

**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**

**26 JANUARY 2026**

**DAY 18**



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

**PROCEEDINGS ON 26 JANUARY 2026**

**CHAIRPERSON:** Good morning, everyone, and compliments of the new year to all of you, to the media, any member of the public who is here, our team of transcribers, all of you over there, the evidence leading team, the NPA team, Advocate Chauke's legal team, our staff, compliments of the new year. Advocate Chauke, Advocate Batohi, we have met you. I can safely say you have received our hugs this morning, both of you. Good morning again. Thank you very much for your  
10 presence today and hopefully all of you have had a very good beginning of the year. We wish you the very best. *Nthathi Mohlamonyane*, we are going to give you an opportunity to tell us what you want to tell us from where we ended last year. Then we can take the matter from there. Thank you.

**ADV MOHLAMONYANE SC:** Thank you, Madam ...[intervenes]. ...[indistinct]

**CHAIRPERSON:** Perhaps before that, may we again just place ourselves on record. I know that we have new faces here. Are we all new? I mean, the media, those of you whom  
20 we have not met, later when we adjourn, we will know one another. I am sure from – I beg your pardon, sir. I think there is someone here from the media. Please be part of this family. Introduce yourself if you wish.

**MR MOLOTO:** Good morning. My name is ...[indistinct] Moloto. I am a reported ...[indistinct].

**CHAIRPERSON:** *Nthati* Moloto, good morning. You are welcome. I see members of the media, their faces are quite familiar, all of you. Anyone who is new in this family? Raise up your hand. We did not hear, what is your name?

**MR KASA:** Mlindi.

**CHAIRPERSON:** Mlindi?

**MR KASA:** The name is Mlindi Kasa. I am doing live streaming.

**CHAIRPERSON:** Kasa, yes. Good morning, Mr Kasa. Are  
10 you from the media? Which house?

**MR KASA:** No, I am a service provider. Not at the media house. Yes, ma'am.

**CHAIRPERSON:** Yes, thank you. Anyone else, you are most welcome. Any new face on my right? The media, do I all know you? You have been with us since last year. Okay. Anybody else who is new here?

**MS MINGA:** Hello. My name is Fihilwa Minga [?]. I am part of the media, ENCA.

**CHAIRPERSON:** ENCA. Ms Minga, you are welcome.  
20 Anyone else on the left side who is new? Advocate Ngcukaitobi, I know you have a new member.

**ADV NGCUKAITOBI SC:** Yes. In fact, I suppose I have two new members because Mr Thembelihle Links has now been formally briefed by the State Attorney. He has been part of us since we started, but not as counsel, as I suppose Mr

Ramogale's appendage, but he has now been promoted. The second person is Ms Michaela Kritzinger, who has also been briefed to support us. So we would like to formally introduce them.

**CHAIRPERSON:** She is also an Advocate?

**ADV NGCUKAITOBI SC:** Yes, she is counsel as well.

**CHAIRPERSON:** She is counsel. Most welcome. You are both counsel. I congratulated you last year. Advocate Kritzinger, most welcome. You are now part of this family.

10 Any other new member, most welcome. You know all of us here in front of you, and we hope you are going to have a pleasant next few couple of months if the President gives this enquiry an extension. Ordinarily we are supposed to end at the end of January, but we are still at the beginning of the enquiry. We hope that we will receive the response from the President in due course. But for now, until the end of January, I suppose we are going to continue. NPA team, you are most welcome, Madam. Our spokesperson, you are part of the family. Advocate.

20 **ADV MKHABELA SC:** If Mr Ngcukaitobi allows me to speak, because when he is around I do not speak. But I do have a student, Joshua Norton, who is with me doing a vacation job with me for two weeks and he has joined us for the week. Thank you.

**CHAIRPERSON:** Thank you very much. I am sure counsel

allows that. Mr Norton, you are welcome. Are you serving articles?

**MR NORTON**: Not yet. I am still a law student at WITS. So I am just ...[indistinct] for the next two weeks.

**CHAIRPERSON**: Second year, third year, final year students?

**MR NORTON**: I am going into my third year.

**CHAIRPERSON**: You are third year. You are most welcome, and the very best to you as you pursue your legal studies.

10 You will probably be sitting in front of us next time in court. So we wish you the very best.

**MR NORTON**: Thank you.

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

**ADV MOHLAMONYANE SC**: Thank you, Madam Chair, and your co-sisters. When the matter was adjourned on the 15<sup>th</sup> of December 2025, Advocate Batohi had interrupted her evidence because she was seeking legal advice. Now it is important that we should place it on record the position as it pertains today.

20 On the 23<sup>rd</sup> of January 2026, which was last week on Friday, the evidence leaders received a letter from Advocate Batohi who was informing us that the position as it pertained on the 15<sup>th</sup> of December 2025 is still the same. She has not yet received legal counsel, which she sought.

She informs us that she asked for a senior counsel

and a junior from the office of the State Attorney last year. And the Solicitor General, the Acting Solicitor General, did not provide one but advised her to approach the Minister in that regard. On or about the 8<sup>th</sup> of January this year, the Minister responded and suggested that because the NPA has a legal team in the form of Advocate Hulley SC and her junior, Advocate Leketo, that she should utilise their services.

Now she further states in her letter that she then expected that Advocate Hulley SC and her junior would  
10 advise her. And Advocate Hulley SC wrote the letter, which the Panel has received, requesting for permission to speak to her. And to date, Advocate Batohi says there was no response from the Panel and therefore she will not be able to continue with her evidence until and unless she receives legal counsel. That is the position that is prevailing at the current moment, Madam Chair and your sisters. That is all I can state for now.

**CHAIRPERSON:** Might I clarify the position with regard to the Ministerial response? What presented before the Minister  
20 was an appeal in the sense of Advocate Batohi appealing the decision, refusing further legal counsel for her, and she appealed to the Minister. Correct?

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

**CHAIRPERSON:** In relation to the correspondence addressed by Advocate Hulley and responded to, among

other letters, of course, by Advocate Chauke's legal team, certain legal issues have arisen. Correct?

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

**CHAIRPERSON:** Has Advocate Batohi been made aware of such correspondence and responses from Advocate Chauke's legal team?

**ADV MOHLAMONYANE SC:** No, she has not been formally made aware of the response.

**CHAIRPERSON:** Informally?

10 **ADV MOHLAMONYANE SC:** Informally as well. She has not been. Not to my knowledge.

**CHAIRPERSON:** In other words, Advocate Batohi has not had a sight of the responses from Advocate Chauke's team?

**ADV MOHLAMONYANE SC:** To my knowledge, yes, Madam Chair. She has not had sight of that. She has not had sight of that.

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

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

20 **CHAIRPERSON:** I suppose what you are saying, in a nutshell, is that Advocate Batohi will not resume where she ended last year, subject to her being afforded what she is asking for, or what she asked for.

**ADV MOHLAMONYANE SC:** That is the position. That is how we understood her letter.

**CHAIRPERSON:** If I may ask you, supposing Advocate

Batohi does not take the witness stand, have you decided on the way forward?

**ADV MOHLAMONYANE SC:** We discussed the way forward. We discussed it.

**CHAIRPERSON:** Thank you.

**ADV MOHLAMONYANE SC:** We discussed it as evidence leaders. Let me be clear on that one.

**CHAIRPERSON:** Yes. Advocate Skosana?

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

10 **CHAIRPERSON:** I think I must just place it on record that whatever you are going to say, you did not mention to us in the chambers.

**ADV SKOSANA SC:** Indeed so, Madam Chair. You made an election not to tell us, meaning that it is something that is new to us, what you are going to tell us. You may proceed.

**ADV SKOSANA SC:** Thank you, Madam Chair. Thank you for the opportunity. And thank you to Advocate Mohlamonyane for explaining what has occurred so far.

20 **CHAIRPERSON:** I beg your pardon, Counsel. Are we inaudible? Just raise your voice and tell us to be louder. You can just raise your voices there so that you can hear what we are saying. We are sorry for that. Proceed, Counsel.

**ADV SKOSANA SC:** Thank you, Madam Chair, and thank you to Advocate Mohlamonyane for explaining what has taken place so far. And all I am going to do is just to address the

position of the evidence leaders in relation to the evidence of Advocate Batohi and what has happened so far. Well, the first thing that I believe is clear is that the evidence leaders are not representing Advocate Batohi, nor are they acting in the interest of the NPA as such.

Advocate Hulley SC and his junior, Advocate Leketo, which I call them the NPA legal team, represent the NPA, though we know that they have not been actively involved in these proceedings. Advocate Chauke is represented by a  
10 legal team fully and competently. And we know that there was a request rather, and I am not addressing the manner in which it was done, during the cross-examination of Advocate Batohi that such cross-examination be suspended until she obtains legal counsel, legal advice.

And we know Advocate Mohlamonyane has already indicated that there was then a request from Advocate Hulley SC for permission to consult with Advocate Batohi, apparently with the intention of furnishing such legal advice. And I am not going to go into the issues about such permission, but I  
20 believe it was done on the basis that she is still under cross-examination and we must note that also Advocate Batohi was admonished at some point in these proceedings because she had communicated with some official of the NPA. I believe it was the ADPP, Advocate Zungu, if I remember well, but we are not onto those issues.

What we want to make submission on is that an indication was made that the LPC or Legal Practice Counsel Code of Conduct would prevent the interview of Advocate Batohi because she is still under cross-examination, by either the NPA legal team or any other legal practitioner. We would like to just make a submission in that regard as evidence leaders, that we do not see that as such, and our submission and our view is that that paragraph of the LPC Code of Conduct does not prevent legal practitioners who have not  
10 called a witness to testify, to interview that witness.

**CHAIRPERSON:** Advocate Skosana, please allow me to interject.

**ADV SKOSANA SC:** Ja.

**CHAIRPERSON:** You are going into the substance of the correspondence, the letters, that were exchanged among the parties, correct?

**ADV SKOSANA SC:** No, that was not my intention.

**CHAIRPERSON:** Well, the point that you are raising as regards the position of the LPC is what has been raised by  
20 Advocate Chauke's legal team in response to the letter by ...[indistinct]. Is it not so?

**ADV SKOSANA SC:** Yes, Madam Chair ...[intervenes].

**CHAIRPERSON:** That is precisely – I beg your pardon.

**ADV SKOSANA SC:** Yes.

**CHAIRPERSON:** That is precisely what I am saying, that

you are now getting into the substance of the letters that were exchanged between the parties, and you seek to make legal submissions as regards those letters and there is no application before us here. Now we are going to argue, make argument in relation to what was raised in the letters between the parties. I thought that you were going to raise something else, but if you are going to make submissions about what was raised in the letters on behalf of Advocate Chauke, that goes into legal issues, does it not? Correct me if I am wrong.

10 **ADV SKOSANA SC:** Thank you, Madam Chair. Perhaps it does, but what I am addressing here is the position of the evidence leaders insofar as what has occurred so far, and we are simply laying a basis for us as evidence leaders for taking that position. And if we perhaps get somehow into the legal argument, that is not my intention to really raise legal issues or legal argument in that regard, but simply to lay the basis for our position as evidence leaders.

**CHAIRPERSON:** Yes, but if you make legal submissions on issues that were raised in the letters, what do you seek us to  
20 do with regard to those submissions?

**ADV SKOSANA SC:** Well, the bottom line, maybe I should go there, the bottom line of what we are saying as evidence leaders is that we think this issue of Advocate Batochi obtaining legal counsel should be addressed first before the proceedings can go any further, and before any other issues

that have already been raised in the letters, in the correspondence may be addressed. What the first hurdle that you have to go through is this issue of Advocate Batohi obtaining legal counsel. I think that is the essence of our position, and I was merely laying a foundation for that. But if perhaps the Madam Chair sees this as perhaps opening other issues and legal argument on the aspect when I was dealing with Rule 55.5 of the Code of Conduct, I can leave that out.

10 **CHAIRPERSON:** Who raised the issue of the LPC?

**ADV SKOSANA SC:** I believe it was raised during the discussion and correspondence. Not even correspondence over the festive, but even earlier correspondence about the paragraph 55.5 of the Code, that it would prevent a legal practitioner from consulting or interviewing a witness while under cross-examination.

**CHAIRPERSON:** And that rule is a regulatory position in relation to the LPC that was raised in the letters among the parties, correct?

20 **ADV SKOSANA SC:** Yes.

**CHAIRPERSON:** Seek to make a submission with regard thereto?

**ADV SKOSANA SC:** Yes.

**CHAIRPERSON:** And there is no substantive application before us?

**ADV SKOSANA SC:** I am not sure, Madam Chair, a substantive application. We are not making any substantive application. All we are doing is to clarify the position of the evidence leaders insofar as what has occurred and what we intend to do. Upon receiving clarity, in other words, after Advocate Batohi has received the legal counsel that she seeks ...[intervenes].

**CHAIRPERSON:** Advocate Skosana, you are a senior counsel.

10 **ADV SKOSANA SC:** Yes, but Madam Chair, may I finish as well?

