know that the same email containing allegations of witness tampering went to the DPP of KZN, Advocate Elaine Zungu, correct?

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

**ADV NGCUKAITOBI SC**: We know that she too did not address the crime of witness tampering, correct?

**ADV BATOHI**: That appears to be the case.

**ADV NGCUKAITOBI SC**: Yes. Now, institutionally, yourself, Advocate Mzinyathi and Advocate Elaine Zungu collectively failed to address the allegations of witness tampering, which are a crime, correct?

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

**ADV NGCUKAITOBI SC**: Yes. All of you are responsible for defeating the ends of justice.

**ADV BATOHI**: That is not correct.

**ADV NGCUKAITOBI SC**: You personally acted in breach of your own oath of office.

**ADV BATOHI**: That is not correct.

**ADV NGCUKAITOBI SC**: Yes. Now, that is what I will argue in the end, that you violated the provisions of the NPA Act because you failed to address a crime brought to your attention. The matter then became a subject of discussion.

If you go to page 369.

**CHAIRPERSON:** 369?

**ADV NGCUKAITOBI SC:** Yes, the same file, Madam Chair, that we have been dealing with.

**CHAIRPERSON:** Is that SB?

**ADV NGCUKAITOBI SC:** No, it is just file 3. Yes, I am told that it has become a little bit difficult to bear.

**CHAIRPERSON:** Thank you, counsel.

**ADV NGCUKAITOBI SC:** Thank you. Now, if you go to page 369, there is more information that is disclosed by Mr Danikas to the officials of the NPA. There is Sheriza Ramuthah [?] and Notando Mbisi at the bottom of that email. Who are those people?

**ADV BATOHI:** They are both advocates in the DPP office, Durban.

**ADV NGCUKAITOBI SC:** But we know that email then comes to the attention of the DPP herself. If you look at the top of 369, Miss or Advocate Elaine Zungu, correct?

**ADV BATOHI:** That is correct.

**ADV NGCUKAITOBI SC:** Yes. And how it comes to her attention is because Advocate Sheriza Ramuthah has prepared a draft response and is showing the DPP the contents of the draft response, correct?

**ADV BATOHI:** I am just looking at the emails.

**ADV NGCUKAITOBI SC:** Well, it says, see my response to

Mr Danikas.

**ADV BATOHI:** Yes, which I am assuming she is referring to the email below. I am not sure if there is a draft attached.

**ADV NGCUKAITOBI SC:** Well, we know the letter that was sent, which we assumed was the draft, is the letter we looked at last week. At page, yes, page 366. That is the one with enquiries, S Ramuthah.

**ADV BATOHI:** Yes, I see that.

**ADV NGCUKAITOBI SC:** So that is what I am saying is the draft that was being circulated at the time internally.

**ADV BATOHI:** I am not seeing that the draft was circulated. If I can be pointed to that, I can respond.

**ADV NGCUKAITOBI SC:** Well, it says, see my response to Mr Danikas and he is to me attached.

**ADV BATOHI:** Ah, yes, I see that.

**ADV NGCUKAITOBI SC:** So they are clearly attachments there.

**ADV BATOHI:** That is correct.

**ADV NGCUKAITOBI SC:** Yes, all right. All right. What I want to refer you to for now is the middle, the email from Advocate Sheriza Ramuthah on the 21st of November 2019. And what she is saying to his colleagues, to her colleagues, Mr Nell, Mr Sankar, Ms Dlamini, is:

“Please see the trailing email from Mr Danikas regarding the Cato Manor matter.

Does this relate to any matter that you have dealt with in this project?”

It appears that she is not even aware of the involvement of Mr Danikas in the case, correct?

**ADV BATOHI**: [Pause] It appears to be so.

**ADV NGCUKAITOBI SC**: Yes. And then the draft that she is proposing:

“If not, I am simply going to write to him and inform him to send his evidence, information to SAPS, as he is under the impression that we are investigating the Cato Manor unit.”

So here it appears also that she is under the impression that the Cato Manor unit is not even being investigated or considered by the NPA.

**ADV BATOHI**: She is under the impression that investigating is in inverted commas, that we are, the NPA is not investigating it. That is my understanding.

**ADV NGCUKAITOBI SC**: Yes, correct. I do not know what is the disagreement there, because I am saying exactly what you are saying because it is clear from the email. And then look at what Mr Danikas is bringing to their attention, which is at the bottom of the page. It says:

“Good morning again, Ms Ramuthah. I am attaching a short audio file and a video

capture frame. This is an extract from a previous security video file recorded in my old electronic store in Smith Street, Durban on the 21st of January 2016. In particular, I refer to the video clip I previously provided in my statement to the NPA in 2016 in Greece at the SA Embassy. Attached photo frame, Booyesen on his knees with white t-shirt and shorts far right. Booyesen proudly and graphically describing me and my wife, how he and his members, while on duty and driving a Lumina, shot at for their entertainment, innocent civilians at a taxi full of Africans, because the driver will not let him pass. There are three incidences described by Booyesen within the original video recording.”

Then it continues.

I have attached only the one audio part that, in my view, is clear and describes how Booyesen and Cato Manor members shot at a prostitute from their car. The details are clear on the audio. I have used some sound filters to clear the background

music, a demonstration as to how an expert sound engineer can further clear the remaining sound recording of this video clip.

Did anyone from the investigating team ever submit this crucial video recording to a forensic sound expert in order to authenticate and clear the audio? I believe that this part of the ignored so far evidence is crucial to a pending investigation as it paints a criminally and a graphic picture of those racist police members' mentality and how they operated with a total disregard to the law, as well as a racist behaviour towards Africans.

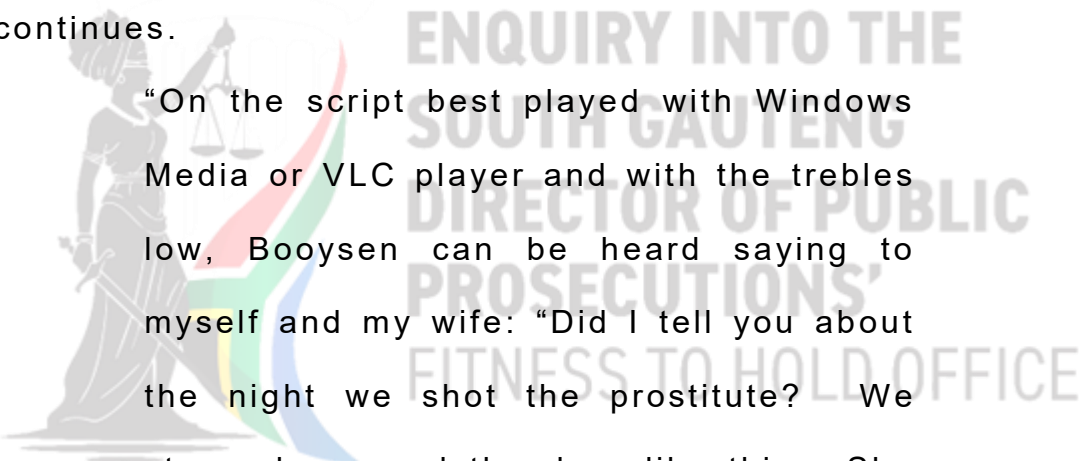
Out of the courtesy and prior to sharing this part of the sound clip, as well as a relative video clip to the media, I am forwarding to you for further investigation. As I am an active member of the two international NGOs for Human Rights, I have dedicated my life to uncover the hidden truth regarding the Cato Manor unit.”

The substance of this is this. There is a video and an audio that is circulated to the attention of the DPP, which has

already been given to you by virtue of the email we looked at on the 8th of August 2019. But this one contains even more evidence of Mr Booyesen himself confessing to the commission of a crime. Can you see that?

**ADV BATOHI:** It appears to be so.

**ADV NGCUKAITOBI SC:** Yes. Now, the man is sending a video to the DPP's office. The response you get internally is that everyone in the DPP's office is confused about his status and is confused about the status of the investigation. That is what Miss, Advocate Ramuthah appears to be. Then it continues.



“On the script best played with Windows Media or VLC player and with the trebles low, Booyesen can be heard saying to myself and my wife: “Did I tell you about the night we shot the prostitute? We stopped, opened the door like this. She walks to me like that, short dress with an A like that. We shot across the road, dish. Vipyva van Tonder [?] handles this thing very well, handles this thing well. Now she is stupid. While she is looking at him, dush, and we leave, we come back, we come back. Genuine there is a table inside and there is under the table looking like

what is going on outside.” End of the script.”

Now this is according to Mr Danikas all recorded in the video where Mr Booyesen confesses to having shot an innocent woman. And might I remind you, these documents we are looking at now were discovered to us over the weekend by Ms Karen van Rensburg. These are NPA's own documents. And we do not criticise her, we actually thank her for doing this.

**ADV BATOHI:** That is correct.

**ADV NGCUKAITOBI SC:** Yes. Then it says:

“The above are clearly heard on the short part of the sound clip I have attached within as part of my video clip that I have submitted back in 2016 and having been, should have been, having been ignored by the NPA so far.”

She says, I have given you these videos, you have ignored them so far. Then it continues:

“Should your investigating officers find my original evidence that I have submitted previously, the video can be processed and analysed further. My wife is willing to give also a supporting statement via an MLA request in Greece. I have maintained since

the beginning of the NPA criminal investigation of the Cato Manor unit that my evidence introduced could be linked to human rights violations, racist behaviour, as well as criminal activities committed by Cato Manor members and Booysen himself from 2000 until 2008 that I served with the unit.