**CHAIRPERSON:** No, no, no, no.

**ADV SKOSANA SC:** Yes.

**CHAIRPERSON:** We cannot go around circles about this matter. You raise a matter which is the subject of correspondence between the parties where a legal issue is raised. You are now making a submission that as evidence leaders, you take issues with the point that has been raised. You do not agree. You do not agree with that submission,  
20 with that point that has been raised on behalf of Advocate Chauke. Did I understand you correct in that submission that you made earlier?

**ADV SKOSANA SC:** Yes, I did, Madam Chair, and I have explained why I have raised that issue. And if raising that issue perhaps is not acceptable to the Panel, then I will

abandon it and proceed to make other submissions.

**CHAIRPERSON:** Yes, that is why I am saying to you, as an SC, you know you cannot raise a legal argument based on letters. There is no application before us with the specific relief sought so that we can make a ruling or an order. That is why I said, how do you then make a submission on a legal issue when there is no pending application before us, purely based on the letters exchanged by the parties? I thought that you were going to indicate to us a direction, or at least the  
10 procedure that you proposed that we should consider following last year's unprecedented developments.

But you are now raising these issues which are making it difficult for all of us, because those legal skirmishes raised in the letters, we spoke in chambers that we hope that you are going to speak to one another and resolve those issues, but you are now raising it now. You chose not to speak in chambers, maybe we should have given a direction, so I do not think personally that it is a correct procedure to follow when there is no pending application before us.  
20 Perhaps you can just go straight to the point as regards the position that you are taking.

**ADV SKOSANA SC:** Thank you, Madam Chair. I really do not see why Madam Chair is repeatedly saying that I am a senior counsel. Of course, I am, but the point is, and I know that the Panel does not agree with me. If you do not agree

with me, I have already said I can abandon that position ...[intervenes].

**MS RAMAGAGA**: May I just come in here, just to clarify one thing so that when you answer, like you are saying that you are aware that the Panel does not agree with you on a particular point, but nevertheless you are going ahead or you are considering abandoning the point. I think it is important to just look at what has brought us here to the point that we are now at.

10           And if one is to try to consider the question that you have, or the statement that you had made right at the beginning, you said an indication was made that the LPC Code of Conduct bars the evidence leaders and the legal team from communicating with Advocate Batohi. We do not agree with that indication.

          Now firstly, what I have done has been to paraphrase. I am not quoting it verbatim. It will be clear on when the records are released as to what it is that you said, but it is something to that effect. Now, once you say that  
20           there is this indication that was made regarding the LPC, it is about the interpretation of the Code, the interpretation of a particular clause of the Code. And once the issue is about interpretation, we know that a determination should be made. There should be an adjudication of that interpretation where one party says this clause means this and the other party

says, no, no, it means that.

Just by saying I do not agree with the understanding of that clause, that in itself, Advocates Skosana, brings about an existence of a dispute about the interpretation. And that is something that appears clearly from the correspondence that has been exchanged, that the issue is about interpretation of that clause of the LPC in particular. And I confine myself to the LPC because you are talking about the LPC code of conduct. Thank you, Chair.

10 **ADV SKOSANA SC:** May I proceed, Madam Chair?

**MS RAMAGAGA:** Advocates Skosana, if you want to respond or comment to what I have said, because it is not a question, you may. But if you choose then to proceed with what you are busy with, still you are at liberty to do that. Thank you.

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

**CHAIRPERSON:** Yes, Counsel. Are you responding or commenting to what my sister has just mentioned?

**ADV SKOSANA SC:** Yes.

20 **CHAIRPERSON:** If not, my sister, Advocate Baloyi, may want to ask you something. Do you wish to respond or comment to her statement?

**ADV SKOSANA SC:** Well, shortly, what I can say, there has been a lot that we have been disagreeing with, with the legal team of Advocate Chauke. And in the midst of what has

happened, and us, you know, explaining our position as evidence leaders, we are bound in one way or the other to touch on the points of disagreement. And I was merely dealing with one. I am not going to deal with all the points of disagreement, and also perhaps what Madam Chair has referred to as skirmishes between the parties. But I am prepared to leave that point, particularly about the Code of Conduct, leave it out of my address now and then move on to other points. And I believe it is not going to be long, but I  
10 can leave that out, yes.

**CHAIRPERSON:** On those issues, in respect of which you disagree, I suppose the position is clear what you need to do, or what you ought to do. Am I correct, legally speaking?

**ADV SKOSANA SC:** Well, there may be issues where we need to bring a formal application for a particular ruling from the Panel, but I believe that is not what we need to do at this time, at this point in time and that is not what I intended to do. We are simply explaining what is our position.

**CHAIRPERSON:** With a view to achieve what? When you  
20 mention all these things to us, you mention it with a view to achieve something, because we have the correspondence. We know all these things that you are talking about. We have been copied of the correspondence between yourselves, or amongst yourselves.

Now, you are making submissions about them. I am

not sure to achieve what. I thought that you will simply indicate to us the position you have taken in relation to these matters so that if you have agreed between yourselves, then at least it is minus one of the problems. If you still disagree, then you, parties, you will decide what you want to do. I am not sure why is it that we have to listen to disagreements in relation to matters that are raised in the letters that we have, but you may proceed. Advocate Baloyi will ask you a question.

- 10 **ADV BALOYI-MERE SC:** Just out of interest, Advocate Skosana SC, you seem to take issue with the Chair reminding you that you are senior counsel. My understanding is that she is doing it purposely because you are leading a team and you should lead by example. I am not sure why do you take issue with being reminded that you are here as a leader. Is there an issue so that maybe we should not do the same next time?

Because I know I have a tendency of just saying or just reminding someone that you are here and you are leading  
20 and you should lead by example, and you should know the rules better, and you should know the procedure better because right at the beginning we issued rules of procedure where parties were informed on how to deal with issues. You deal with issues amongst yourselves. If you do not agree, you bring a substantive application and we make a ruling.

Thank you.

**ADV SKOSANA SC:** Thank you. What you are saying, Advocate Baloyi-Mere SC, is that actually to me also emphasises the way I understood it. When somebody says to you, you are a senior counsel, you should know this, it seems you are saying you are not doing your work properly. You are supposed to know this, yet it appears that you do not know it. And I am simply saying, I am making submissions and they relate to the position of the evidence leaders.

10           You may disagree with that, of course. Disagreement is in the nature of proceedings. But I find that submission, that remark to me, I must say, unacceptable. And I am sorry that this now again happens in the public arena, but I do not intend to be disrespectful. All I am saying is that that was my understanding, that when you say you are a senior counsel, yet it seems that you do not understand this basic rule, I want to put it that clearly that that is why I reacted in the way that I did. But if I may proceed?

**CHAIRPERSON:** Before you proceed, Advocate Skosana,  
20 we all had an opportunity this morning where matters were discussed in chambers. Of all the parties, you are the only one who decided not to tell us in chambers on all these things that now you are placing on record. And perhaps these matters would have been discussed in chambers without being discussed in the public domain.

You know, as we lawyers speak, that opportunity was presented to you, but you made an election not to discuss it in chambers like what everybody else did. It cannot be correct now for you to say this thing is being discussed in the public domain when you had an opportunity, as we all discussed in chambers, so that we could understand your position, but you decided not to say anything.

You said you want to place it here on record in the public space. We would ordinarily discuss it in the public  
10 space because we are transparent, but we discussed amongst ourselves as lawyers so that we come here knowing precisely what we are going to talk about. You may proceed.

**ADV SKOSANA SC:** Ja, I think I have said what I needed to say. As far as our submission and our position as evidence leaders, we are saying at this point in time Advocate Batohi has indicated her unwillingness to proceed without having obtained legal advice. And I want to emphasise that the term unwillingness is used advisedly. In other words, it is not unqualified unwillingness as it has been portrayed in some  
20 media publications.

It is unwillingness on the basis that she still needs to obtain legal advice. She requires that advice in order to verify her legal rights and interests, which may well include her constitutional rights, whether they are secured in the light of the manner in which the cross-examination has proceeded.

Once truly advised, she will then make that call about continuing or not continuing with her testimony.

What I believe and what we believe as evidence leaders may be in question is how long that would take. But of course our solace is in that – or let me leave that part because it may take us back to the same question. Now, our position is that all the other questions are dependent, may be dependent on this one. In other words, they cannot be addressed meaningfully without or before this one of her  
10 obtaining legal advice is determined.

If Advocate Batohi, after obtaining the legal counsel that she requires, then communicates that she still is not prepared to continue with her testimony, then the evidence leaders will have to make a call, taking into account the powers of the enquiry with regard to the power to subpoena and so on. Then the evidence leaders must decide whether they want to take any legal steps to compare her to continue, and if so, what steps.

Of course, if no legal steps are taken, then the  
20 evidence leader will have to decide then what further evidence they need to lead. And I think there are questions that have been raised by Advocate Chauke's legal team, but then those questions can be argued after that point has been passed. One of the issues that have been raised, and I am not addressing it, is whether or not she can return to testify.

I am not sure even that they still pursue that, but that was raised.

But we are submitting as evidence leaders that that can only be entertained after she has decided whether or not she is returning. Otherwise, the enquiry will be considering, you know, questions which are based on a qualified decision of Advocate Batohi, instead of an absolute decision, an absolute one.

And the other question that has been raised by the  
10 legal team of Advocate Chauke is that if she does not return, whether there will be an irredeemable evidentiary deficit in these proceedings. That question will also, in our submission, will also be and can only be addressed after she has decided whether or not she is returning.

We want to also mention that, you know, at the previous hearing before the adjournment, Advocate Batohi was crudely reminded that her conduct could have serious consequences, which is legal consequences. But we submit that she can only weigh that up, or weigh up those legal  
20 repercussions by having access to legal counsel who are also allowed to speak to her.

So that is, in essence, our position as evidence leaders, that we think it all centres around whether she is granted that permission and the opportunity to consult and to obtain that legal counsel. And thereafter, then all other

issues will follow and will have to be determined if they are still in dispute. That is the essence of what I wanted to present on behalf of the evidence leaders.

**ADV BALOYI-MERE SC:** Advocate Skosana, you said you are going to present the position of the evidence leaders. And right at the beginning you told us, and rightfully so, that the evidence leaders do not represent Advocate Batohi or the NPA and you are not here in the NPA's interest. You are here to present evidence from all quarters, all walks of life, as long  
10 as the evidence is relevant to the enquiry.

But what you have presented to us, when I was listening to you, unless if I am wrong and if I am wrong, please correct me, is you are giving us all the obstacles that Advocate Batohi is facing, without giving us your position as the evidence leaders. Because I had expected that you would have thought, or should I stop there?

**CHAIRPERSON:** You may switch off your microphone.

**ADV BALOYI-MERE SC:** Okay. I had expected that – we were all here on the 15<sup>th</sup> of December. You are the evidence  
20 leaders. You are the drivers of this enquiry. So, from what happened and the request that Advocate Batohi made for legal representation and all the obstacles that she met along the way, that would have triggered or made you, as evidence leaders, to think about the way forward, but you have multiple probabilities.

What happens if Advocate Batohi does not get evidence leaders and she decides she is not proceeding with her evidence before she gets a legal representative or legal advice? And what do we do in the meantime? And we are all here in the interest of the public.

Now, what do you do as evidence leaders to make sure that the enquiry proceeds with its work? Or you come here, you give us your position to say, seeing that Advocate Batohi is not continuing with her evidence, as evidence  
10 leaders we take it, that is it, this is it, we are stopping here, no more enquiry. I expected that the evidence leaders will be, when you said you were giving us your position, you will come with a guiding position in trying to give a way forward.

Now, you are telling us that no, even all the other questions depend on the advice that Advocate Batohi is going to get. Meaning, should Advocate Batohi not get her advice, we may not be able to proceed. Or, should it take time for her to get advice, we will have to stop and wait for that. You are not giving us a way forward, a position that can help us  
20 to go forward. Instead, you are giving us all the problems that Advocate Batohi is facing and also not even giving them the solution. I expected that the evidence leaders will be guiding and will be assisting this enquiry going forward. Thank you.

**ADV SKOSANA SC:** Thank you, Advocate Baloyi-Mere. We,

as evidence leaders, and I think correctly so, you stated we do not represent the NPA or Advocate Batohi. But also as evidence leaders, I think we are tasked with the duty to bring evidence to this enquiry and from all quarters, you know, whether it favours the NPA or favours Advocate Chauke.

But also, part of our duty is to try and ensure insofar as we can that the evidence that is brought before this enquiry is evidence that has got value, evidence that is brought forward in a proper way. And we have examined as  
10 evidence leaders the position of Advocate Batohi, who has been called by the evidence leaders to give testimony. She has put it plainly what her position is and that she requires that counsel.

And we are merely expressing our view and our opinion that that issue ought to be solved in whatever way. First of all, it must be given an opportunity. She must be given an opportunity to consult and obtain that legal counsel from whatever quarters, whether it be from the NPA legal team or any other legal team, but that has to be dealt with.  
20 That is our position as evidence leaders.

And we, of course, will have to address, and I have said it already that we will address only upon establishing that position, upon her returning after obtaining legal advice, whether she intends to continue with her testimony and all the other issues that will have to be addressed, including the

fact that what should happen now to this enquiry? Are you, as evidence leaders, in a position to lead further evidence? Do you intend to lead further evidence? And the circumstances surrounding that. That is our position as evidence leaders. I do not know if I have addressed your question.

**CHAIRPERSON:** Thank you. It was for progress. Let us assume, Advocate Skosana, that Advocate Batohi decides not to take the witness stand for the reason that she does not  
10 have her personal legal representative. I use personal because I know, all of us know, that Advocate Hulley has been acting together with the junior, of course, as the team for the NPA, correct?

The NPA, which, if I may use that, is Advocate Batohi because she is a leader of that institution. She seeks legal counsel, her personal legal representative, apparently, to seek legal advice on issues that are not before us. Am I correct? We do not know what she wants to be advised on. Am I right? Or maybe you know. As far as we are concerned  
20 as a Panel, we do not know.

**ADV SKOSANA SC:** We do not know the details, Madam Chair, yes.

**CHAIRPERSON:** Neither do you know as evidence leaders. We have just been told that she must now be afforded an opportunity to be given legal counsel, and we know that

Solicitor General has declined her request. She appealed to the Minister. The Minister declined her request on the basis that NPA, which she leads, is before us.

Now, in the absence of an application in which you will be told what issues she wishes to pursue, if we were to make a decision, on what evidence are we going to make any such decision? If we do not even know what she seeks legal advice on, maybe if you can advise me there?

**ADV SKOSANA SC:** Well, Madam Chair, I think it is quite a  
10 secular question because at the same time as evidence  
leaders we are convinced that at least as evidence leaders,  
we are not allowed to consult with Advocate Batohi at this  
point in time. And while she is under cross-examination, so  
it is ...[intervenes].

**CHAIRPERSON:** Yes, but you are answering a different  
point. I am simply saying if she is indeed entitled to a legal  
representation personally, I think a matter that probably the  
Minister was not asked to consider, what is the essence of  
that request? What is it that she seeks legal representation  
20 on? Because we have to take each other's, she has to take  
us into her confidence, at least in an application.

The letters that she wrote, which we did not respond to because a Panel is not in the business of exchanging letters with the parties. If we are asked to make a decision, it must be on an application. It is then we have all the facts

by all the parties, we have legal argument by all the parties, then we can form a view and make a ruling. Now, we do not have anything in front of us.

But we take note of the position that you as evidence leaders have taken and as my sister, Advocate Mere SC, has said, your role as evidence leaders must decide on the process forward because without you this enquiry will come to an end. You have given us a list of witnesses. If she is not going to testify, supposedly because she has to pursue her request, you should be in a position to proceed with this enquiry and lead further witnesses at the very least so that we can make progress.

But it cannot be that we are told that if the Advocate Batohi does not get a legal representative, you will not be in a position to proceed as evidence leaders because you are not acting for her, neither are you acting for NPA. You are here to assist this enquiry and at least to gather all evidential material that may assist us in the task we have been asked to perform.

I assume that you will decide when we adjourn as to what position you are going to take in that regard, not as looking for Advocate Batohi because you do not have any application here. And if she takes the position that she is not going to testify, when the Minister has taken a decision, are we in a position, as we speak, to say to the Solicitor General

whether there are funds or no funds, appoint a legal team for Advocate Batohi, or even to the Minister? What will be the basis of that decision without anything being presented to us?

So I do not want us to exchange with you because we are not even representing her. You are an evidence leader, you must assist us as the key leaders of evidence on the way forward. If you think that you will not be in a position to call any of your witnesses in the meantime, because progress is what we have to make here. We cannot now go  
10 – now we have spent almost half a day talking about the interests of Advocate Batohi, which we all understand, but a decision must be taken.

If she decides not to take a witness stand, that will be her choice. If you think that that is going to make your case difficult, what would have remained after cross-examination would be you leading further evidence in re-examination. If that does not happen, then you can call another witness. Because we all know what her position is, we all know what her position is. So please discuss this  
20 matter with the Advocate Mohlamonyane and your team regarding your position as evidence leaders, not as evidence leaders presenting the case for Advocate Batohi because we do not have anything in writing here other than the letters. [Indistinct]... would like to ask something.

**ADV SKOSANA SC:** Well, the risk of repeating myself, I

think what I was placing before this Panel was the position of the evidence leaders, which we have discussed and we have said this is the position that we take so far. We are not yet at a point where we are dealing with the leading of further evidence, but we are dealing with the position that this enquiry finds itself in so far as Advocate Batohi is concerned. That was our position in that regard.

**CHAIRPERSON:** But of course – you may switch off – as I mentioned, you now know the position of this Panel. If you  
10 decide to proceed, you may confer with one another as evidence leaders as to what you wish to do. If Advocate Batohi decides, because the choice is hers, if she decides not to proceed, she is not represented by Advocate Hulley and if she feels that she is being put in a disadvantage, she will indicate so.

But I do not know how we are going even to make a determination of the disadvantage without any evidential or facts being placed before us. That is a very difficult situation. So what I am saying, Advocate Skosana, is that you will take  
20 a position as evidence leaders on the way forward of this enquiry. And it means when we adjourn after my sister has asked us the question, we will afford Advocate Ngcukaitobi to confer with his team and we will reconvene, because I am sure he is taken by surprise on these matters that we are engaging with you.

And he will come back and indicate what his position is and if necessary, in the event Advocate Batohi would like to talk to us, she is free to do so. She may even communicate to you as evidence leaders who brought her here, and if she decides to take the stand, she is free to do that. Let my sister ask a question.

**MS RAMAGAGA**: Yes, thank you, Chair. Mr Skosana, you know, when I was listening to you about where this issue stands, I gained an impression that you are saying everything  
10 revolves around the question whether Advocate Batohi secures counsel for advice or not. Is that understanding correct? My understanding that everything revolves around the question as to whether she secures advice from the legal representatives or not. Is that understanding correct or wrong? And if it is wrong, just correct it so that we can move together side by side on a common understanding. Thank you.

**ADV SKOSANA SC**: Well, perhaps, you know, maybe I will put it this way that we as evidence leaders think it is  
20 important at this stage to resolve that question first. Not that this whole enquiry and the proceedings depend upon that, but that question should be resolved. Of course, we are mindful of time and that is why I said in my address that also the question is how long that would take. That question be result whether or not she intends to come back and testify and that

can only be resolved after she has received that legal counsel.

**MS RAMAGAGA:** Ja.

So, actually, my understanding that everything revolves around it, it is wrong. It is slightly wrong.

**ADV SKOSANA SC:** Yes, I do not want to say it wrong, but I think I have clarified it.

**MS RAMAGAGA:** No, then that is fine. It is now common knowledge that Advocate Batohi appealed after her request  
10 was turned down by the Solicitor General and the Minister has also rejected the appeal or turned down the appeal. Am I correct?

**ADV SKOSANA SC:** That is so.

**MS RAMAGAGA:** And Advocate Batohi has an election to insist, I do not know what comes beyond appeal. I will ask you that because you are acting on instructions by the State Attorney, that after the appeal of the Minister, is there still anything that can be done within the parameters of the Department of Justice? Can you assist with it?

20 **ADV SKOSANA SC:** Well, Madam, I am not sure if there is anything that can be done on the side of the Department. But what I can say is that this question of the possible conflict of interest with Advocate Hulley and her junior, only arose now. We must remember that when the instruction or the – ja, when she was disallowed to appoint a new counsel to advise her

and when the NPA legal team was pointed as the ones who should give the advice, that issue had not arisen.

Actually, we have a letter from NPA legal team that says can the Panel grant them an opportunity or permission to consult with her while she is under cross-examination. Now, this has arisen afterwards, and I also see it that it is correct that there is actually a conflict of interest. I am not sure whether the Minister or the Department in the appeal that has been considered, the question of conflict of interest.

10 Those are the issues that will still have to be resolved before we can determine finally the issue of her obtaining legal concern.

**ADV NGCUKAITOBI SC:** Sorry, Madam Chair, if I could apologise, Madam Ramagaga, but Mr Hulley has a real problem because he is not allowed to make submissions, but he appealed to all of us not to raise this issue because he has not yet canvassed it. So, I just thought let me put that on record. I apologise.

**CHAIRPERSON:** And, Advocate Skosana, you aware of that?

20 **ADV SKOSANA SC:** That?

**CHAIRPERSON:** You are aware of the fact that this matter that you are raising regarding Advocate Hulley was not supposed to be brought here.

**ADV SKOSANA SC:** Well, I think the Panel already alluded to it and asked me questions about it. So, I am not sure if

you say I did not really bring it here.

**CHAIRPERSON:** Which questions?

**ADV SKOSANA SC:** The question that Madam Chair is raising about the conflict of interest.

**CHAIRPERSON:** Did I mention any conflict of interest, me? You are the one who has just answered to Madam Ramagaga as you were answering the question that because of the conflict of interest with Advocate Hulley, and this is the reason why Advocate Ngcukaitobi is interjecting. And as we  
10 came here, Advocate Hulley made it clear that all the matters that were raised in chambers as regards his position and his juniors should not be discussed here, and now you are raising them. Am I right?

**ADV SKOSANA SC:** Well, first of all, I spoke about potential conflict of interest, possible conflict of interest. But in any event, I understood that question to already have been raised by the Panel. Because in the middle of my address, that  
20 issue that Advocate Hulley is actually representing only the NPA and not Advocate Batohi in person, although she is still an NDPP, that question already arose and I addressed it in the way that I could.

As to whether now that has not been formally raised, that is another issue and I understand that Advocate Hulley might be given the opportunity to explain that, but I raised it in the context of the Panel having alluded to that.

**ADV BALOYI-MERE SC:** If I may just jump in, Chair? I am sorry to do this, but Advocate Skosana, if I may remind you, and I hope that the record will be able to bear me out, the Chair referred to Advocate Hulley and Advocate Leketo as the representatives of the NPA. And she said, although I am not quoting her verbatim, but she said, which in essence includes Advocate Batohi because she represents the NPA. And I think that is as far as it was taken. She leads the NPA. That is as far as it was taken. It was never taken beyond that  
10 because we understood that Advocate Hulley has not briefed Advocate Batohi.

And also on a question that was posed to you, which you answered positively, that the correspondence and the response from the Chauke team was never brought to Advocate Batohi's attention, whether formally or informally. Meaning, as we speak now, Advocate Batohi might be in the dark and she might need to be briefed before certain issues are discussed in public.

And that was my understanding, that we as a Panel  
20 did not raise any issue that was not supposed to, or that was not ripe to be to be discussed here today before there has been a consultation or there has been a briefing between Advocate Hulley, Advocate Leketo and the NPA and Advocate Batohi. Thank you.

**MS RAMAGAGA:** I had asked was a very simple question,

and that question was whether seeing that the Solicitor General has not approved the application as informed, the Minister has not upheld the appeal. Is there anything else that can be done? That was the question now that brought this whole lot of things. It is a very simple question as to whether in light of the processes.

And I ask you this question because you are acting on instructions by the State Attorney and the State Attorney is the one that has their own processes in terms of affording  
10 or funding legal representations of people. So your answer in a nutshell is what to the question, whether beyond the appeal there is anything else that can still be done by the Department of Justice. You remember that question?

**ADV SKOSANA SC:** Ja.

**MS RAMAGAGA:** Yes.

**ADV SKOSANA SC:** The prelude to my answer was that no, I do not know. I do not know what else the department can do. Then I added the remark after that.

**MS RAMAGAGA:** All right, thank you. Do you agree that  
20 Advocate Batohi is not barred from obtaining legal representation through her own funding out of pocket? Is she barred from doing that?

**ADV SKOSANA SC:** As far as I am aware, no. Yes.

**CHAIRPERSON:** Can she also seek Legal Aid if she qualifies?

**ADV SKOSANA SC:** Well, Madam Chair, yes. If she qualifies, yes. I am not sure about the rules around the Legal Aid. My little knowledge would say that she would not qualify, but that is under correction.

**CHAIRPERSON:** So I am asking that she has been refused legal representation by Government. I am told or I read because of financial constraints and if she wishes to pursue her position, bearing in mind that she is a witness, just a witness. Will she be entitled to approach Legal Aid if she  
10 does not have her personal funding? If she qualifies, of course, I mean, she will have to ascertain that herself. I am asking you as counsel.

**ADV SKOSANA SC:** Certainly, Madam Chair, if she qualifies, she may obtain Legal Aid funding.

**MS RAMAGAGA:** I am done. Thank you. Thank you, Chair.

**CHAIRPERSON:** It is a procedure. Given the position that you have taken as evidence leaders against the backdrop of the request being refused, not once or twice by the Government, if I may put it that way, and the fact that you  
20 say as we speak, you are not in a position to proceed without her being afforded legal representation, what is it that you think we can do as the Panel?