Since 2013, a systematically fake news propaganda against my credibility was launched on the media by the accused to discredit me as a witness as well as interfere with the investigation to the unit and himself.”

Then he makes an undertaking:

“As I am an ex-police reservist myself with 10 years' experience in CSI, I can assist further with your investigation and those criminal acts by Cato Manor members and Booysen himself.”

Now I assume that none of this was brought to your attention because we do not see your name but what we can see for sure is that it was brought to the DPP of KZN.

**ADV BATOHI:** That is correct.

**ADV NGCUKAITOBI SC:** Yes. We can also see that the, we

played videos on Friday where we see the same pattern. Videos are brought to your personal attention, nothing happens. Same videos with more are brought to the attention of the DPP, nothing happens.

**ADV BATOHI:** [No answer]

**ADV NGCUKAITOBI SC:** Do you have any comment on that? Why are witnesses who possess original evidence reporting crimes to your offices? Nothing happens.

**ADV BATOHI:** [Pause] What I do want to say is that this does concern me, what you have read out. It does not look good and for any police officer to conduct him or herself in this way is not acceptable at all. Mmm... So, and as I have said previously, you know, I mean, Booysen and others could have been, no one is saying that they are angels and from this it does not appear to be mmm... it is seriously concerning, as I said. Again, I say, when we prefer charges as prosecutors, we must ensure we have evidence. No matter how, how, a person could be a criminal, we cannot charge anyone without the evidence and that is all we say, is that when we do charge people, we must have the evidence. This, of course, is very concerning.

**CHAIRPERSON:** But what of the members of the NDP themselves, let alone the police officers? What about the conduct of your officials themselves?

**ADV BATOHI:** Chairperson, this is concerning and I will

have to look at this and reach out to the DPP to understand exactly what happened in this matter.

**CHAIRPERSON:** This touches on illegality, does it not?

**ADV BATOHI:** Chairperson, yes.

**CHAIRPERSON:** On the part of NPA's officials' concerned.

**ADV BATOHI:** I am not sure on the part of NPA officials. I was referring to the conduct of Booyesen as set out by Danikas. But on the part of the NPA members, I have to hear from them first to understand exactly what happened in this matter, before I say that they acted illegally.

**CHAIRPERSON:** Yes, I hear that, but I said, put aside Major General Booyesen. Let us look at the conduct of the NPA advocates to whom this correspondence was signed and who, on your own version, did not react to this conduct. The witness tampering allegations, that was complained of, and nobody did anything about it. Hence, I say, the illegality on the part of your own officials who did not act upon the complaint of witness tampering to them. And your answer was that, yes, it is a matter of concern that police officers could behave that way. And I say to you, let alone the conduct of the police officers, what of the conduct of NPA itself, given the context of this email?

**ADV BATOHI:** Chairperson, as I said, I need to speak to the DPP, write to her, to get an explanation from her about this, before I can make any further comment on their conduct.

**CHAIRPERSON:** Yes, but you are the Head. We have evidence before us that is not disputed. There was this communication. And Mr Danica still says, I was prepared, I communicated in 2016 to your office, I continued to communicate about this, for the lack of a better word for now, illegality, the tampering, the intimidations that you talked about, the abuses, and nothing happens. And the question is, as counsel has just put it to you, and you say, it is of concern to me that police officers could behave this way.

So if you can make such a judgment about police officers, so you can make a judgment about your own officials who are implicated in these emails. And my question is, if it was of concern to you, or is of concern to you now, that these officers behave this way, what of your own officials who dealt with these matters, or ought to have dealt with them?

**ADV BATOHI:** Chairperson, I was responding to whether it is illegal on their part, their conduct. In that regard, if I may say, I cannot say that it is illegal, but certainly I need to, it does not look good, and I need to understand exactly what happened, and why it was dealt with in this manner.

**CHAIRPERSON:** Is it not of concern to you?

**ADV BATOHI:** It is of concern to me, Chairperson.

**CHAIRPERSON:** That is the point. Because it is easy to say what the officers, the police officers did is of concern to you. But you should even be more concerned about your own

advocates ...[intervenes]

**ADV BATOHI**: Chairperson...

**CHAIRPERSON**: ...to whom the complaint, I beg your pardon, let me finish, to whom the complaints were made. It is just as simple as that. Does it not concern you, as the Head of the NPA, that your own subordinates or advocates behaved in this fashion?

**ADV BATOHI**: It does, Chairperson, and as I said, I need to get a report from the DPP about exactly what happened in this matter.

**CHAIRPERSON**: It is important that it is of concern to you.

**ADV BATOHI**: That is correct.

**CHAIRPERSON**: What you are going to do hereafter is neither here or there.

**ADV BATOHI**: Noted, Chairperson.

**CHAIRPERSON**: Thank you.

**ADV BALOYI-MERE SC**: As a follow-up, Advocate Batohi, these emails emanate from November 2019, and not only these emails, but even the evidence that we saw on Friday, the videos that we saw on Friday, you gave the same response, that it is of concern and you are going to request an explanation from the DPP KZN. Are we not past the stage of requesting explanation and we are at the stage of action, given that this, I am not talking about occurrences, I am talking about this information was brought, well, with others,

for example, Meridi Haz [?], it was brought to your office's attention, Danikas' email was brought to your office's attention and you were copied in that email, but in all these instances, nothing happened.

Are we still, realistically speaking, are we still at a stage where you can make a promise that you are going to do something, or we are at a stage where somebody has to act? Especially given that when you started testifying, you said victims of crime are very important and they are your clients and you must always make sure that the victims of crime get justice. Now, here we are. We are talking about emails that were sent 2019. We are talking about events that took place before then. Where is the justice there? Is the mere saying that I will do something giving comfort to the victims?

**ADV BATOHI:** Chairperson, in these circumstances, the first step I have to take is to seek a report from the DPP to understand exactly what happened here. And then the next step is to decide, depending on what is in that report, if further action is warranted. But it is, in fact, action to first ask the DPP for a report in this matter.

**ADV BALOYI-MERE SC:** In other words, we are still going to ask for an opinion whether action is warranted in the face of what we are looking at now. One would understand before this sitting, because you said you did not read everything or

you did not read, but now it is in your face. It is in front of you. Are you still going to request a report or an opinion on whether anything went wrong and something should be done? Or are you going to act on what is in front of you now?

**ADV BATOHI:** I have to first ask the DPP to give me an explanation for how and why this was handled in this way. That will be my first step. I have to do that. I have to hear what she has got to say about this and then decide on any necessary steps after that. It is not an opinion, but her explanation of how this matter was dealt with in the office.

**CHAIRPERSON:** For our purpose here, of what relevance is that step? Your decision to take the steps that you have mentioned hereafter, of what relevance is that step for our purpose now as an enquiry?

**ADV BATOHI:** Chairperson, I have been asked about it and that is why I am saying what I will do.

**CHAIRPERSON:** You may proceed.

**ADV NGCUKAITOBI SC:** Thank you, Chair. Advocate Batohi, you know, the answers you have been giving to Advocate Baloyi-Mere are interesting to me because they show you up as somebody who is fundamentally inconsistent in their leadership. On the 6th of March 2019, you were already prepared to take disciplinary steps against Advocate Maema, without having satisfied yourself about anything. Today, there is Advocate Elaine Zungu, there is Advocate

Mzinyathi, there is, in fact, even yourself. All of you are complicit in defeating the hands of justice, but you are not prepared to commit yourself to initiating disciplinary steps at all.

**ADV BATOHI:** If I may comment on that. Chairperson, in order to make decisions to take disciplinary steps in any matter, there is a process that has to be followed. Even in the case of Advocate Maema and others, as I mentioned, I had not taken any decision to institute any disciplinary steps against them, but to ensure that there is a process, and that process itself will determine whether disciplinary steps are necessary. As I also mentioned, I did not take the decision in that matter to institute any disciplinary proceedings. There is a separate process in the NPA that I am not involved in that results in somebody else deciding that issue. And so here, likewise, I must engage in a process, and so it is totally consistent with how I operate.

**ADV NGCUKAITOBI SC:** Advocate Batohi, you are the one who introduced the word discipline in the 6th March 2019 meeting, happily, when it came to Advocate Maema, today it is a big problem because it is a different staff of the NPA that is involved. This is why I am accusing you of being a fundamentally inconsistent leader.

**ADV BATOHI:** That is not correct, because even if disciplinary steps are required in this particular matter, there

is a process that must be followed. So there is nothing inconsistent about it. I have to make sure that the process is properly followed.

**ADV NGCUKAITOBI SC:** Can you tell me about your own conduct of failing to read an email which reports a crime? Is that consistent with your oath of office?

**ADV BATOHI:** I generally read, as I said, emails that are addressed to me, I read them, where a deputy, it is also written to a deputy in my office. Then I often leave it to them to deal with the matter. So it is perfectly consistent with my oath of office.

**ADV NGCUKAITOBI SC:** Your evidence on Friday, that you expected Advocate Mzinyathi to bring it to your attention, and the revelations this morning that it was in fact brought to your attention, is that also consistent with your oath of office?

**ADV BATOHI:** It is consistent with my oath of office to make sure that matters that are brought to my attention are dealt with within the office.

**ADV NGCUKAITOBI SC:** No, I am asking about your attempt to mislead the panel by blaming unfairly Advocate Mzinyathi for an oversight of not bringing it to your attention, when the truth is it was brought to your attention. That attempt to mislead the panel, is that consistent with your oath of office?