**ADV SKOSANA SC:** Well, Madam Chair, I believe and it is subject to what Madam Chair has already said, that there should be a proper application, that that opportunity should

be granted to Advocate Batohi to secure that legal counsel. Of course, it will be within confines of time. That would require, of course, from us, as evidence leaders, and that one we have not discussed with evidence leader, whether that would require us to bring a formal application for an adjournment for that period, whether it be a day or two, so that that can be done. But that application has not been brought, we are merely presenting our position.

**CHAIRPERSON:** Yes, that is why I am asking you, apart  
10 from what I said, based on the submissions that you have made now, I am asking you, sitting where you are, what do you think is the solution to this conundrum without means dictating or directing? We have not issued any direction. I am just asking you questions that in the absence of any facts, that tells us the basis on which the request has been made to the Solicitor General and to the Minister. What do you think we can do as a Panel, given that scenario, without me saying to you we think that there must be an application? As evidence leaders who have made submissions in that regard,  
20 what do you think is the solution?

**ADV SKOSANA SC:** Well, at this point in time, and having heard the view of the Panel on this, I think we would need to ask for an adjournment for us as evidence leaders to take the position whether we want to bring such an application or not. I have already indicated what we, in our discussion, thought

should happen. And it may be that the Panel does not agree with our thinking and our submissions, but we have indicated what our position is. And we would then, now having heard what Madam Chair is saying, I have to take a position what should happen, whether I want to bring an application for such adjournment for the consideration of this question of Advocate Batohi to obtain legal counsel.

**CHAIRPERSON:** You know, Counsel, I do not want to believe at the point, but I would like us to understand each other or one another. So, you made the submissions on the basis that you will not be in a position to proceed pending or subject to Advocate Batohi's request being granted or something to that effect. That is the current position that you take as evidence leaders.

And I ask the question, even yourself, you do not know what is it that she bases that request on, you said so earlier. Because if somebody says as witness I am no longer proceeding because I seek legal representation but she does not really tell us or take us into her confidence to say what is it that she thinks will guarantee or warrant such a request being conceded favourably.

In other words, how do we make a determination if we were to make a determination on such a request without being taken into her confidence? You yourself do not know. I am sure the Minister does not know either. The request has

now been refused, but those who provide money, and we are now told that something has to be done for her. But then the question is, what is it that warrants that request being granted without any evidence, any information that may persuade us to say, Minister, reconsider your position? I do not even know whether we are entitled to do that.

But the question then remains, in the event such a request is considered, as you say, you want to make an application or you are going to concede to make an application, we should now grant you a postponement. There is just another delay on a matter that relays to a witness who seeks to, I suppose, to protect her interests, but you do not know precisely what is it that she thinks she has been prejudiced on. It makes it so difficult for us. And then the question then arises, and I thought a sad earlier, do discuss it with your colleagues about your position, because your role is to assist us and not make our task difficult.

As it is right now, we cannot proceed with this enquiry because of the position that you are taking. I thought that you will say, if Advocate Batohi verily believes that she is being disadvantaged by the refusal to grant her legal representation, we, yourself as evidence leaders, to bring this matter to finality, we will, in the meantime, bring another witness to make some progress.

But now you ask us to pause again. We paused for

more than a month, a delay for this enquiry to be finalised. Now you are asking for another two days to go and consider whether you want to make an application. I find it very difficult to understand as evidence leaders because you have given us a list of witnesses.

Perhaps you should consider, and I am just thinking aloud. I am not telling you how you should run the matter. Perhaps you should consider, in the meantime, for progress to call the next witness whilst Advocate Batohi is considering  
10 her position, whether she can expand her finances or approach Legal Aid because Government has refused her legal representation personally.

If you were to make an application and seek a specific relief, what relief, if I may ask you, what kind of a relief are you going to ask? That we tell the Minister to provide money for her for legal representation? What kind of relief are you going to seek? Advocate Skosana, I do not know what the right answer is, but probably you may assist us. If you cannot, you will confer with your team so that you  
20 try to engage with one another to find a solution to this difficult situation that has been presented to us.

**ADV SKOSANA SC:** Thank you, Madam Chair. I appreciate that and the difficulties. In the midst of that, I want to also mention that part of the difficulty is our inability to consult with her. We do not have details of her basis for seeking

legal counsel because we may, as much as the NPA legal team was not able to consult with her, then for a stronger reason, the evidence leaders are not able to consult with her while she is under cross-examination.

So we were not able to get to the depth of her thinking and why she felt that way and decided to seek legal counsel. And of course, that legal counsel would include the question whether she needs more time. I think that that counsel, we may not prejudice that counsel by now getting  
10 into the issues of whether or not she should continue. As evidence leaders, I think we may not get into that question.

Ours was to lead evidence of the witness and to try and ensure that that evidence is led in a proper way and to some extent that also her right as a witness now, not as NPA or NDPP, but as a witness are protected. Thank you.

**CHAIRPERSON:** In the letter that she wrote to the Secretary, Solicitor General, I beg your pardon, to the Solicitor General and to the Minister, did she disclose all these things that you say you are not aware of? Even if she  
20 does not consult with you, did she have an opportunity to present to the Solicitor General and to the Minister, what is it that she thinks entitles her to a separate legal representative?

Because at least even if you do not consult with her, in the letter to the Minister she could divulge all this

information which could be assisting us because we have the correspondence. That is an opportunity that she has if she were to write in details to them to reconsider their position as the Ministry, if she presents all the information to them. On top of anything in the letter that was disclosed to the Minister, that gives the substance of the request.

**ADV SKOSANA SC:** Madam Chair, that information was not devised to us. We were not furnished with a copy of the letter.

10 **CHAIRPERSON:** You are, however, aware of this correspondence that we all have that has been exchanged, even by Mr *Nthati* Sebelemetsa.

**ADV SKOSANA SC:** Well, Madam Chair, we are aware that she sought the funding of her counsel from the Solicitor General, which was refused, and she was directed to use the services of the NPA legal team. She then appealed to the Minister, which appeal was then dismissed. That is all we are aware of. We do not have the details or the documentation itself of that application.

20 **CHAIRPERSON:** Nothing debuts you from communicating with Mr Sebelemetsa with regard to that correspondence or all the facts that were presented to him and subsequently to the Minister as to whether she explained the reason why she thinks that she is entitled to a personal legal representation as a witness.

**ADV SKOSANA SC:** Well, Madam Chair, we will enquire from Mr Sebelemetsa. As far as we are aware, Mr Sebelemetsa always copies us if she receives correspondence, whether from Advocate Batohi, from Advocate Chauke's team, she communicates, she gives us copies. In this case, or in relation to that, we did not see any correspondence, but I will enquire from him whether he had any access to such correspondence.

**CHAIRPERSON:** Well, he is an instructing attorney here,  
10 the Solicitor General, and he must have based his decision or the State Attorney's decision on the basis of something. The Minister too must have based her decision on something, and it is therefore that I am asking you to confer with him. He is your instructing attorney. Then you can get all that information from him, and if such information was presented, which we are not aware of, because we do not have any facts. It may well be that Advocate Batohi presented something that has not been brought to our position, that if you were to apply, you may include in that application.

20 But I am not very sure whether the relief that you will seek will be such that may entitle us to direct the Minister to afford her legal representation. That is why I was asking you, if you were to apply, and I am just asking you to assist us, if you were to apply, what kind of a relief are you going to seek, given this background?

**ADV SKOSANA SC:** Well, Madam Chair, I think I have already tried to answer that question. We have not yet brought the application, of course, and we will consider what Madam Chair is saying. But I think part of the problem is that we also do not have facts precisely for the reason that we are unable to consult directly with Advocate Batohi. But we will consider all that has transpired now and also consider – we have not even, I have not discussed with my team whether we will bring that application as evidence leaders, but we are  
10 going to consider that now.

**CHAIRPERSON:** Yes.

**ADV SKOSANA SC:** Yes.

**CHAIRPERSON:** Advocate Ngcukaitobi, I suppose it is the right time to pause to enable you to consider your position as regards to the matters that we have been engaging with Advocate Skosana on. And when you resume, you will then present your position, covering all the facts that we have been raising with him because we do not know what the right answer is. We are all taken aback. We do not have answers  
20 and we do not know what kind of ruling or direction we can give in the circumstances, and we will take the matter from there.

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

**CHAIRPERSON:** I beg your pardon. This will also enable all of you, if need be, to confer with Advocate Hulley, who is

representing the NPA. These are not simple matters to simply discuss, like we are just having a discussion on the matter where there is no application, And that is why I am asking counsel.

Given all the circumstances, even if you were to go the route of a substantive application, what kind of a relief would you people ask us to consider? And secondly, whether there is sufficient evidential material presented either before the Solicitor General or the Minister, that we ought to  
10 consider, even aside of a substantive application. I know that you may not have such information, but if there is anything that can be brought to our attention, probably favourable to Advocate Batohi, it should be brought to our attention. [Indistinct]... is here. He signed one of the letters, and he is in his better place to guide the evidence-leading team.

To that end, I think the right thing is to take to pause for 30 minutes. If you are still discussing within 30 minutes, do send a message, then we can grant you more time to confer with one another. Remember, we mentioned at  
20 chambers, the legislative imperatives to have this enquiry finished as soon as possible. We do not have time on our side. 12 months is going to expire very soon. And we cannot be seen to be arguing about these interlocutory issues when we are supposed to get to the heart of the matter, because we are all here to investigate and bring all the facts.

It is not about Advocate Batohi being – she is not an accused or it is not in a position of Advocate Chauke. She is just a witness. And if she thinks that she has been prejudiced, she knows what avenues are open to her, but let us proceed. As you go out to discuss, bearing in mind this legislative imperative, we cannot waste more time. In fact, we committed to the Minister that we may have to sit Saturdays, given the list of witnesses that you people have given us.

10 But if you are seen to be delaying the matter anywhere, it is going to be very difficult for us because you have to prepare a report at the end of the enquiry and you may not have sufficient time to do so. So I am mentioning it to all of you, not necessarily to you, Advocate Ngcukaitobi, that let us work towards finality to enable us to discharge our task. We will adjourn until – I beg your pardon. Yes, sir?

**ADV MOHLAMONYANE SC:** No, Madam Chair, I just wanted to ask how long, but I think you have answered that.

**CHAIRPERSON:** Take 30 minutes. We could use that to  
20 have tea if we have been supplied with tea. It appears that the Ministry does not have money anymore to give us lunch, but we are told that we will be served with tea. Everybody here, the media, we are told that will only be given tea, all of us. But let us see what we would have been offered. We should be thankful for what they are giving us. You all know

that finances are tied everywhere. Let us go and have tea. We can reconvene at 12:10. If you still need more time, send our researchers and tell us how much more time you will need, then we will reconvene. Yes, thank you. We will adjourn for 30 minutes.

**ENQUIRY ADJOURNS**

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**ENQUIRY RESUMES**

**CHAIRPERSON:** Good afternoon, everyone. Advocate  
10 Ngcukaitobi.

**MR NGCUKAITOBI SC:** Thank you, Madam Chair. We are grateful for the indulgence. We discussed the matter internally as well as in collaboration with the evidence leaders. Perhaps the best way is to allow the evidence leader to explain the position they are finally settled on. Thank you, Madam Chair.

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

**ADV SKOSANA SC:** Thank you, Madam Chair. We, as evidence leaders, have considered this matter and decided,  
20 in view of the deliberations that have occurred today, to bring an application. And the application would be for the adjournment of these proceedings until, from what we have discussed so far, until Monday, the coming Monday. And, of course, that application will contain the basis and the reasons why we are bringing that application. The timeframes and the

timetable for exchange of papers between the parties may be discussed, but we do need to bring that application.

I may indicate at this stage that, broadly, the application will be on the basis of addressing the issue of the potential interest, and I emphasise the potential interest, conflict of interest, sorry, conflict of interest and in regard to Advocate Hulley and the NPA team, legal team. And number two, the reasons will be relating to the list of witnesses that the evidence leaders has provided and the challenges that  
10 they have experienced in that regard. So they would, in broad, there will be those two reasons in the application.

There may be more, but those two will be there. I just wanted to give the Panel an indication, in broad terms, what that application will be about. Yes, Madam Chair, I think I can stop at that point for now.

**CHAIRPERSON:** Yes, thank you, Counsel. The first aspect of that application relates to the potential conflict of interest in relation to Advocate Hulley, you said?

**ADV SKOSANA SC:** Yes.

20 **CHAIRPERSON:** And the application will be brought by who?

**ADV SKOSANA SC:** By the evidence leaders, Madam Chair.

**CHAIRPERSON:** The second aspect relates to? You said the second aspect relates to the witnesses?

**ADV SKOSANA SC:** Relates to the witnesses, the list of witnesses that was provided and the challenges that have

been experienced so far by the evidence leaders.

**CHAIRPERSON:** All the witnesses that you have provided us with, you have challenges in relation to all of them or some of them?

**ADV SKOSANA SC:** Well, some of them, Madam Chair, yes. And we must indicate, in particular, in relation to this aspect relating to the Cato Manor Unit and Major General Booyesen and the like. That is all those witnesses so far.

**CHAIRPERSON:** You can speak to the mic.

10 **ADV SKOSANA SC:** Oh, sorry. There is one aspect of this case relating to the Cato Manor unit as well as Major General Booyesen. Witnesses will be testifying in relation to that in particular, that aspect. We have experienced difficulties and will explain in the affidavit that we intend to file the kind of difficulties and why we think it is necessary to complete that part of the case before going to the second aspect, which relates to the Mdluli case.

**ADV BALOYI-MERE SC:** Just to clarify so that I understand, you said you have considered and decided to bring an  
20 application for these proceedings to be paused until Monday next week.

**ADV SKOSANA SC:** Yes.

**ADV BALOYI-MERE SC:** So should I understand that what you are saying is we stop until next Monday? Or you are bringing an application? When will you bring the application?

It is a bit confusing for me.

**ADV SKOSANA SC:** Yes, thank you. I think you are correct that I did not indicate exactly. I said the timeframes, of course, may be decided, of course, with the guideline of this Panel. And the timetable for the exchange of papers in that application and the hearing of that application for postponement, because we would like to bring it formally on paper.

**ADV BALOYI-MERE SC:** So meaning that while the  
10 exchange of papers is happening, the enquiry would have paused according to your suggestion?

**ADV SKOSANA SC:** Indeed so.

**CHAIRPERSON:** And of the witnesses that you have listed in relation to the Cato Manor case who are not giving you challenges, are you not in a position to at least consider calling any of those witnesses whose position is not  
challenging for you, so that we can make some progress?

**ADV SKOSANA SC:** As I am aware, as far as I am aware, and upon discussion with our team, we think we have a  
20 difficulty with all the witnesses relating to that aspect. That is now the Cato Manor and Major General Booysen. Perhaps when I said some, Madam Chair, I was dividing between one aspect and the other.

**CHAIRPERSON:** The Mdluli matter?

**ADV SKOSANA SC:** The Mdluli matter, yes.

**CHAIRPERSON:** As regards the Cato Manor matter, all the witnesses listed by yourself as evidence leaders, are giving you some challenges. I am not sure what those challenges are, but you seem to be encountering challenges with them.

**ADV SKOSANA SC:** Yes, Madam Chair. I do not want to find myself perhaps, you know, making a contradictory statement at this point. We will do our best to give as much detail as possible in the application, which will be brought, I believe there will be affidavits in that regard, and explain  
10 exactly what is happening, what kind of challenges we have experienced as evidence leaders.

**CHAIRPERSON:** Yes, I understand. The reason why I engage with you, is to ascertain a possibility of us proceeding at least with any of the witnesses who may not be giving you challenges as far as the Cato Manor is concerned, so that at least we can tick off those witnesses, because we have a long list. And I am not sure how we are going to proceed when we have expanded closer to more than a month on one witness, and we are not even done with that witness.

20 So assuming that you understand our predicament as a panel, and you as evidence leaders, because your role is very critical for our functioning, if we have any other witness, some of them you have consulted with. I remember at one stage, Advocate Mtsweni was excused upon his request to go and consult with some witnesses, yourself too, Counsel. And

if any of those witnesses are ready, that is why I am asking you questions.

If any of those witnesses are ready, and we can probably deal with their evidence to make some progress, should you not consider, unless, of course, as you say, seemingly, all those listed witnesses are presenting challenges to you? If that is the case, then maybe we should leave it there. And you will explain to us in your application what the challenges are and why we cannot proceed.

10 **ADV SKOSANA SC**: Yes, Madam Chair, from our discussion as evidence leaders, we have a challenge with all the witnesses, and it is different kind of challenges. But we were able to conclude that, at this stage, we are not in a position to call any of those witnesses. We appreciate the predicament and the time constraints.

**CHAIRPERSON**: I beg your pardon. If we are minded to consider this application, or your request now, favourably, to postpone, have you considered the timeframes within which certain steps will be taken by yourself and the other team,  
20 and then yourself in reply, if need be, and the filing of written submissions?

**ADV SKOSANA SC**: Well, Madam Chair, we have not considered it with the Advocate Chauke's team. However, as evidence leaders, we did contemplate that we should have the application heard by this Panel by latest Thursday or

latest Friday this week, after the papers have been filed, including the submissions, if any, legal submissions.

**CHAIRPERSON:** No, I am talking about timeframes. With time period within which application should be launched, if you were to give directions, ordinarily, the parties should have agreed to that, and present to us a consent document saying, you will launch your application on tomorrow afternoon, for argument's sake. They will file their answering affidavit by Wednesday afternoon. You will consider your  
10 reply, if any, by Thursday. Written submissions may be filed simultaneously by the parties, something to that effect, to ripen the matter. That is what I am asking.

**ADV SKOSANA SC:** Well, Madam Chair, we are prepared to do that. That has not been done formally. I think there were informal discussions, and I may be corrected by Advocate Ngcukaitobi. there were some informal discussions around that, around the timetable, when papers can be filed. But we did not, you know, reduce that to writing. We, in any event, also wanted to hear what the Panel's view is on that, and  
20 perhaps to get guidance. Because whatever documents we will draft, we will have to receive the approval of the Panel.

**CHAIRPERSON:** Thank you, Counsel. The Cato Manor witnesses who seem to be giving you challenges, if we were to say, let us leap to the next issue, in relation to which the witnesses are not giving you problems, can we not do that?

Is it possible? The Mdluli monitor?

**ADV SKOSANA SC:** I will answer it from, ...[intervenes]

**CHAIRPERSON:** I think you can confer with your colleagues.

I do not want to take you by surprise. You can confer with your colleagues, if you wish.

**ADV SKOSANA SC:** Yes.

**CHAIRPERSON:** Yes.

**ADV SKOSANA SC:** What I wanted to indicate, Madam Chair, is that also some of the developments with regard, or  
10 the challenges that we have experienced, are things that have arisen of late, as late as last week Friday, and so on. And the Panel will see that on our affidavits. But nonetheless, I can confer further on the question that is now on the table, what I have been asked.

**CHAIRPERSON:** No, no, no, no, you indicated earlier that, as far as the witnesses are concerned, the challenges you have encountered are in relation to the Cato Manor matter. That begs the question, as regards the Mdluli matter. If the Mdluli matter witnesses are available to be called, should that  
20 not be considered?

**ADV SKOSANA SC:** I do not know whether I should start by confer, maybe I should confer with my colleagues here before I answer that question.

**CHAIRPERSON:** I think that is a right thing to do.

**ADV SKOSANA SC:** Ja, thank you.

**CHAIRPERSON:** Counsel, if you need a bit of time to confer with one another, we can adjourn for a few minutes, so that we can talk about this. It is critical. It is critical in the sense that we need to make progress here and if we cannot make progress, at least we have to understand that it is something beyond our control, at least as a Panel. But if the challenges are with the evidence leaders, it will be understood as such. So that is why it is important that you and your team should seriously consider what is possible in relation to calling other  
10 witnesses to make some progress.

We cannot be seen to be, I mean, this matter was postponed for a month, almost a month in December. I do not want to go back there. But so much time has gone. We do not have much time now. And I really wish that all of us must work towards progress. So if it is possible, we should continue. If it is not possible, as you would tell us, you will let us know. That is why I would like you to have much time to consider all possibilities so that we can make progress.

Do you need time to confer and discuss this matter  
20 in relation to the Mdluli matter, or you have finalised your discussion?

**ADV SKOSANA SC:** Sorry. We need time, Madam Chair. We will request a short adjournment just to finalise that aspect and our response to that.

**CHAIRPERSON:** Yes. Before we hear Advocate

Ngcukaitobi, my sister has a question.

**MS RAMAGAGA**: Thank you, Chair. Advocate Skosana, the first reason why you are seeking an adjournment, is for the Panel to afford you the opportunity to bring an application to this Panel, which seeks to address the issue of the potential conflict of interest. Am I correct?

**ADV SKOSANA SC**: Yes, I said so.

**ADV RAMAGAGA**: You said so, and that is the case.

**ADV SKOSANA SC**: Yes.

10 **ADV RAMAGAGA**: Right. Now, whatever the grounds that you may bring to the attention of the Panel, maybe let me withdraw that question and ask this one first. When you make this application, specifically with the intention to bring the issue of conflict of interest to the Panel, what is the ultimate goal? Is the ultimate goal intertwined with the question of funding the legal representatives for Advocate Batohi, or are they divorced from each other? Of importance to me is to just understand as to whether this issue of bringing the application to show us the conflict of interest, is it being  
20 brought with the ultimate view or ultimate intention of addressing the issue of funding Advocate Batohi's personal legal representation, or what is the position?

**ADV SKOSANA SC**: Well, perhaps to say it is, maybe I did not articulate it as I should. The issue that would require an opportunity to address, actually the answer may be yes and

no, because it involves, yes, it might involve the issue of funding, but essentially as to whether the NPA legal team is or will experience that conflict of interest. And it is not to tell the Panel whether or not there is a conflict of interest. The question, the ultimate question, is of course whether Advocate Batohi can receive that legal advice.

**ADV RAMAGAGA:** I am trying to ascertain as to what the first question is meant to address. So what you are saying is that that issue of conflict of interest, that application  
10 concerning the conflict of interest, is made to obtain what information, whether Advocate Hulley may consult or advise Advocate Batohi or not? Is that the aim? And correct me if I am wrong so that we, you know, save time.

**ADV SKOSANA SC:** Well, it is to establish whether there is, in fact, that is why we refer to it as potential conflict of interest, whether there is, in fact, conflict of interest. There may not be, in which event then Advocate Hulley can consider to provide that legal counsel.

**ADV RAMAGAGA:** Okay. I will ask again. Does it have to  
20 do, anything to do with the funding of Advocate Batohi for her personal legal advice or not? Or is it not related at all?

**ADV SKOSANA SC:** Well, it is related to some extent and not related in others.

**ADV RAMAGAGA:** Much as I know you have not as yet put pen to paper, but I think it will help us just to understand as

to whether information that you will be bringing to us as the Panel, when that application is launched, whether that information will be information that has already been shared with the Solicitor General and the Minister when the initial application and appeal were done, or is it information that is totally new?

And let me inform you as to why I am asking this. I would not want us to get involved in a to-ing and fro-ing with the Minister and the State Attorney and so forth. I just want  
10 to understand that. Is it something that is looking to also paving the way in that direction? Or is it something that has already been shared and we are now being brought into a better light of what is already known by the State Attorney, the Department of Justice? Thank you.

**ADV SKOSANA SC:** Well, what I can say is that we, as evidence leaders, are not privy to that information. We do not have that information. Our attorney is Mr Sebelemetsa  
[?], who is a different attorney from the attorney that briefs the NPA legal team. I think that information may well have  
20 been in their possession, but it is not in possession of our attorney, Mr Sebelemetsa. So we do not have information in that regard.

**ADV RAMAGAGA:** Advocate Skosana, that information, I would have thought that during the discussions as teams now, when you make preparation or formulate intentions on what

other avenue to pursue or not to pursue, you have engaged even in the discussion. I think the Chairperson did ask about whether you are privy to the information or not, and you did say that you were not privy to the information. There was a long break in between.

And as you were sitting there as teams, either individually or collectively, certain thoughts came to mind about how to approach this. Did it not occur to you to try and get information, so that we know that when we adjourn here,  
10 we are likely to be facing completely new information from the information that the department does have already, or whether it will be amplified information that has already been presented before the Department of Justice? Did you try to establish as to that case?

Because remember that you argued for some time about this issue, about the interest of Advocate Batohi and so forth, and how the application failed at initial level and up to appeals level. But then you do not know what had been said. Did it not perhaps cross your mind to try and source  
20 that information from even Advocate Sebelemetsa?

**ADV SKOSANA SC:** Well, all I know is that Advocate Sebelemetsa does not have. I tried to check that, and I established that he does not have that information. And the attorney for the NPA legal team is not here and so far, we could not get hold of him. I think one has to also consider

that that information might also be privileged information that cannot just be acquired as easy as that. Information, I guess you are asking me about in relation to what was the appeal to the Minister and what was asked to the Solicitor General.

**ADV RAMAGAGA:** Yes, you do not know for sure whether the information is privileged or not. You say it may be privileged information. You have not established as to whether the information is privileged or not. Am I correct?

**ADV SKOSANA SC:** Yes, yes.

10 **ADV RAMAGAGA:** You have not established.

**ADV SKOSANA SC:** Ja.

**ADV RAMAGAGA:** So it may or it may not be privileged.

**ADV SKOSANA SC:** Yes.

**ADV RAMAGAGA:** Thank you.

**CHAIRPERSON:** As regards the two issues that you raised, the potential conflict of interest, you will seek a specific relief, I suppose, in relation to each one of them. Possible conflict of interest in your application because it is an issue. The second one, challenges as regards the witnesses, you  
20 will seek a specific relief in your notice of motion.

As regards the first, if your information, I am just thinking aloud, if the information you are going to establish is going to raise new facts that were not brought before the Minister or even before the Solicitor General, are we the proper forum to consider whatever relief you will be seeking

before us? If new, totally new information, which ordinarily ought to have been brought to the attention of the Minister but was not, and it emerges now, are we the right forum, given that the decision in relation to the core issue is an executive, or rather entails an executive decision?