**ADV BATOHI:** It was not an attempt to mislead. I mean, we are dealing with matters seven years ago. I do not even know

if I opened that email, if I saw it, I have got no idea. I am trying to recollect what happened to me, what happened at the time. So there is absolutely no intention to mislead. As evidence is presented, you know, it gives us a clearer picture of what happened. But I am trying to just cast my mind back to think about what might have happened or could have happened, and that puts me in a very difficult position. So I am not trying to mislead at all.

**ADV NGCUKAITOBI SC:** Thank you. Now, there is a further set of judgments that we also got from Advocate van Rensburg, helpfully. They start at 373 to 394. Now, what is interesting in those documents is that we have the original response from Advocate Sankar on the prosecution of Warrant Officer Padayachee for having killed Kwazi Ndlovu. That original explanation is at page 389 to 391. Can you see that?

**ADV BATOHI:** I do.

**ADV NGCUKAITOBI SC:** Yes. Now, I went through that to look for an explanation why the ballistic report of Captain Mangena was not introduced. There is not a single reference to Captain Mangena there. Do you accept that there is no reference to Captain Mangena?

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

**ADV NGCUKAITOBI SC:** Yes. Now, the other allegation that was made by Mary de Haas was that Mr Sankar,

Advocate Sankar, attempted to force the family to settle for an inquest instead of a trial. There is not any response to that allegation.

**ADV BATOHI:** That is correct.

**ADV NGCUKAITOBI SC:** Yes. Now, these are the two most critical elements which gave rise to the accusation that there was an attempt to suppress evidence, quite apart from the fact that the report of Dr Naidoo and Mr Steyl is grossly misrepresented. And it seems that what happened is that the misrepresentations that were made by Advocate Sankar filtered through to Advocate Elaine Zungu and ultimately filtered through to yourself. Can I ask you if you ever read these reports from Advocate Sankar that went to Advocate Zungu?

**ADV BATOHI:** I cannot recall.

**ADV NGCUKAITOBI SC:** Well, it seems to me, considering the pattern of your evidence, is that you most likely did not read them.

**ADV BATOHI:** I cannot agree with that. I do not know if I read them.

**ADV NGCUKAITOBI SC:** Well, I am giving you a chance to explain whether you read them or not. You say you have no recollection.

**ADV BATOHI:** That is correct.

**ADV NGCUKAITOBI SC:** Yes. Because if you had read

them, you would have asked yourself the immediate question, why have you not responded to the accusation by Mary de Haas that you attempted to force the family to settle for an inquest instead of a trial? Because it is such a glaring omission.

**ADV BATOHI:** I cannot comment on that, I do not know.

**ADV NGCUKAITOBI SC:** I do not understand what you mean. You had the statement by Ms de Haas. You have a draft response by Advocate Elaine Zungu. The draft response is deficient because it does not address the misconduct of the prosecutor in forcing the family, the poor family that is illiterate, to settle for an inquest. It is the most obvious thing to ask them: Your conduct, Mr Prosecutor, is impugned, because they are saying that you are trying to direct the family wrongly. What do you mean you cannot comment on it? The only way you could have come to the conclusion you did to sign this letter, which is misleading, is because you did not read the original response by the prosecutor.

**ADV BATOHI:** I really do not know if that was before me at the time. I cannot comment on that at all, beyond this.

**ADV NGCUKAITOBI SC:** Because if you read it, and despite having read it, you came to this letter that you wrote, then there is a real problem of your ethics.

**ADV BATOHI:** There is nothing unethical about this at all.

As I said, I depended on the report of the DPP following the events that unfolded in this enquiry. I have, in fact, asked her a lot of, several questions about the way in which this matter was handled, and I hope to get that report on my desk very soon.

**ADV NGCUKAITOBI SC:** No, I think you are not answering what I am talking to you. I am saying to you, the most favourable interpretation to you is that you did not read the report of the prosecutor. You are resisting that interpretation.

**ADV BATOHI:** All I am saying is I cannot recall what happened at the time.

**ADV NGCUKAITOBI SC:** Yes. Because if you read it, you would have seen that it is misleading.

**ADV BATOHI:** I am not sure about that. It may perhaps have some omissions. It does, in fact, have omissions, but I am not sure that it is misleading.

**ADV NGCUKAITOBI SC:** I see. Again, Advocate Batohi, this stack of documents, they are now a fuller account of what happened than the pieces we had on Friday, which we got from third parties. But this stack from 373 to 394 came from your office, from Ms van Rensburg. Do you have any comment to that?

**ADV BATOHI:** That is correct, we have got nothing to hide.

**ADV NGCUKAITOBI SC:** Well you had nothing to hide until

we asked for them.

**ADV BATOHI:** When things became relevant, we are willingly providing whatever we need to. We are not trying to hide anything.

**CHAIRPERSON:** Is anybody suggesting that you were hiding anything? Why do you not just answer the question?

**ADV BATOHI:** That was the impression I got, Chairperson. Maybe an incorrect one.

**CHAIRPERSON:** Just answer the question.

**ADV NGCUKAITOBI SC:** Yes. In fact, to that impression, Advocate Batohi, the only point I was making is that these are not our documents. They are NPA's judgments, and we got them from one of your colleagues, Ms van Rensburg.

**ADV BATOHI:** That is correct.

**ADV NGCUKAITOBI SC:** Yes. Madam Chair, I am going to start a totally new topic. I am done with the disclosures we got over the weekend. I am in your hands whether to do it now or after lunch. The time is 12.59.

**MS RAMAGAGA:** Counsel, before you proceed to the next topic, I would like to ask some questions regarding the delegations of powers in your office. You, being the Head of administration in the office, you will be well conversant with the issues of governance and how you have pecked your order of delegations within the NPA. Is that correct?

**ADV BATOHI:** Well, I am the Head of the office, and

certainly I think we can safely assume that I will have, those matters must be done properly in terms of delegations that are given to DPPs. So my answer to that is yes.

**MS RAMAGAGA:** Ja, my questions are not going to be confined only to delegations to the DPPs. It is unfortunate that every time I ask questions, there is maybe just one or two that would have been answered as questions that were asked by me, but most of the time you do not. But that is something that will be taken care of in due course. Please, when I ask a question, I understand the question that I ask. If you do not understand it, it would be helpful to ask me to repeat the question rather than to answer, and then I have to go back to correcting the question or reiterating the question that I have asked.

And the question that I have asked is that as the Head, like you call yourself the Head of the institution, which is correct, as the Head of the institution, you are actually in charge of governance and you are actually conversant with the governance issues with specific reference to delegation of powers. And I said in their pecking order. Once I say pecking order, you can see that it may apply to several other positions.

**ADV BATOHI:** This is a difficult one because, yes, I am the Head of the institution. I do have a lot of – I mean, there are other sections that deal specifically with various types of

delegations that I may not be completely ofay with. So... So that is, you know, so... I am not sure if I am answering your question properly, but I may not be aware of all the issues relating to the delegations in the NPA.

**MS RAMAGAGA**: Let us talk firstly about the delegation of powers between yourself and your deputies. Are all the delegation of powers by yourself to your deputies in writing?

**ADV BATOHI**: There are some that are in writing. Others are delegated authority by virtue of the area or the business unit that they run.

**MS RAMAGAGA**: As the overall Head of the institution... Or rather, let me not go there. Let me still stick with this issue of the deputies. Now, your deputies, you delegate certain functions to them. Certain functions, yes. And when you do that, do you do that in writing? Do you give written delegations of authorities or not?

**ADV BATOHI**: There are some that are in writing.

**MS RAMAGAGA**: Right. Now, arising from your answer that you expected an Advocate Mzinyathi to attend to the email that had been sent from Mr Danikas, is it one of the matters that fall under the written delegations of powers that you have? Just in a broad spectrum, not specifics, because delegations of powers are generally done on a broader spectrum and then specifics just fit into that. So does it fall within that spectrum?

**ADV BATOHI:** If my memory serves me correct, there is a specific written delegation for the deputy to deal with representations. So it could potentially fall under that or it could fall under the deputy's power and authority with regard to the business unit that they head where they will then deal with whatever aspect of it needs to be dealt with.

**MS RAMAGAGA:** Do you know or you do not know as to whether it falls within the written delegations that you would have given or not? Do you know or you do not?

**ADV BATOHI:** I think... I do not think it falls under the representations. I think this is a communication, it is not actually a representation. So I do not think it would fall under that written delegation.

**MS RAMAGAGA:** Do you know or do you not know? Because I do not think, is not good enough. It does not indicate as to whether you know or you do not know.

**ADV BATOHI:** Understood. Looking at this email, it is not a representation, it is a communication, so it would not fall under that delegation.

**MS RAMAGAGA:** Does or rather, do your deputies have the powers to also delegate delegated functions?

**ADV BATOHI:** No, they have teams assisting them.

**MS RAMAGAGA:** So in this case, if this matter falls within the scope that you would have delegated, Mr Mzinyathi would not be empowered to delegate it further. It means the buck

would stop with him.

**ADV BATOHI**: He cannot delegate it further, that is correct.

**MS RAMAGAGA**: And that means that the buck would stop with him in terms of delegations.

**ADV BATOHI**: That is correct.

**MS RAMAGAGA**: But ultimately, the buck would stop with you as the officer that is statutorily provided for to deal with the matters of the office.