So elaborate, Counsel, because ultimately, you will ask us to grant you some form of an order or a direction. But if the information you are going to gather appears to be an information that ought to have been presented to the Minister  
10 when making a decision, are we the right forum to even be given that information to make what decision, if the decision falls within the prerogative of the Executive?

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

**CHAIRPERSON:** Oh, I beg your pardon, I beg your pardon. I will repeat myself very briefly. I beg your pardon, gentlemen. My question is, yes, Counsel, I am trying to think aloud, because you do not want to anticipate an application in respect of which an ineffective relief is going to be sought, whereupon we do not even have the power to grant that kind  
20 of relief. So the long and short of this question is, if the information that is not before you, that you are going to establish, is the information that ought to have been presented to the Solicitor General in the first place, secondly to the Minister on appeal, is found, will we be the right forum to even consider that that information, because the decision

is that of an Executive, the Minister herself?

**ADV SKOSANA SC:** Thank you, Madam Chair. I think the application that we are bringing is essentially to ask for an opportunity for that question to be considered, not for the Panel to consider that information as such, which was brought before the Minister and so on. At this stage, I think the application is to obtain permission from the Panel to adjourn the proceedings until Monday, so that that issue can be resolved. And we think whether the information is already  
10 before the Minister or was not placed before the Minister will appear.

One should remember that also the question of her getting legal counsel may get to a point where she has to obtain it privately, in other words, using her own, from her own pocket, from her own funds. We are saying, as evidence leaders, that opportunity that we are requesting should include that, considering all the questions. And when we return, it will be that she has obtained that legal advisor, whether from a private legal practitioner or from one that is  
20 funded by the State.

**CHAIRPERSON:** No, my question is different. My question is, whatever you are going to establish, Counsel, you do not have information at the moment. But we know one of the issues relate to the potential conflict of interest, as you say, which impacts on the very request that was initially made to

the Solicitor General and the Minister. Am I correct?

**ADV SKOSANA SC:** Way were before the Solicitor and the Minister, yes.

**CHAIRPERSON:** No, no, my point is, and I will repeat myself, the very issue that you have raised, the potential conflict of interest, impacts on the issue relating to Advocate Batohi's request to the Minister, ultimately.

**ADV SKOSANA SC:** Yes. Yes, Madam.

**CHAIRPERSON:** Is that correct?

10 **ADV SKOSANA SC:** It is correct, yes.

**CHAIRPERSON:** It is correct. Now, but the point I was raising with you, if it is correct, and this very information you are going to establish in due course was not brought before the Minister, are we the right forum even to know anything about that information in the first place? Because we do not have such a power which vests in the Minister to decide whether, yes or no, she could be afforded a legal representative.

I am looking at the question of relief, basically, that  
20 you can make an application. But when you make an application based on the facts that you are going to establish, if those facts are new facts and were not brought before the Minister, should you not go back to the Minister and say, here are new facts that we did not present to you which may convince you as you exercise your executive decision to

enable Advocate Batohi to be legally represented at the personal level? Basically, this is what I am saying.

The Panel does not have such a power. Even if you come up with new information, to what extent does that information impact on the ministerial executive decision making?

**ADV SKOSANA SC:** Well, to answer the question, I think the Panel does not need that power. And the Panel is not asked to exercise that authority to decide whether Advocate  
10 Batohi should be funded or not. The Minister has already decided, as I understand it, the Minister has already decided that she already has a legal team which is funded by the State. That is what the Minister has decided. Now, the opportunity that we ask for is for the determination of whether there is a conflict of interest for that legal counsel to be provided by this legal team, the NPA legal team. And it may be that there is no conflict of interest. Then the NPA legal team will complete its task and provide that legal counsel. If  
20 there is a conflict of interest, then the issue will have to be then resolved further, which I have already indicated may require that she now must obtain advice from a private legal firm.

**CHAIRPERSON:** So if I understand you correctly, and correct me if I am wrong, what you want to seek to present to us is submissions or evidence to prove that there is a conflict.

Do I understand you correctly, Counsel?

**ADV SKOSANA SC:** I am not sure if I understand you, Madam Chair, yes.

**CHAIRPERSON:** The application you seek to launch deals in the first place with a potential conflict of interest. Now, if it is established from the facts that you are going to gather, that there is indeed a conflict of interest, a matter which probably was not brought to the attention of the Minister, should the matter not then be taken to the Minister who has  
10 a decision, who has the power to make the decision regarding Advocate Batohi's legal representation?

**ADV SKOSANA SC:** Well, Madam Chair, to decide whether, I am not sure if the Minister is to decide whether there is a conflict of interest or not.

**CHAIRPERSON:** No, no, no, if you present new evidence to her, where in your letter or your memo you say to the Minister: Minister, that which was presented to you previously, following on what information are going to be given, did not encompass this information that shows or reveals a potential  
20 conflict of interest. We are therefore urging you to consider this new information. That then impacts on your earlier decision, when you reflect on the new evidence that proves a potential conflict of interest. You understand what I am saying?

**ADV SKOSANA SC:** Yes.

**CHAIRPERSON:** Therefore, if that can be the case, why is it that it is us who must make a decision on the conflict of interest? Because it is just a factual matter. It is either you establish a conflict, and then you go back to the Minister and the Minister decides on whether to reflect on her earlier decision. I think that should start with the State attorney, Solicitor General. He may be persuaded. Then he can say to the Minister, yes, I think Advocate Batohi deserves a legal team to represent her. The Minister may also agree. My  
10 point is, why should such an application be brought to us?

**ADV SKOSANA SC:** Well, Madam Chair, let me start off by saying that may well be so, that an application may be brought before the Minister or the Solicitor General to say there are additional facts which establish a conflict of interest, and therefore reconsider this application. But before we get to that point, first, we need to establish, or it must be established, that there is, in fact, a conflict of interest.

Now, in our submission, we have not passed that  
20 point. We are asking for an opportunity to establish that. And that can only be established during the period that we are asking an adjournment for, whether there is a conflict of interest. And only after that can we go back to the Minister if that is the decision to be made, to say there are additional facts which establish that there is a conflict of interest in the

team that you have directed must give advice.

**CHAIRPERSON:** I now understand. That is why we went this route of asking your questions, because you started that application, and you are talking about timeframes as to when you are going to launch the application, when they are going to answer, when you are going to reply, when the written submissions are going to be filed. And we are talking in that context of you saying you seek an indulgence for a matter to be postponed so that you can make an application. And that  
10 is why these questions arise, Advocate Skosana. But if you are saying now, it is not an indulgence to apply, but an indulgence to go and ascertain whether there is any information that may prove or disprove a potential conflict of interest with a view to approach the Minister, it is a different matter. Am I right?

**ADV SKOSANA SC:** Yes.

**ADV BALOYI-MERE SC:** But if the intention is to gather information to prove or disprove conflict of interest, why would you need seven days to do that exercise? If I  
20 understand you correctly to say you want the enquiry to pause until Monday next week. And I am asking this question on the background that we are pressed for time and we have had to write a letter to request an extension and give reasons for our request. But then immediately we start, on the very first day, we are talking about pausing for seven days. Is that not

counterproductive?

**ADV SKOSANA SC:** Ja, I understand, Madam Baloyi SC, where you come from. But I think... you know, I said earlier on we will reveal this in more detail. But perhaps in the interest, and I understand the timeframes and the time constraints, we must understand also the changes that are happening within the office of the NDPP. And I think that actually in a matter of a week, I think there will be a new NDPP. One should remember that the decisions to be made  
10 on behalf of the NPA would normally involve the NDPP. I do not know if you are, I hope you all follow with these many acronyms. But the decision has to be made by the NDPP. Now, the new NDPP will come in ...[intervenes]

**CHAIRPERSON:** Which decision are you talking about now?

**ADV SKOSANA SC:** The decisions that may ...[intervenes]

**CHAIRPERSON:** I beg your pardon. You say the decision has to be made by the new NDPP. Which decision?

**ADV SKOSANA SC:** Well, when we speak about the potential conflict of interest, we are speaking about the  
20 potential conflict between the NPA, as an institution, and Advocate Batohi, who is currently the NDPP. That is the, so, and as an NDPP, he also makes decisions on behalf of the NPA. And we all know that in a matter of a few days, there will be a new person in that post. So, I ...[intervenes]

**CHAIRPERSON:** The postponement for a week will enable

the new NDPP, then, to be seized with the matter, basically. Because Advocate Batohi will not be there anymore by beginning of February, which is about next week.

**ADV SKOSANA SC:** Yes. Ja, I think I have said much. The Advocate Batohi cannot be involved at this stage in that decision, which may have a conflict with her personal interest in the Office of the NDPP. And at the same time, she is making decisions as the sitting NDPP on behalf of the NPA. So, it is convoluted. But what we are trying to resolve are all  
10 those issues, and which we are just disclosing those in order to enlighten the Panel on the issues that we have to deal with, and that we are requiring an opportunity to resolve. You know, we are mindful of the time that we have as an enquiry. But at the same time, those are serious issues that actually warrant proper consideration, and may warrant the granting of this postponement. As we say, I am merely elaborating and elucidating without paper at the moment. We will provide proper affidavit in that respect, and also submissions.

**CHAIRPERSON:** It is a long answer to my simple question,  
20 Counsel. I was asking you, the postponement would enable the new NDPP to be seized with the matter. As you said, if you postpone for a week, that is the end of the period of Advocate Batohi. Then she cannot decide. Therefore, the new NDPP then will be seized with whatever decision-making power, including this very issue. Correct?

**ADV SKOSANA SC:** Yes, yes, yes, Madam Chair. Just that I elaborated, but yes, the answer is yes.

**CHAIRPERSON:** In fact, as you have said, and I hope I understood you correctly, we are not adjourning that you apply. If I understood your submissions, you are not going to apply. You are going to consider whether there is any evidence, new evidence, if I may say, concerning the potential conflict of interest that was not brought to the attention of the Minister. Am I getting it right?

10 **ADV SKOSANA SC:** I am not sure if it is correct, Madam Chair.

**CHAIRPERSON:** Yes, you see, Advocate Skosana, all these things in the discussion revolves around the issue of whether Advocate Batohi should be afforded legal representation, is it not?

**ADV SKOSANA SC:** Yes.

**CHAIRPERSON:** So if the Minister could have been given all the information that you are going to establish, maybe which was not before her, it means she must then be  
20 approached and say, reconsider your decision in light of this new information. Am I right in my understanding?

**ADV SKOSANA SC:** Yes, Madam Chair. I think partly, because that decision would be to say, we are bringing this additional information which was not before the Minister to say, now, grant permission that should be funded to employ

another team, other than the NPA legal team. Yet, at the same time, we are saying, we still need to establish whether there is a conflict of interest. Otherwise, if there is not, then the NPA legal team can continue to grant that advice.

**CHAIRPERSON:** That is what I am saying. I just want to ascertain whether you are going to launch an application, an interlocutory application, or whether you need the time, a week, to go and consider all these things that you are raising. And if you find this information, then where to go to?

10 **ADV SKOSANA SC:** Well, Madam Chair, if we are able to secure that time, that opportunity, without bringing the application, the formal application, I think we will be, and subject to what Advocate Ngcukaitobi say, and we will all be relieved from bringing that application and asking the Panel to make a ruling on it. But Madam Chair, you have correctly, I think you have capped it so nicely and correctly, that those are all the issues that, as evidence leaders, have taken into account and which we thought we need to put it on affidavit formally, in order to support this request for adjournment.

20 **CHAIRPERSON:** You see, Counsel, unfortunately, ordinarily, when you seek indulgence, a postponement, you apply. The reason why we ask you questions, is because you have not filed a proper application for a postponement for a week. And we need to understand why you are entitled to be granted that kind of request. Because a postponement is not

there for the taking. You have to explain to us, given the circumstances that we have elaborated on, the timeframes and the time expended already, why is it that you should be given the request that you seek? Because we do not have anything in writing. So we have to ask you questions to determine whether, indeed, we can grant you the indulgence that you are seeking. So we are not just asking questions for the sake of asking. We want to understand where you are going to and what you seek to achieve.

- 10 **ADV SKOSANA SC:** Thank you, Madam Chair. I think I understand, and I have no difficulty in being asked as many questions as possible. I think I have been in that situation before, if not worse in the past. So I think I understand perfectly. I have no difficulty being asked as many questions.
- CHAIRPERSON:** I am tempted to say, Counsel, lastly, before my sister asks, if we do not proceed with this matter, or as we are minded to do, we may grant you the indulgence. But the indulgence will be coming at the instance of the evidence-leading team, which will cause a delay. So the delay will be
- 20 at your door as evidence leaders. Evidence leaders comprised of a team of four Advocates. And we find ourselves where we are today. So I just want to place that on record, that the delay should not be placed at the door of the Panel, because we are all ready to proceed.

And we are even trying to look at other avenues,

whilst the issue relating to Advocate Batohi is being attended to. Can we not even try, as evidence leaders, to look at the other possibilities, or proceeding with other witnesses, the names of whom you have placed on the record? But we are engaging with one another, which something that is actually saying to us, to me at least, we are delaying with this process. I do not sit very comfortably with that kind of a position, because time is not on our side.