**ADV BATOHI**: That is correct.

**MS RAMAGAGA**: Right. Now, going to the Directors of Public Prosecutions, do they have the delegations or the powers to delegate their functions to the junior staff?

**ADV BATOHI**: They get direct power from the Act, and they can delegate it to those within their office.

**MS RAMAGAGA**: Yes. And do you know how far they can go with the delegations, or it would be just immediate delegation from the officer to the next below him or her in office?

**ADV BATOHI**: A DPP issues delegations to prosecute to all prosecutors in their division. So you get a direct delegation from the DPP to prosecute in his or her division.

**MS RAMAGAGA**: Okay. Now, just going back to this matter in particular, the matter of Booyesen, which is linked to the Danikas statements and information that was sent to you. In your evidence when you testified, you stated that the

Booyesen matter, you regard it as serious and needing urgent attention because it is one of the matters that had actually dented the image of the NPA.

**ADV BATOHI**: [Pause] I cannot recall precisely what I said at the time, but I certainly did say that it was something that needed urgent attention and that it had impacted on the image of the NPA. I do not know what exact words I would have used at that time.

**MS RAMAGAGA**: Yes, at that time, the words that you used was that it is one of the matters that had wrecked the image of the NPA. I think the record will speak for itself.

**ADV BATOHI**: Okay.

**MS RAMAGAGA**: You agree that it is something to that effect.

**ADV BATOHI**: Yes.

**MS RAMAGAGA**: Just in case you say I am not, I cannot be precise.

**ADV BATOHI**: It is something to that effect, that the credibility of the NPA, it had affected it.

**MS RAMAGAGA**: And that actually motivated you to approach De Kock and others to constitute a panel in July, June, or rather in April, I think, for them to make, to look at the matters of racketeering, amongst others, against General Booyesen.

**ADV BATOHI**: As I mentioned, the reason why I constituted

the panel was to... get an outside, well, not outside, an opinion from experienced staff members on this matter, so that I could decide what approach we should take in the litigation that was pending at the time. So that was the reason why I got the panel together.

**MS RAMAGAGA:** Ja, the question that I am putting to you is that you constituted a panel which would, amongst others, look at the racketeering against the General Booysen's team, Cato Manor team, let us put it that way.

**ADV BATOHI:** So I am not sure what you mean by amongst others, because I think my memorandum to the team sets out what the purpose of the team was. And we can look at that to just refresh our memories, but my understanding is that they were to look into the authorisation of racketeering charges in this matter.

**MS RAMAGAGA:** Now, that was way back in around April or so. Later, in August now, you get correspondence. It reaches your desk. Correspondence that is lamenting the conduct of the Cato Manor group. And as you correctly say, this was a very, it is an important matter, it is a high-profile case that required, that needed your attention. You get that information and you decide not to read the email.

**ADV BATOHI:** [Pause] It is really not a question of deciding not to read the email. I... as I said, I could not even recall that I got the email. But of course, we have proof that it was

sent to my inbox. I cannot recall what the position was at the time, whether I even saw it. I do read my emails. It is important to me that I do, except in circumstances, as I said, where a deputy is copied in and it falls within his or her specific area. Then, of course, I leave very experienced staff members to deal with it. Mmm... in this case, I cannot recall exactly what happened.

**MS RAMAGAGA:** Ja, to be honest, I am tired of telling me to ask, to answer us questions, so I will just proceed. I will proceed, thank you, thank you, I beg your pardon. I will just proceed to ask, whether you answer the asked questions or not, the record will speak for itself. Now, notwithstanding the fact that already when you took office, you had, based on what was in the public domain, formed a view that this is a case that has wrecked the, or rather the handling of the case, which has wrecked the reputation of the NPA. Now, bearing in mind that you had that view and this correspondence is sent to you in August, while you are still looking for or looking to get an idea of what this case is all about, then you do not read the email.

You are not in the lookout for all the emails so that you make sure that nothing escapes you or your attention. I say, based on that information or regarding to that information, you nevertheless do not make it your business to ensure that in order to get things right in this place that

has problems, this place that is tainted, one of the safety mechanism would be for me to read every email that comes my way.

**ADV BATOHI:** My response to that can only be what I have said, and that is, you know, I cannot even recall receiving this, but senior deputies, you know, I expected to do what their job description is, and I reasonably can expect that the deputies will deal with matters in the manner that it should be. I honestly cannot recall what exactly happened with regard to this matter.

**MS RAMAGAGA:** Would you say that the Senior Deputy Mzinyathi failed to exercise her powers in the manner that he ought to ...[intervenes]

**ADV BATOHI:** I cannot...

**MS RAMAGAGA:** ...in compliance, just listen, in compliance with the Constitution, the NPA Act, and his oath of office.

**ADV BATOHI:** I cannot say that, because he forwarded it to the DPP to get a response.

**MS RAMAGAGA:** Thank you.

**CHAIRPERSON:** Advocate Ngcukaitobi, we will adjourn at half past one, given that we had lunch, breakfast a bit earlier, but we have 10 minutes to wrap up, I suppose. But before you proceed, let me clarify one or two aspects with regard to the file 3, the additional documents that were made available to us this morning, page 385 and 386 up to 387. Am I correct

that this is the correspondence to Advocate Mzinyathi, who was acting Deputy National Director of Public Prosecution by the DPP, KZN, Advocate Harrison, who has been referred to Advocate Zungu? Is Harrison the same person as Advocate Zungu?

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

**CHAIRPERSON**: Thank you. Now, this correspondence is dated 20 January 2025, and it seeks to deal with representations that were made by Madam de Haas. Correct?

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

**CHAIRPERSON**: And the fundamental issue that was identified after the pre-trial conference, apparently in relation to this matter, was the issue regarding whether the accused was armed with a firearm when he was shot at by the accused. If I am correct, this first accused refers to the young boy, Kwazi, who was shot at whilst lying on the couch at home. Am I correct?

**ADV BATOHI**: Chairperson, I am not sure where it is referred to him as the accused, but...

**CHAIRPERSON**: If you read the last paragraph, middle line, page 385, after a pre-trial conference, maybe it will be helpful to read the entire. Ms de Haas ...[intervenes]

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

**CHAIRPERSON**: 385 of the bundle that was made available to us this morning.

**ADV BATOHI:** I am there, mmm-mmm.

**CHAIRPERSON:**

“Ms de Haas will always complain and question prosecutors' prosecutorial decisions and all prosecutorial strategies used during a trial. After a pre-trial conference, it was agreed that the issue in question is, was the accused armed with a firearm when he was shot at by the accused?”

That is what I was reading. Now, the first accused there, does it refer to the young boy, Kwazi, who was shot at whilst lying on the couch at home?

**ADV BATOHI:** It should be the deceased, Chairperson. It does appear to be referring to him.

**CHAIRPERSON:** Yes. And the second accused will be referring to the police official who is alleged to have shot at him whilst lying on the couch at home?

**ADV BATOHI:** Correct, Chairperson.

**CHAIRPERSON:** This having been a fundamental issue to ascertain, when you look at page, the next page, 386, mention is made of witnesses, one, two, and three.

**ADV BATOHI:** That is correct.

**CHAIRPERSON:** And mention is also made what was noted by Advocate Sankar.

**ADV BATOHI:** That is so.

**CHAIRPERSON:** Let me just quickly read that.

“He noted that he had consulted with both these witnesses, that is, witness two, Kobus Steyl, and witness three, Dr Naidoo, who both conceded that they could not ever indicate whether the deceased was carrying a firearm at the time of the incident. That all they could say was that they suspect “he was not carrying same and therefore they were uncertain of the issue”.”

Remember what the issue is, which I read in earlier? The next line, in the next paragraph of page 386, so write Advocate Harrison, Advocate Zungu:

“The decision not to call these witnesses, that is, Mr Steyl or Dr Naidoo, was that after a thorough consultation with the two witnesses.”

Now, this letter having been written in 2025, January 2025, we know already from what was revealed to us last week, and having seen the videotape being played here, that subsequent to the shooting, there was a ballistic report by expert Mangena, you remember?

**ADV BATOHI:** I do.

**CHAIRPERSON:** Which was far earlier, that is, before January 2025, correct?

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

**CHAIRPERSON:** Why is it that your officials, Advocate Zungu, the DPP in KZN, makes no mention whatsoever of the ballistic report of Captain Mangena? Do you know?

**ADV BATOHI:** I do not, Chairperson, but I have asked her that question, just after all of this emerged.

**CHAIRPERSON:** You said you know?

**ADV BATOHI:** I do not.

**CHAIRPERSON:** You do not?

**ADV BATOHI:** Yes.

**CHAIRPERSON:** Is it not strange that a DPP, seized with a matter on such a fundamental issue, decides not to have regard to a ballistic report that tells them about the positioning of the firearm?

**ADV BATOHI:** Chairperson, it is very concerning that the prosecutor in this case did not mention it in the report to the DPP, which is what she based her response to Advocate Mzinyathi on, and I have asked her these specific questions now that all of this has come to light, because it is very concerning that this ballistic report of Captain Mangena is not mentioned anywhere.

**CHAIRPERSON:** We do not know what you asked her, it is not before us, but as a DPP who praises his colleagues and

concludes, as she did, decides not to have regard to such an important piece of evidence, what should we make of that? Particularly when Advocate Sankar, who was seized with the matter, made certain observations, having consulted with these witnesses, and having spoken about what appears to have been the positioning of the firearm in issue.