I will repeat it again and again. We ought to have  
10 done better as an enquiry, as evidence-leading team, especially because you are four Advocates. You have consulted with witnesses, and we are trying to really help you. Let us look at this avenue, so let us consider this. So you must also be seen to be helping us to make progress, and not to delay the matter any further.

**ADV RAMAGAGA:** Thank you. Advocate Skosana, we engage you out of necessity. We fully appreciate that sell time.

**ADV SKOSANA SC:** I understand, I understand, Madam.

20 **ADV RAMAGAGA:** Yes, ja. Right, maybe let me just take off from where the Chairperson has left the question, then I will go to the next one. I would have preferred to do it the other way around, but that is fine. Now, my understanding of your statement when you are asking for a postponement, you say, is that what you are seeking to obtain is a determination

whether there is a conflict of interest or not. Now, thus far it would appear that it would be two parties involved. It would be the evidence leader advancing whatever argument that has been brought to its attention, and then it would be Advocate Chauke's team also advancing whatever argument it may be.

Now, what I first want to know is which side of this question are you? Is it about obtaining a determination that there is in fact conflict, and the other one is opposing that  
10 and wanting the Panel to find that there is no conflict? Can you just indicate to this panel as to which side? Are you the applicant or the evidence leader's team is the team that seeks to get a confirmation that indeed there is a conflict of interest, or is it a team that seeks to obtain a finding that says there is no conflict?

**ADV SKOSANA SC:** Well, the way I understand it is that we are on neither side. Well, if there is a conflict, there is a conflict, and the conflict will be between the NPA and Advocate Batohi, and if there is, then that means the legal  
20 team cannot advise her.

**ADV RAMAGAGA:** Thank you. You know, this question, it is a question that I will say is just been changing colours and sizes and what have you, but it is the same question about the relief sort. Who is seeking which determination? And when you say, well, we are on neither side, what are you

doing? Are you going to file, in the event that you come to a conclusion that there has to be an application, are you going to file an affidavit that says we shall abide by the decision, we are not seeking any determination, as evidence leaders now?

Because I think I got it wrong. As I was listening to you when you said, what we seek is to obtain is a determination whether there is a conflict of interest or not. Now, from that statement, what came to my mind is that here  
10 it means there will be no less than two parties. One contesting for a determination that there is a conflict and the other contesting against the determination. But I may have been presumptuous and assumed that that would be the case. And it would help us, you as the evidence leader, to just clarify that issue as to, you have made it clear that you are neither for nor against. So what role will you be playing as the legal representative leading the evidence leader's team in this respect?

**ADV SKOSANA SC:** I think, Madam Ramagaga, you are  
20 correct that we are not on either side. We, all we are saying, we are asking that an opportunity be granted for that to happen. The legal team, the NPA legal team, will establish themselves whether there is a conflict of interest. If there is, then they cannot provide the advice. If there is not, then they will provide the advice and the advice, we do not know what

advice they will give. It will either, do not go back, do not, or it will say, and then we can then, from there, Advocate Batohi, but we are certain now she is not going to return to continue her testimony. And in that event, what will the evidence leaders do?

**ADV RAMAGAGA:** Is there a role that you foresee playing? And when I say you, I am talking about you as a collective. Is there a role that you foresee yourselves playing in this issue of a determination whether there is a conflict or not?

10 And if there is a role that you see yourselves playing, what is that role? Thank you.

**ADV SKOSANA SC:** Ja, at this stage, I do not think we really have a role there. The issue is between the NPA and Advocate Batohi as the current NDPP. So all we are waiting for will be an answer. Yes, there is a conflict, yes, or there is not. And we think with all the information we have, the reasonable time will be up to Monday. And I have indicated that also there would have been a change of hands in the office.

20 **ADV RAMAGAGA:** Thank you. Let me then get off that subject. It has been canvassed, I cannot see adequately. There may be a need to canvas it further. The question that now I want to go back to is the question of a list of witnesses. Remember, there are two grounds for the application. It is the witnesses' challenges and it is the potential conflict.

Now, I am addressing the issue of the list of witnesses.

**ADV SKOSANA SC:** Yes, sorry for interrupting you, Madam. I just, that question, I think that is the one where you were saying you are going to grant me an opportunity to confer with my team. Unless it is not related to that. I just wanted to...

**ADV RAMAGAGA:** Remember that the, I think it was actually the Chair who then indicated that, you know, you may get it, you may have to obtain instructions. And let me then be  
10 disciplined and restrain myself from asking you the question that I wanted to ask. I stop here for now. Thank you.

**ADV BALOYI-MERE SC:** I am going to make a follow up on what my sister have said, have asked you. You said you do not see, for now, you do not see yourself, I mean, the evidence leaders playing a role in the issue of conflict of interest. This is between the NPA and Advocate Batohi. Now, are you requesting this period of until Monday on behalf of the NPA and Advocate Batohi? Or you made your own judgment to say we will need this period? Or they will need  
20 this period to deal with the issue?

**ADV SKOSANA SC:** Well, as evidence leaders, it has been repeatedly said that our duty is to bring evidence before this enquiry. And we have been doing that, Advocate Batohi has been called to the witness by the evidence leaders and in the process, there were these challenges or difficulties. So we

are trying to merely resolve that. And we thought in our own right as evidence leaders, we could bring that application in order to ensure that things proceed in a proper manner and she has given that opportunity and we think a reasonable time would be up to Monday and in view of what I have mentioned in what is happening at the moment.

**ADV BALOYI-MERE SC:** So as a follow up, it is the evidence leaders who determined this period, and while keeping in mind that you are not going to play any role in the resolution  
10 of the whole issue. And you are right. As evidence leaders, you are the ones who are driving this process, who must see to it that it comes to an end. And after having raised issues about timeframes and everything, and after you having conceded that you are not going to take part or to play a role in this issue, do you still insist that you need seven days to resolve the issue of conflict that is between Advocate Batohi and the NPA?

And I will add further, because you now brought in the issue that next week, a new Head of Office will be taking  
20 over. Now, we will be breaking until Monday. Come Monday, a new Head of Office is taking over. And I am wondering if the new Head of Office would have considered everything and made themselves ofay with this whole enquiry and its issues by Monday, or for the Head of Office to take a decision whether there is further funding for Advocate Batohi or

Advocate Batohi must get her own private legal funding.

It seems like we are trying to kick the can down the line. I do not see the end of this, because come Monday, there will be another issue. There is a new Head of Office who needs to apply their mind in order to take a decision. I do not expect a person to jump into the office on Monday and decide, okay, no, no, no, we are not funding, or no, we are funding. They will have to weigh the options and to consider that there is an NPA team, and where is the conflict, and what  
10 is happening, what has been happening during the initial consultation stages, and all those and also maybe want to go through the whole record to acclimatise themselves with what is happening.

So is this ever going to come to an end? And also, what informed you to request for seven days? I do not even want to imagine what will happen beyond the seven days come the new Head of Office next week. Because Advocate Batohi started the process, and rightfully so. She was empowered. She is empowered, actually, not in the past  
20 tense, she is still empowered by statute to deal with this process. So why should it be that we want to postpone, we want to pause until a new Head of Office comes in, and then deal with the issues thereafter, when we have a process that has started, lawfully so, and legally so? I do not want to believe that we are trying to kick the can down the line, down

the road. Thank you.

**ADV SKOSANA SC:** Well, certainly not from our side as evidence leaders, we are not trying to kick the can down the road. One must consider that when you say there is a conflict between the NPA and Advocate Batohi, who do you ask that question? On behalf of the NPA, you have Advocate Batohi, because there has to be a person, NPA is an institution. Now, obviously, you cannot ask that question to Advocate Batohi to give you an answer on behalf of the NPA. And in that

10 context, I will say it is important, and perhaps it may help us to resolve the issue if the new person takes over the office and makes the decision on behalf of the NPA. And may I add also that we have been doing some of the things and some of the submissions also having discussed with the NPA legal team, who at this stage, of course, they have no audience in this enquiry, I do not know if the Panel still intends to grant them an opportunity to address them, but we also had some discussion with the NPA legal team.

**ADV BALOYI-MERE SC:** As a follow-up, Chair, Advocate

20 Skosana, should not right from the beginning, your submission, should it not have said we want to pause and wait until the new Head of Office comes, in in order for the Head of Office to take a decision? Because we have heard that you want to bring an application to this Panel to make a determination. The next thing, if there is new evidence, it

needs to go to the Minister. And then the third thing, you are not going to play any role, you do not see yourself playing a role. But all I am saying is it seems like the crux of this request for a postponement is to allow the new Head of Office to come in and deal with this issue. Am I correct? Correct me if I am wrong.

**ADV SKOSANA SC:** Well, it is an important factor, but it is not the only factor we have, and we intended to put that on paper. There are several reasons which I have divided into  
10 two categories. But it is not the only point. It is an important point.

**CHAIRPERSON:** The answers are giving rise to further questions, Advocate Skosana. I thought that a process has started in respect of which Advocate Batohi approached the Solicitor General and then the Minister. I do not see why the new NDPP comes into the picture. If the information to be established as regards the potential conflict of interest is found, the new NDPP does not come into the picture. He does not have powers to make any decision whether Advocate  
20 Batohi should be given money or not. The matter goes back the same route where it started, back to the Solicitor General with the new evidence, and then the Minister on appeal.

So I do not think we should complicate issues here and bring a new NDPP into the picture because that is going to create whole lot of problems for us. And I am just saying

there is a matter of guidance. My understanding is that this decision taken by the Solicitor General and then subsequently the Minister, which does not favour Advocate Batohi, may have to be revisited because of this alleged potential conflict of interest. And if indeed, as you receive the information, you find that there is a conflict of interest, then you present it to the Minister, first to the Solicitor General, who may just resolve this issue and say yes, upon consideration of this new issue, we decide otherwise.

10            If they do not, at a State Attorney, you then approach the Minister with this new information. I do not see how the new NDPP comes into the picture. Where do we start? Where do we end with this whole thing? So I am raising it so that we do not lose sight of the fact that a process has started and we may have to go back to the same process without necessarily involving the new NDPP, because the decision is that of the Solicitor General and the Minister, as I understand it. So I thought that you need this postponement to consider that. You said that you are not making an application. So if  
20 you need time to go and make that determination, should two days not be enough for you to ascertain that, the Solicitor General is here?

          Then you can then decide what procedural steps as regard the decision you seek finally are going to be. Do we really need a whole week to do that? And that is the point

my sister was raising. Why do we need a week? Because if you had applied, we would be having facts in front of us. That is why we are asking this question. Why do you need a week? A full week for that matter?

**ADV SKOSANA SC:** Well, Madam Chair, it is because of the reasons and the other grounds that we, you know, put forward and we seek to put forward in that application. We have mentioned, and I said, it is two categories. It is about the issue of the conflict or potential conflict of interest. It is also  
10 the issue of witnesses, which we also seek an opportunity to explain by way of affidavit. And the question that has been raised about the other set of witnesses relating to the Mdluli case, I would need an opportunity there to confer before I respond to that.

**CHAIRPERSON:** Yes, the question of witnesses, we had indicated that we will give you time to confer with your colleagues because if we are agreed that the process to follow, if you are amended to grant you the seven days or maybe even less than seven days, is to make a determination  
20 on evidence as regard to potential conflict of interest. Then the other issue as regard to witnesses, we said, if it is possible then to proceed with the Mdluli matter, then consult with or confer with your colleagues and determine whether the witnesses who have been lined up can be called. Then we can proceed, whilst we are dealing with the Cato Manor

issue, the potential conflict, the witnesses that are giving you challenges. So I suppose we go back where we were that we will afford you an opportunity to then confer with your colleagues to discuss that second matter. Can we not proceed with the Mdluli matter? Those witnesses would have been lined up. You will have a time, I beg your pardon, I am talking.

**ADV SKOSANA SC:** So I beg your pardon, Madam Chair. Just a paper that I wanted to understand.

10 **CHAIRPERSON:** You will have regard to your paper. I am saying, I am just trying to line up the process. If you are agreed, then we can pause and then you properly consult with your colleagues as regard the second issue. And so far as the Mdluli matter is concerned, maybe we can start whilst you are dealing with the other issues.

**ADV SKOSANA SC:** We will respond to that. And Madam Chair, while you are on it, the note I have received is a request that Advocate Batohi be excused for the day. That is what disturbed me a few minutes ago.

20 **ADV RAMAGAGA:** Thank you, Chair.

**CHAIRPERSON:** Before you proceed, Advocate Batohi has just asked that she be excused. I think we can allow that. We are engaging with one another here, so Advocate Batohi can be excused. My sister raises a point. Someone will have to tell her, if we decide that we will postpone this matter for

a week or for less than a week, someone has to give her a date. I suppose yourself as the evidence leader, you brought her here. I think it would be proper to hear from you. So I do not foresee any difficulties with you conveying to Advocate Batohi about our final decision in relation to the postponement.