**ADV BATOHI**: Chairperson, I do not know whether the DPP was even aware of the existence of the report of Captain Mangena at the time.

**CHAIRPERSON**: Am I correct, though, that the docket would have contained a ballistic report?

**ADV BATOHI**: That is correct, Chairperson, it should have.

**CHAIRPERSON**: If so, the DPP ought to have had regard to the contents of the docket, correct?

**ADV BATOHI**: The DPP, Chairperson, I am not sure whether she had regard to the contents, or whether she relied on the report of the prosecutor concerned.

**CHAIRPERSON**: I am not asking that, I am not asking that. I am asking, given this scenario that I have set up to you, the DPP ought to have had regard to the contents of the docket, which, as you say, would have contained or included a ballistic report.

**ADV BATOHI**: Chairperson, it is not unusual for DPPs to rely on reports that they get from prosecutors.

**CHAIRPERSON**: No, I am asking a different question,

Advocate Batohi. You have just answered that the ballistic report would have been included in the docket. And remember, we have the CAS number, eSikhawini CAS 03/04/2010, that we spoke about last week. And that is the very case in respect of which Captain Mangena reported after visiting the scene. We have the ballistic report, there is no issue about that. The point is, if the docket included, not even if, when the docket included the ballistic report, as you have just answered, should the DPP not have had regard to that ballistic report?

**ADV BATOHI:** If the DPP looked at the docket, she would certainly have seen it.

**CHAIRPERSON:** Your answer might necessitate us hearing from the DPP. But I thought it is a standard thing, as the Head, you expect your advocates to look into those dockets that are before him, and the contents thereof.

**ADV BATOHI:** Chairperson, just like ...[intervenes]

**CHAIRPERSON:** Do not answer for the DPP, he may have to answer for himself or herself.

**ADV BATOHI:** Chairperson, I am not answering for her, I am trying to explain what the practice is.

**CHAIRPERSON:** No, but you say, if she read, but I am asking you, as the Head of the NDP, that when the DPP assists with a matter such as this one, and a docket is in front of her or him, should a ballistic report not, contained in that

docket, be taken into consideration when a decision is made, particularly when the very issue, fundamental issues, concerns matters that are covered in the ballistic report?

What Zungu ought to have done or could not have done may not be relevant for now. She may or he may have to answer for himself or herself. But I am asking you now, as the Head, your officials, your advocate, your DPP is given a docket. And this docket contains a ballistic report. Ought he or she not have had regard to the contents of that ballistic report?

**ADV BATOHI:** Chairperson, I am trying to answer for the DPP. I do not know whether she in fact had the docket in front of her at the time. So it becomes very difficult for me to try to answer when I do not know whether the docket was in fact before her at the time.

**CHAIRPERSON:** Yes, but generally speaking, let us assume that it was before her. So let us work on the premise that the docket was before her or him. I cannot even remember. It is a lady. Advocate Harrison Zungu.

**ADV BATOHI:** It is Harrison now, yes.

**CHAIRPERSON:** It is Harrison now. Elaine Zungu.

**ADV BATOHI:** That is correct.

**CHAIRPERSON:** Thank you, madam. Let us work on the premise that she had the docket because she refers to it. If you look at the headline, she refers to that very same docket,

the CAS number. Obviously, that is a document that is before her. And if that docket was presented to her containing a ballistic report, she ought to have had regard to it, even apart from what the witnesses were saying, correct?

**ADV BATOHI**: Yes, Chairperson, on the assumption that she had it.

**CHAIRPERSON**: No, no, no, no. I have just said to you, let us work on the premise that she had the docket.

**ADV BATOHI**: Yes, I thought you used the word assumption, so my apologies for that. If we work on that premise, then yes, she would have seen it.

**ADV BALOYI-MERE SC**: Just a small follow-up question, Advocate Batohi. You are the Head of the NPA. That is a given. And all the prosecutors in South Africa are under your command and your leadership. Am I correct?

**ADV BATOHI**: Ultimately, ultimately, yes, they are.

**ADV BALOYI-MERE SC**: But there are certain standards and work ethics that are expected of prosecutors and you sit in a position where you are the enforcer of such standards. Am I correct?

**ADV BATOHI**: That is correct.

**ADV BALOYI-MERE SC**: And part of or one of the issues that one would expect to be an ethical issue or an ethical standard that should be practiced by prosecutors is for them to read the dockets and apply their minds before they take a

decision whether to prosecute or not. And I am basing this question from your earlier testimony that you kept on telling us about the independence of the prosecutors to prosecute without fear or favour. So I am saying one of the ethical standards that should be enforced by you as the National Head of the NPA is to make sure that they read and consider and apply their minds into every document that they receive that has to do with prosecution. Am I correct?

**ADV BATOHI:** Insofar as the prosecutor taking the decision is concerned, you are absolutely correct.

**ADV BALOYI-MERE SC:** And where wrong decisions or no decisions are taken, you have a mechanism to enforce or to deal with such situations. Am I correct?

**ADV BATOHI:** That is correct.

**ADV BALOYI-MERE SC:** Now, given the exchange that you have just had with Justice Nkabinde in relation to Advocate Harrison, where obviously, I mean, I would say obviously because we now have the full set of facts in front of us, where obviously she ignored evidence before her and gave a report where she said there is no, she could not find any wrongdoing and thus she is closing her file. When do you suppose, as the Head of NPA, to re-look into this or maybe I am asking a wrong question because you have already testified that you do not read ...[intervenes]

**ADV BATOHI:** I did not testify that I do not read.

**ADV BALOYI-MERE SC:** Were you not supposed, given that there was a lot of *prima facie* evidence that could trigger a prosecution and then your DPP says to you, I am not closing the file. Does that not trigger something in you as the Head of the institution? Or trigger a curiosity to want to look at this particular file where there are a number of complaints accompanied by video evidence and pictures?

**ADV BATOHI:** If I may answer. So the first thing, it has definitely, to use your words... well I am not sure if they are precisely your words, but it is not just my curiosity, it is raised my concern about how this matter was dealt with and I have asked for an explanation from the DPP. That is the first part, but the second part of your question states that Advocate Harrison obviously ignored evidence before her. Now that relates to the exchange that I had with the Chairperson in that I do not know that Advocate Harrison looked or had the docket in front of her.

So I cannot say that she obviously ignored evidence in front of her. But certainly what transpired with regard to all of the ballistics reports in this matter is something that I am concerned about and I have asked the DPP to look into this and in fact I did say to her just yesterday, I would like you to read the docket and let me know. Let me have your report after that. So that is the position with this matter.

**CHAIRPERSON:** So you discussed the matter with the DPP,

who may be a potential witness?

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

**CHAIRPERSON**: No, I am asking, you discussed this matter under consideration with the DPP, who may be a potential witness?

**ADV BATOHI**: Chairperson, I did not know that she is a potential witness. I mean, if that is the case, then any member of the NPA can be a potential witness. If I am being told that I should ...[intervenes]

**CHAIRPERSON**: Do not anticipate my question, please. Mine is just very simple. So you discussed this matter under consideration with the DPP KZN, who may be a potential witness?

**ADV BATOHI**: I did discuss it with her.

**CHAIRPERSON**: And last week, mention was made about what she did, Advocate Zungu, Harrison?

**ADV BATOHI**: Her name has come up in these proceedings, Chairperson.

**CHAIRPERSON**: Not once? Several times? Last week during cross-examination?

**ADV BATOHI**: Her name has come up, indeed.

**CHAIRPERSON**: But you decided to go and discuss these matters with her?

**ADV BATOHI**: I decided to ask her for a report about these matters, which is what I have done.

**CHAIRPERSON:** You did talk to her?

**ADV BATOHI:** I did speak to her mmm...

**CHAIRPERSON:** Thank you, thank you.

**ADV BALOYI-MERE SC:** Advocate Batohi, on Friday when we adjourned, the Chair reminded you that you are still under oath and asked you not to discuss this matter with anyone. Do you still remember?

**ADV BATOHI:** Chairperson, anyone... I cannot recall what exactly the Chairperson said. But I do know that I should not discuss this matter with people like, for example, Advocate Riley. I was specifically said I should not speak to her about it, which I did not. In this particular case, I mean, I did not intend to contravene any rule in this hearing about consulting with potential witnesses whilst I am under cross-examination.

Given what has happened in this matter, in fact, it is like a double-edged sword, because if I did not ask her for a report, then I could have been accused of not being concerned about this matter. So it puts me in a very difficult position as the NDPP about when to ask for reports and when not to. This, for me, is a serious matter, and I asked her for a report.

**CHAIRPERSON:** You just acceded that you had a discussion with Advocate Harrison, despite the fact that you are still in the witness box. And we warned you last week, you could have communicated to her through your officials. Advocate

van Rensburg, for instance, could have written to request for that report. Why did you have to talk to her?

**ADV BATOHI**: Chairperson, I will do this in future. I will not speak to any of the NPA staff members until I am finished cross-examination. I honestly did not think that there was anything wrong with me asking her directly for a report in this matter.

**CHAIRPERSON**: I beg your pardon, Advocate Batohi, you are an advocate of the High Court. You know the rules. Besides, I cautioned you last Friday when we adjourned. Discuss I not?

**ADV BATOHI**: You did.

**CHAIRPERSON**: I said you are still on the oath and you will not discuss this matter with any witness. In fact, we had just been alerted by the investigating, the evidence-leading team, when they said they want to, they may have to consult with somebody and this matter arose from there. Then when we adjourned, I cautioned you. But you are telling us today that yesterday you had a discussion with Advocate Harrison, who has been mentioned many times with regard to what is before us. And you cannot say that you do not know. Please, you are an advocate. You are not a layperson.

**ADV BATOHI**: I accept that. May I respond, Chairperson?

**CHAIRPERSON**: If you want.

**ADV BATOHI**: I did not intend to in any way influence her

with regard to this matter. All I did is was trying to get an understanding of what happened to, in fact, assist this enquiry. But in future, I will make sure that I communicate with staff members through other NPA colleagues that can do it.

**CHAIRPERSON:** The fact is that you ought not and should not have even spoken to her. That is the point that I am making.

**ADV BATOHI:** Chairperson, I really did not think I was doing anything wrong by asking for a report.

**CHAIRPERSON:** Advocate Ngcukaitobi?

**ADV NGCUKAITOBI SC:** Yes, Madam Chair.

**CHAIRPERSON:** I think we should pause for a lunch break. We propose to adjourn now for 45 minutes, I think. Let me just confer with my colleagues. Yes, thank you, we will take a lunch break for 45 minutes, meaning we will reconvene at 2.30. We will adjourn. Remember, you are still under oath, madam.

### **ENQUIRY ADJOURNS**

### **ENQUIRIES RESUME**

**CHAIRPERSON:** Good afternoon, everyone. Good afternoon, Advocate Chauke. Advocate Ngcukaitobi?

**ADV NGCUKAITOBI SC:** Yes, Madam Chair, I think the best will be to ask my learned colleague, who is leading the evidence, to tell us where is the witness, because the witness

does not appear to have returned from lunch.

**CHAIRPERSON:** Well, I asked you because when we adjourned, you were still cross-examining the witness, and I see Advocate Batohi is not here. Advocate Mohlamonyane?

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. As evidence leaders, we received a message from the NPA team that Advocate Batohi would like to be excused from these proceedings to go and seek legal counsel. As indicated in chambers, according to Advocate Hulley SC, he knew that she was already gone, and he indicated as much to yourselves.

But before we started here, he said to me, Advocate Hulley SC said to me, in fact, she is still here, but is not coming into the chamber. The situation as it stands is that she is not here because she is asking to be excused, and that she wants to seek legal counsel. That is as far as I can take it, Madam Chair and your two sisters.

**CHAIRPERSON:** She is asking who to excuse her?

**ADV MOHLAMONYANE SC:** I understood Advocate Hulley SC to be meaning the panel to excuse her. That is my understanding. I may be wrong in my interpretation of the message.

**CHAIRPERSON:** Assuming she sought our indulgence, she decided to leave without the panel's permission.

**ADV MOHLAMONYANE SC:** That seems to be so, Madam

Chair, because she is not in this chamber and we are told she is still outside, but she is not ready to come into the chamber, or is not willing to come into the chamber, whatever the case may be.

**CHAIRPERSON:** If she is still in the building, she must be called.

**ADV MOHLAMONYANE SC:** I think I agree with that proposition.

**CHAIRPERSON:** Advocate Batohi, who is still on the witness box, be called to the hearing chamber. I see your attorney, Ntate ...[indistinct] has just entered the hearing chamber. Do you know where Advocate Batohi is, as you just entered? You may just speak to counsel. Come over. You are an instructing attorney. Speak to the evidence-leading team. You are an instructing attorney, and tell us where Advocate Batohi is.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. Mr ...[indistinct] says to me that she saw her in the room, and I asked her which room. She says the room in which she sits.

**CHAIRPERSON:** Good afternoon, Advocate Batohi.

**ADV BATOHI:** Afternoon, Judge.

**CHAIRPERSON:** We have just been informed, when we were about to come here and resume, that you decided that you are not coming back because you would like to go and consult counsel, correct?

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

**CHAIRPERSON:** And you decided to stay away without seeking our permission before you left?

**ADV BATOHI:** I decided, Chairperson, that I was not going to come back pending getting proper legal counsel.

**CHAIRPERSON:** And you made the decision without us giving direction or permission for you to leave whilst you are still being cross-examined?

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

**CHAIRPERSON:** Why so?

**ADV BATOHI:** I think it is an important decision, and it is one that I need to take myself.

**CHAIRPERSON:** I am not asking you about your decision. I am asking you, you are before us, and you decide that you are leaving without approaching us with a request or an application through your team to give you that permission, and you stay away.

**ADV BATOHI:** Chairperson, I was not seeking permission. It is something that I decided I needed to do because it is about me and my integrity.

**CHAIRPERSON:** So you can do whatever you want without approaching us?

**ADV BATOHI:** Chairperson, I did not want to come here because I did not want to be subjected to this kind of questioning. I would appreciate it if I can be excused now.

**CHAIRPERSON:** I am asking you questions first before we excuse you. That is why we called you back to the hearing chamber, because this enquiry is instituted at your instance, and we have been appointed to preside over this enquiry, and you decide totally disregarding this panel and to walk away and decide not to come back here.

**ADV BATOHI:** Chairperson, I was in the building. When I was told to come back, I did come back.

**CHAIRPERSON:** Do you want to walk away now?

**ADV BATOHI:** I would appreciate it if I can be excused.

**CHAIRPERSON:** This is the request that you ought to have made before you behaved the way you did.

**ADV BATOHI:** Understood.

**CHAIRPERSON:** Advocate Mohlamonyane? Before you speak, let me just give a chance to my colleagues if they have any questions.

**ADV BALOYI-MERE SC:** Advocate Batohi, as a lawyer and a senior advocate who heads a very important institution, the NPA, surely you know the rules. I know this is not a formal court sitting, but you know the rules of a *quasi*-enquiry like this, and you know that you cannot just walk out, especially if you are under oath and a witness. I take it you know that. It is common cause, because you are a seasoned practitioner.

**ADV BATOHI:** I understand that that will be generally the case. This is, in fact, you are correct, It is not a court.

Appearance here is voluntary. But because of what I have been subjected to, I felt I needed to get legal advice, and that is something that is my decision.

And as I explained to my counsel, I am not prepared to continue. I am not withdrawing. I am not prepared to continue pending getting good legal advice. And that is why I thought it was my decision to decide not to continue.

**ADV BALOYI-MERE SC:** But, Advocate Batohi, you cannot say It is voluntary because the whole trigger for this enquiry is your referral to the President in terms of a certain section of a statute that governs you. So we are here because of an act of Parliament.

**ADV BATOHI:** Understood.

**ADV BALOYI-MERE SC:** We are not just here as a kangaroo court where one can say, no, I do not, I am not going to participate, I have had it, and, and, and, but we are here because you took time to write a letter to the President and referred the conduct or whatever of Advocate Chauke. And the President then constituted this enquiry. And you came here to testify, to give your side of why we are here.

So if you feel, I do not want, you feel I do not want to be here, I am walking out, does that not border on being disrespectful to this panel?

**ADV BATOHI:** I did not intend to be disrespectful, and I am not walking out. All I am saying is that I am not prepared to

continue testimony at this point pending getting legal advice.

**MS RAMAGAGA**: Advocate Batohi, when we adjourned for lunch, you did not request to be excused. Is that correct?

**ADV BATOHI**: That is correct.

**ADV BATOHI**: And you were expected to come back after lunch like any other party that is here and participating in this enquiry.

**ADV BATOHI**: That is correct.

**MS RAMAGAGA**: And you then decided to inform the representatives of NPA that are present here that you are not coming back.

**ADV BATOHI**: That is correct.

**MS RAMAGAGA**: And true to what you had requested or what you have informed them of, when we resumed, you did not come back.

**ADV BATOHI**: That is correct.

**MS RAMAGAGA**: And you knew that we had resumed.

**ADV BATOHI**: I had indicated to my counsel that that is what I will do. I was not going to come back. So I imagine that that would have been communicated to the panel.

**MS RAMAGAGA**: And over the period, for the duration of this enquiry, any of the active participants in this enquiry would ask to be excused if the party or the participant would not be able to sit through the enquiry. To make an example, there is a time when Advocate Skosana left, there is a time

when Advocate Hulley left, there is a time when Mr Mkhabela left. In all those instances, they would have requested the enquiry to excuse them. It would be on application. Is it correct?

**ADV BATOHI**: In my view, the circumstances are different, but you are correct.

**MS RAMAGAGA**: They would leave after having been excused or they would be absent after having been excused because they would have asked to be excused in advance.

**ADV BATOHI**: That is what has happened, that is correct.

**MS RAMAGAGA**: And you found it proper not to even come back when we resumed to ask to be excused.

**ADV BATOHI**: In the circumstances, which are important, I communicated through Karen to my counsel to inform the panel of what I had decided. And that was out of respect, I did not want to just disappear. But I remained in the building as well. I was in an office and when I was asked to come back, I came back.

**MS RAMAGAGA**: Had you not been requested to come back, would you have come back?

**ADV BATOHI**: No.

**MS RAMAGAGA**: Thank you.

**ADV BATOHI**: May I now be excused, Chairperson?

**CHAIRPERSON**: Do you really seek our permission?

**ADV BATOHI**: I do.

**CHAIRPERSON:** Because I want to ask you a question. You told your counsel, It is not like you are requesting him to make an application, you were telling him that you are not going to come back, correct?

**ADV BATOHI:** That is correct.

**CHAIRPERSON:** Did counsel had a choice to say to you not this way?

**ADV BATOHI:** We did not speak much. I told him that and he left.

**CHAIRPERSON:** Because you were telling him, you are not seeking his counsel as your counsel.

**ADV BATOHI:** I could not seek his counsel because I am not allowed to speak to him. So I informed him that this is what I was going to do and I was going to get legal advice, not from him, but legal advice.

**CHAIRPERSON:** Well, if you could not speak to him, could you not then wait and speak for yourself?

**ADV BATOHI:** Chairperson, I wanted him to communicate that.

**CHAIRPERSON:** So he had no choice but just to tell us what you wanted or what you had decided. Correct?

**ADV BATOHI:** If you put it that way, then that is true. I suppose he had no choice, I do not know.

**CHAIRPERSON:** If I put it that way, is that how you answer?

**ADV BATOHI:** I do not know if he had a choice or not,

Chairperson.

**CHAIRPERSON:** You told him to tell us, not so?

**ADV BATOHI:** Chairperson, I will not be shouted at here, I am trying really to help.

**CHAIRPERSON:** You have been totally disrespectful to everybody here.

**ADV BATOHI:** Well, I apologize then, Chairperson.

**CHAIRPERSON:** And we have been so patient with you, disrespecting almost everybody, and this has gone into the record. We have been so patient with you.

**ADV BATOHI:** It is not the sense I get, but It is fine.

**CHAIRPERSON:** Well, the record will speak for itself.

**ADV BATOHI:** Indeed.

**CHAIRPERSON:** It has spoken for itself. And today, you decided to be totally disrespectful to this hearing.

**ADV BATOHI:** That was not my intention ...[intervenes].

**CHAIRPERSON:** Not only to us, but to everybody here.

**ADV BATOHI:** That was not my intention, Chairperson.

**CHAIRPERSON:** Well, everything has always been that not being your intention. But the fact speaks for itself. You have been disrespectful.

**ADV BATOHI:** I apologize for that, it was not my intention ...[intervenes].

**CHAIRPERSON:** Advocate Mohlamonyane?

**ADV MOHLAMONYANE SC:** May I suggest perhaps that my

colleague, Advocate Ngcukaitobi, should also comment?

**CHAIRPERSON:** But I think in fairness we need to know now with this posture, what is to happen to this proceedings, because you decided to walk away. You are still under cross-examination. When do you intend to come back?

**ADV BATOHI:** I have no idea. When I get legal advice, I will know what to do.

**CHAIRPERSON:** Are you making an application from where you are sitting to postpone the hearing *sine die*?

**ADV BATOHI:** No, Chairperson, I am not making any application.

**CHAIRPERSON:** You are just walking away.

**ADV BATOHI:** I am for now stopping my testimony, pending legal advice.

**CHAIRPERSON:** And we do not know when you will be available to come back to testify?

**ADV BATOHI:** That is correct, because I have not yet got counsel. And if they need to read the record, it might take longer than, I do not know how long it will take.

**CHAIRPERSON:** I beg your pardon?

**ADV BATOHI:** I have no idea how long it will take.

**CHAIRPERSON:** And being a very senior lawyer, you cannot even say, let us postpone to such and such a date, given the fact that you are under cross-examination, correct?

**ADV BATOHI:** I would propose sometime next year, given

that it is the 15th of December already.

**CHAIRPERSON:** Advocate Mohlamonyane, if you, well, you had already said that Advocate Ngcukaitobi will place whatever he place on the record.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. Advocate Batohi, I am still cross-examining you. I just want to understand what you want to do. Are you prepared to answer further questions?

**ADV BATOHI:** Not at this stage.

**ADV NGCUKAITOBI SC:** All right. So, when will you be prepared to answer further questions?

**ADV BATOHI:** After I get legal advice and I know what to do.

**ADV NGCUKAITOBI SC:** Just tell me something more about that. The, Advocate Chauke is here because he has been brought here by you, via the Minister and via the President. And you have made no application for a postponement, but you are absconding from participating.

**ADV BATOHI:** I am not absconding. I need legal advice on ...[intervenes].

**ADV NGCUKAITOBI SC:** Well, you may have a reason for the absconding, but you are absconding because you are not prepared to answer further questions.

**ADV BATOHI:** I am not absconding. I am, at this point, not continuing with my testimony, pending legal advice.

**ADV NGCUKAITOBI SC:** Yes, but what I am interested in, it was my turn to ask you questions. You answered questions for three weeks.

**ADV BATOHI:** Chairperson, I am not prepared to be cross-examined at this stage on this. That is my decision, and I am not going to answer any further questions.

**ADV NGCUKAITOBI SC:** Yes, that is exactly what I am asking you is you will not answer questions from me. You will not answer questions from the panel. And I am not here in my personal capacity, I am here on behalf of Mr Chauke. So you will not answer questions raised on behalf of Mr Chauke, either. Correct?

**ADV BATOHI:** I am not answering any further questions.

**ADV NGCUKAITOBI SC:** Yes. All right.

**ADV BATOHI:** This is my last question that I am going to answer, and I would like to be excused.

**ADV NGCUKAITOBI SC:** Yes. Well, the last time, Advocate Batohi, somebody walked out of an enquiry, there were serious consequences. But I have no reason to give you legal advice. Thank you, Chair.

**CHAIRPERSON:** Advocate Mohlamonyane?

**ADV MOHLAMONYANE SC:** This puts everybody between a rock and a hard place, but may I make the following suggestion, and my learned colleagues will comment if necessary. Seeing that we had already made arrangements

for Wednesday on a substantive application, my suggestion would be, let us reconvene on Monday, on Wednesday, and deal with whatever issues have to be dealt with.

For instance, the issue of how many witnesses each party intends to call, and whether, and the application, the substantive application that has been made, and other relevant interlocutory issues. That is how far I can take it, Madam Chair.

**ADV NGCUKAITOBI SC:** Madam Chair ...[intervenes].

**ADV MOHLAMONYANE SC:** My learned colleague seems to be in disagreement with me.

**ADV NGCUKAITOBI SC:** I am shaking my head vigorously. Could I just ask for a short adjournment, and maybe we can agree a way forward, because, yes, a short adjournment of 15 minutes. Ms Batohi must take a decision about what she wants to do. As I understand, she has not been excused by the panel, but she is got lawyers to advise her. But insofar as the further progress of these proceedings, I would really ask for a short adjournment. I also need to speak to Mr Hulley who is here for the NPA. Thank you, Madam Chair.

**CHAIRPERSON:** Yes, thank you. I was actually going to say, and I am sure I am speaking on behalf of my sisters, Advocate Mohlamonyane, the substantive interlocutory application was going to be conceded whilst these proceedings are underway. So It is not like we would not deal

with a substantive application whilst the cross-examination is continuing. We will still be here to do the work of the enquiry.

As far as we are concerned, there is no proper application for a postponement before us. And Advocate Batohi says she has made a decision, she is not going to answer any questions, meaning, she is doing whatever she is doing on her own frolic. We have not given her permission. I suppose the teams will be given an opportunity to confer with one another about the next step that you propose should be taken, and we will consider that. We will adjourn, Advocate Ngcukaitobi, for how long?

**ADV NGCUKAITOBI SC:** Well, at least between 15 and 30 minutes. Mr Hulley says 15, Mr Mohlamonyane says 30 minutes. I think maybe ...[intervenes].

**CHAIRPERSON:** Let us adjourn now for 30 minutes. If you need more than 30 minutes, you will send a message to us to come back.

**ADV NGCUKAITOBI SC:** Indeed. Thank you, Chair.

**CHAIRPERSON:** We will adjourn.

**ENQUIRY ADJOURNS**

**ENQUIRY RESUMES**

**CHAIRPERSON:** Good afternoon, everyone. Advocate Mohlamonyane.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. Advocate Themba Skosana SC will address you.

**CHAIRPERSON:** Good afternoon, Ntate Skosana.

**ADV SKOSANA SC:** Good afternoon, Madam Chair. Madam Chair, I have been given this difficult task to try to explain and also the view that we take of this matter subject to the panel's view as well. Madam Chair, we as evidence leaders, I think to some extent also with Advocate Hulley SC, we were all taken by surprise by the decision made by Advocate Batohi. We had prepared, or we were in the process of preparing witnesses as well as a list of witnesses.

At this point in time, if it comes to that point that we have to call the next witness, we would in any event not be in a position to do so looking at the time of the year and having spoken to some witnesses and tried to make arrangements with them.

So, Madam Chair, I would ask in the circumstances that first of all, we ask the panel to adjourn these proceedings and perhaps I should, I will deal with the issue of the interlocutory application that is pending. But first of all, to ask this panel to adjourn these proceedings, perhaps to next year, to whatever date that may be agreed. At this point in time, we are suggesting the 26th of January, 2026 with the view that perhaps in the process, while we will be preparing witnesses and exchanging lists of witnesses, we hope also that in the process perhaps Advocate Batohi may be advised to return back to continue with her evidence which was under

cross-examination at this point after she has obtained the legal counsel that she seeks. Of course, we cannot guarantee that. We are not involved in that process. As the panel may know, we cannot speak to her, we have not been speaking to her.

As far as the interlocutory application, the papers, meaning the affidavits, have already been filed and completed. Today the replying affidavit was filed. All that is left now is for us to make written submissions, which we intend to file not later than the end of the day tomorrow, the 16<sup>th</sup> of December, and perhaps ask the panel whether the panel can deal with the matter in chambers and give directions in regard to the proposed amendment, which can then be submitted and given to the parties in writing.

But for now then ask that the proceedings be adjourned. We have also looked at a number of ways to try and see how we can exchange documents with a view to limit some, or eliminate some of the evidence that would have had to be led, that is now between the parties, but we will engage in that process during the course of the recess and before our resumption next year.

So that, in short, our submission and our suggestion in the circumstances that we find ourselves. Thank you, Madam Chair.

**CHAIRPERSON:** Thank you, Advocate Skosana. The

replying affidavit to the substantive application, has it been filed?

**ADVOCATE SKOSANA SC:** Yes, Madam Chair. Our attorney, Mr Simele ...[indistinct], advised me that that has been done. It has been served on the Secretariat as well.

**CHAIRPERSON:** When did you file it?

**ADV SKOSANA SC:** It was this morning.

**CHAIRPERSON:** Today?

**ADVOCATE SKOSANA SC:** Today, early today.

**CHAIRPERSON:** And the heads of argument, when do you propose to file them?

**ADVOCATE SKOSANA SC:** Well, certainly from my side, they will be ready by tomorrow. Before the end of tomorrow, we will file them.

**CHAIRPERSON:** Tuesday, 16 December.

**ADVOCATE SKOSANA SC:** Yes.

**CHAIRPERSON:** As you recall, we spoke about the list of potential witnesses this morning, so that we may decide, more or less, which period we should request from the Minister or from the President to extend the period that was initially allocated to this enquiry. The initial period was to end by the end of January, meaning that when we approach the Minister, we should have an indication at least approximately when we should end and submit our report.

But we can do that, as we mentioned to you earlier,

that you should indicate the witnesses, the number of witnesses you wish to call and how long each will take so that we can make an approximation when we will be able to finalise this enquiry. Have you discussed that?

**ADV SKOSANA SC:** Yes, Madam Chair. We have, from our side as evidence leaders, we have discussed that. The list has been prepared, but I have been informed that there has been some adjustments to the list, actually, an addition of one or two names. We would, we intended to finalise that not later than Wednesday, this Wednesday. Perhaps in the circumstances that we find ourselves in, we can even finalise it, I believe, today or tomorrow and submit it together with the heads of argument. I just have not discussed it as to the, you know, the time within which we intended. Had this not happened, we intended to submit that on Wednesday, but maybe we can try and do that earlier.

**CHAIRPERSON:** Well, as you know, we had indicated to all of you that we will sit until Friday the 19<sup>th</sup>, but because of this turn of events, it means we will adjourn earlier. But we need to have all that information at our disposal so that when we make a request, we should be basing it on information from your side. Yes, thank you. Advocate Ngcukaitobi?

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. There are just four points. The first one is that we do not necessarily accept that Advocate Batohi is entitled to return

and continue with her evidence. We will submit in due course that a witness who refuses to answer further questions in the middle of a cross-examination and then abandons the enquiry without leave has waived their right to participate in that enquiry. But that is not for today. It is simply to record that we are not *ad idem* with the evidence leaders about Advocate Batohi's entitlement to return.

She did have options. Her option was not merely to leave if she was uncomfortable, either with a question asked by us or with a question asked by the panel. It happens quite often that a witness in the middle of cross-examination requests an opportunity to consult. And if on our side we are unreasonably withholding that opportunity, the panel is entitled to intervene and release the witness for consultation.

But what has happened today has been the most extraordinary thing where a witness has taken it upon herself to make those determinations. So there are consequences to that which we will address in due course. So we should not be seen when we cooperate with the approach proposed by the evidence leaders to waive any of our entitlements to ask for an entire striking of the testimony that she has given thus far.

Number two, we agree with the postponement to the 26<sup>th</sup> of January 2026. Number three, we also agree that the interlocutory application should be decided in chambers

rather than orally argued. Our heads of argument will be ready tomorrow. My junior will tell me when exactly, but certainly during the course of tomorrow.

And we are ready with our list of witnesses. Like our learned friends, we have added one or two and four of the witness statements are ready and those can be exchanged probably by Friday. Thank you, Madam Chair.

**CHAIRPERSON:** I think it will be prudent to give us an indication at least by Wednesday with regard to the witnesses as you spoke early this morning, because the next time we will meet, as you propose, will be towards the end of January, 26<sup>th</sup> January, and we have no reason to believe that given the circumstances it is not a reasonable period within which to do the necessities.

So we propose that by Wednesday you give an indication as to the witnesses and the time they may take so that we can make an estimation of the period the enquiry will need to finalize its mandate. Well, is that doable?

**ADVOCATE SKOSANA SC:** Indeed, Madam Chair.

**CHAIRPERSON:** Advocate Ngcukaitobi?

**ADV NGCUKAITOBI SC:** Indeed, Chair.

**CHAIRPERSON:** Thank you, Counsel. Your request to consider the interlocutory application in chambers is accepted. We will await the heads of arguments tomorrow, both of you before the end of business. And we will consider

the application and make a decision in chambers. The decision will be circulated to you by Friday, by Friday, the 19<sup>th</sup> of December, 2025 before we adjourn.

As regards the request to adjourn this proceedings in the light of what has taken place this afternoon, a situation that we find extraordinary, we will adjourn this proceedings until next year, 26<sup>th</sup> January, 2026. And if there is any application that is to be lodged in between, any such application should be filed online and will be considered appropriately. In that event, we will adjourn until next year. We meet on 26<sup>th</sup> January, 2026.

And we wish you a Merry Christmas ...[intervenes].

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

**CHAIRPERSON:** And a very safe festive season to all of you, hoping that when we reconvene, we will all be in good spirits. There is a birthday cake pending. One of the panel members promised all of you a birthday cake. It is her birthday tomorrow. So we had hoped to invite Advocate Batohi to a birthday celebration on Wednesday, but she decided to leave. And It is also the birthday of Advocate Ngcukaitobi and she has been ordered to provide a cake for all of us. Now, I do not know what is to happen to this offers because we are told that we cannot proceed without business.

But on Wednesday, there will be a birthday cake to

share. Those who are keen to come and share and celebrate with us, do come. Thank you. Advocate Ngcukaitobi?

**ADV NGCUKAITOBI SC:** No, Madam Chair, it is just to express on our behalf at least the appreciation of how far we have come. We resisted at the beginning, but I think we saw the wisdom at a later stage. So we just want to wish the panel all the best for the festive season.

**CHAIRPERSON:** Thank you, Counsel. Yes, sometimes things are unforeseen, but all of us have been on it and we have made a bit of progress, albeit at a very slow pace, but we have started. We account to the public and whatever we do, we must remember that the public is awaiting our decision about these matters. Advocate Skosana, do you wish to say something?

**ADVOCATE SKOSANA SC:** Yes, I would like to concur on behalf of the evidence leaders to also wish the panel the best. Having joined these proceedings in the middle, I also like to say that I do appreciate the manner in which they have been handled and a lot that I am learning. And I am also privileged, actually, to be part of these proceedings. And thank you very much, Madam Chair.

**CHAIRPERSON:** Thank you. Let me thank Advocate Hulley. Would you like to say a word or two? We have been looking on this matter from the beginning, all of us. You may speak to the mic. You have been part of this family from the

beginning. It is a promotion.

**ADV HULLEY SC:** Thank you, Madam Chair. Madam Chair, on behalf of myself and my junior, we wish to convey a Merry Christmas to everyone and a Happy New Year. I take it in the current spirit that I will be allowed to speak in future. So my application will be favourably considered. But thank you very much, Madam Chair.

**CHAIRPERSON:** Thank you very much, Advocate Hulley. Place your application before us.

**ADVOCATE HULLEY SC:** I thought my application was approved without me having to apply for it.

**CHAIRPERSON:** You know how it works. You have to persuade us on paper and we may be minded to grant you the relief you seek. But I think it is opportune for me, on behalf of myself and my two sisters, to thank all of you who have assisted us to be where we are today, the Department, the State Attorney, Advocate ...[indistinct] thank you very much. And everybody concerned, our transcribers, thank you very much. You have done outstanding work because we have been receiving transcribed records every day in the morning. We are thankful.

Let me thank our spokesperson, Ntate Realiboga, for the assistance. Members of the media, all of you, members of the media, for your cooperation, for walking the journey with us. We have not had challenges with you. We have

worked so well together. We wish you a Merry Christmas and hope to see you next year. Hope we have not trampled on your toes.

Let me thank our researchers. Thank you very much for the assistance you have given us. Members of the NPA, Karin, thank you very much, and your team in the office for having assisted us. We know that we started late. You know why, but nonetheless, you have really been helpful. We appreciate that.

And everybody else who has been part of this family. We, as you know, Ntate Chauke, have they told you that in chambers we give hugs because we are a family. You have missed a lot of hugs. I think when we reconvene in January, you are the first to come and get the hugs, after the New Year. But thank you for having been here from the beginning, every day attending the hearing. We really appreciate your cooperation with your legal team, and your attorneys, they have all been sitting here. Thank you so, so much.

I think I have spoken on behalf of my sisters. And we definitely wish to thank you. But the last people we have to thank ...[vernacular] in Setswana that is what they say. I do not know what is the literal translation, the one who is last is a king. Our protectors. Ladies, thank you very much for having made it possible for us to come in and out of this place and we look forward to seeing you again next year.

Thank you. We will adjourn and all the best. Safe festive seasons to you and your families. Thank you.

**ENQUIRY ADJOURNS UNTIL 26 JANUARY 2026**

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