**ADV SKOSANA SC:** Yes, we will do so, Madam Chair.

**CHAIRPERSON:** That event, Advocate Batohi, we have received your request. You are excused for now. Thank you.

10 **ADV RAMAGAGA:** Advocate Skosana, I am asking for a question, I am asking you a question which is capable of being asked in or answered in clear and unequivocal terms. And if it means you get information from your instructing attorney, you can do so. And understand one thing. I will not try to even tempt you or provoke you to come up with the information that was placed before the Minister. I am not looking for the substance of the information when the application was done.

20 All I am asking for is for you, if by now you still do not know, for you to find out from your instructing attorney as to whether the question of potential conflict of interest ever served before the, what? SG, I want to call it in full. That SG, what do you call? Solicitor General, thank you, senior citizens on the bench, Solicitor General or even the Minister. Just to establish that from him as your attorney of record. So

you see, you understand when I say it is simple and capable of a clear and unequivocal answer.

Because it is either is going to be yes, it had been placed or no, it was not placed. The issue of potential conflict of interest when Advocate Batohi applied for funding from the Department.

**ADV SKOSANA SC:** Yes, I will ascertain that.

**CHAIRPERSON:** Thank you, Advocates. Are you done?

**ADV RAMAGAGA:** Yes, I am done, thank you, Chair.

10 **CHAIRPERSON:** Thank you. Thank you, Advocate Skosana. Advocate Ngcukaitobi.

**MR NGCUKAITOBI SC:** Madam Chair, we will oppose the application for postponement, but we do not think that we can oppose the fact that they want to apply. So we think they should be given a chance to apply, but we will oppose it on the merits. There is a lot to be said, but I think it should wait until we see the content of the application. If they want to bring the application for consideration this week, we would propose that they try and launch it by tomorrow at 5.00pm  
20 and give us a chance to answer it by Wednesday at 5.00pm. It can be set down for argument on Thursday at 09.00, and they can file a reply at the same time as the matter is argued. And that will give the Panel the Friday to make a determination on whether the postponement is granted or not.

Now, arguably, Madam Chair, it can be asked, well,

what is the point of this exercise, because they only want an adjournment until Monday? But we think it is nevertheless important to put it on oath what the problem is, why the matter cannot proceed, bearing in mind the public interest that underpins these proceedings. It is the first time we have heard that there are problems with witnesses. But I also do not want to speak about that because my learned friend has not explained the nature of those problems and maybe he is waiting until someone qualified goes under oath on those.

10 But we will see what they say in those.

The question about Advocate Batohi, I think I would just want to say maybe two things. One is that we must not forget that she has walked out of the proceedings without the consent of the Panel. The Panel should not create the impression that you can reward the delinquent behaviour of a witness who walks out and then makes an application while outside. She walked out on the 15th of December. Today, she was present. But even today, she elected not to give evidence. In both of those instances, those were unilateral

20 decisions which did not have the permission of the Panel.

So although we are debating the question of her access to legal representation, the context must not be forgotten that we are dealing with a witness who has taken the law into her own hands and disregarded the authority of the Panel. That is the first contextual matter that is really

critical. The second issue around the unilateral action of Advocate Batohi is the impact that it has on my client. My client is on suspension. He believes that his suspension is wrongful because he believes that the charges are without any foundation. Whether he is right or not, he is entitled to a speedy determination of that question.

The election of Advocate Batohi to unilaterally abscond from the proceedings has already taken a month and a week from these proceedings. So that is why we will be  
10 opposing the request for the adjournment. If our learned friends are ready on Monday to call the next witness, we would of course be pleased and we would be ready to cross-examine them as soon as possible. But I understand that that question also depends on the challenges that they will be outlining on paper and that is why it is premature to make commentary on that issue.

So in summary, Madam Chair, we are not standing on the way. We will play along and cooperate. And we have got a proposal around the timetable. Thank you.

20 **CHAIRPERSON:** Yes, thank you, Advocate Ngcukaitobi. But you have to remember that Advocates Skosana seem to have changed tack. Initially, he sought an adjournment so that they could apply a substantive application. Subsequently, he says what they need is time to go and consult and make a determination whether there is a conflict, meaning he is doing

away with an application. And once they find that there is a conflict, then they will take the next step. That is why the engagement as to then who is the right decision-maker if they find that there is a conflict.

What is the impact of that finding or determination as they will find when they assess their facts or evidence? And I said to him, this is not a forum to make a decision eventually. It is an executive decision. And I would like to hear from you. The process kick-started with the Solicitor  
10 General. It ended with the Minister on appeal. Now, if they have to start the process *de novo* on the basis that new evidence has surfaced, which impacts on that very decision, they must go the same route. And the point we make now is the same route, does that determination, establishing those facts, require a week?

We, at the moment, tentatively, we think a week is too long. They are not bringing an application. If my understanding is correct. Because if they bring an application, the question is what relief? And I will be very  
20 much interested on the relief they seek from us. If we do not have the power to decide on whether Advocate Batohi should be given funding or a separate legal representative or not, it is an executive decision, not the decision of the Panel. That is why they have to go back the same route. But do they need a week to do that? That is the question.

**MR NGCUKAITOBI SC:** Madam Chair, the answer is no. They do not need a week to do that. They need a day. There are substantive answers to it. Advocate Batohi is not entitled to state funding. State funding is discretionary. She has no right to state funding. The panel has no power to order the Minister to give Advocate Batohi her own funding. Advocate Batohi is also not entitled to consult with an Advocate in the middle of her cross-examination, that is in violation of the rules of the Bar. So the relief that she wants is against the  
10 law of this country. But it is premature to engage in that argument until we see the application that will be brought.

The section ...[intervenes]

**CHAIRPERSON:** No application, you will not see any application?

**MR NGCUKAITOBI SC:** Unless I misunderstood my learned friend, I thought they will still bring an application because he says it is two pronged. The first prong is the conflict issue. The second prong is the witness readiness issue. So an application is coming, as I understand. But insofar as the  
20 first prong to the issue, she has absolutely no right to any of the things she is asking for. Now, you cannot ask a postponement of an enquiry in order to achieve things you are not entitled to by law.

So, but they still want an adjournment so that they can work through the difficulties they are experiencing with

witnesses, something I sympathise with until I see what exactly the challenges are. But at the moment, I do not know, and maybe my learned friend also does not know, and we will see what they say. So it is only in that context that I say a timetable is still indicated because we may have to deal with the problem, that if you were to say to them now, Madam Chair, it has got to pass to call your next witness. They will not be able to call anyone.

And so that is why they want a postponement in order  
10 to sort out that problem, which I understand, and that is the timetable I was really addressing myself towards. If he does not want to bring an application in relation to the first issue, that is fine, but I understand him to still persist with it if I am fair to his submission.

**CHAIRPERSON:** Yes, thank you. And in fairness to the evidence-leading team, we have given them leeway to confer as regard the issue of witnesses, which would ordinarily have necessitated that application, as you say. So we will have to  
20 await their conference, we will adjourn and enable them to talk, to establish whether we can start with any of the witnesses in relation to the Mdluli matter, at least so that we do not waste time, whilst the issue regarding the potential conflict of interest is being considered by them without bringing an application.

And of course, that issue, if it is so well established,

you then land on the desk of the Solicitor General and then the Minister. It has got nothing to do with this enquiry. And if the Minister is persuaded, then she will decide, as persuaded. Or if the Solicitor General decide favourably, he will decide. These are public funds, we do not get involved there. If the Minister and the Solicitor General has money to engage further counsel, further set of Advocate because of the alleged conflict of interest, that is their decision.

But what bears heavily on us is the delay. We should  
10 be able to proceed, at least with some of the witnesses. Do you agree?

**MR NGCUKAITOBI SC:** We agree entirely. There is something to be said about the delay. It is important to get moving with the enquiry. Advocate Chauke is also entitled to know the outcome. But this is a case also of immense public importance. I do not know of any enquiry like this where the question of a prosecutor not prosecuting despite the evidence and prosecuting without evidence, has ever been tested in this country and the accusation is made by a person no less  
20 than the NDPP and it is made against a DPP.

So this is a matter of immense importance and the facts that have been uncovered so far are also troubling facts. So the public is also entitled to an outcome. I always think, Madam Chair, since the evidence in this case of the mother of Kwasi Ndlovu, she is entitled to know what is the

truth about the killing of her son. And the delays are not helping her to get resolution to what happened to her son.

**CHAIRPERSON:** Without elaborating much on the issue of public interest, it is also a matter of legality when there is no finality to issues of such national importance. Put aside the issues of budget. A lot of money is expended on this enquiry and it has to be brought to an end as soon as possible. So there is just so much at stake. It cannot just be issues of postponing for the sake of postponing. That is why we are  
10 engaging with counsel, just understand why is it that this matter has to be postponed further?

It was postponed last year. We lost more than a month. Now we are going to lose a week. That is why we are engaging with counsel to understand the basis for postponing for a week. If we can indulge them, because I think in fairness to them, they need to confer with the Solicitor General, Advocate, Nthathi Sebelemetsa? I have  
seen your correspondence. They must consult with you, sir. But a week is too much. We need to finalise this matter and  
20 at least make some progress.

So I think, Advocate Ngcukaitobi, we will take an adjournment, unless my sisters would like to ask something. We will adjourn for how long do we need, Advocate Skosana? What do you, 15 minutes, 15 minutes or so. And you will let us know once you have discussed. You know what our

position is. I think we have repeated ourselves again and again. And please, when you come back to us, assist us because we do not see ourselves going home to wait for next Monday. We have done an application just for you to go and talk.

So, Advocate Ngcukaitobi, thank you. I think in fairness, we will, after my sister has asked, and if there is any further question from my sister on the left, we will then adjourn for 15 minutes to enable Advocate Skosana and team  
10 to talk and when you are ready, we will come back. You will then have to indicate whether, in the context of the issues of Mdluli matter, whether we can start either on Wednesday to notify the witness who will come and we continue. So do let us know.

**ADV BALOYI-MERE SC**: I just wanted to ask you to consider this. Remember, we adjourned on the 15th of December. And on the day of the adjournment, we knew that Advocate Batohi is going to request her own personal representation. So that is one thing that you need to consider and also consider when  
20 did the Minister take the final decision and what happened thereafter. And also the fact that you had a framework, you had an inclination of the witnesses that you are going to call. And I do not want to believe that they all dropped you on Friday, this past Friday.

So while you are conferring, please try to give us as

much information as you can, so that we understand what happened. I do not think they had a meeting on Friday and decided, oh, the enquiry is sitting on Monday, we are all not going. So please take us along on this a month and a week that we have been waiting and while time is ticking, what happened in the process and what steps did you take to try and mitigate, to try and assist this enquiry to be finalised within the set timeframes. Thank you.

**CHAIRPERSON:** Yes, Advocate Skosana, I see you are  
10 pressing, yes.

**ADV SKOSANA SC:** No, I just wanted to confirm that we will do our best to bring that information.

**CHAIRPERSON:** Thank you, sir. Counsel, we will take an adjournment for 15 minutes until quarter past, is it? Until three o'clock. You will send our researcher to call us. Thank you.

**ENQUIRY ADJOURNS**

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**ENQUIRY RESUMES**

20 **CHAIRPERSON:** Good afternoon everyone, good afternoon Counsel. Advocate Skosana.

**ADV SKOSANA SC:** Thank you, Madam Chair, and the panel for giving us an opportunity to confer. Madam Chair, before addressing the issue, and I believe I am going to be short on the issue of the witnesses, it has been indicated to me that

Advocate Hulley SC would like to address the panel as well, on the, particularly on the issue of the conflict of interest, insofar as the resolution of that question may require up to a week, up to Monday next week. I will leave that to the panel, that issue.

But on the question of witnesses, Madam Chair, the answer is simply that as evidence leaders we had a plan, and firstly the plan was that we were going to deal with the issue of the Cato Manor and the witnesses and on that basis, I personally requested to be excused from this enquiry, to go and consult with some of those witnesses. And I consulted with one of them. One must remember that these witnesses are high-ranking officials, advocates, most of them. One of them I consulted for no less than 12 hours, and thereafter, that was now before the adjournment on the 15<sup>th</sup> of December.

**CHAIRPERSON:** Sorry, Counsel, the witness you consulted with, was it in relation to Cato Manor or another matter?

**ADV SKOSANA SC:** The Cato Manor, Madam Chair, yes. And our plan was that we would not like to deal with witnesses haphazardly, you know, call the witnesses in relation to Cato Manor, and then the next in relation to the Mdluli case. But then I consulted with that first witness, and thereafter, on the basis of what I had been told, prepared a statement, which was not a short statement, of at least 20 pages, and provided

to the witness, who then informed me that it is going through the statement, and we are now in the thick of the festive season.

And later on, I also consulted another witness, who had been allocated to me to deal with that witness, second witness, who we could not physically meet over the festive season, but I held a consultation over certain aspects with him, with the understanding that we will continue with the consultation in the beginning of 2026.

10 Now, the first witness that I consulted with, after a while, I think it was about over two weeks, returned to me to say he is not happy with the statement, and she requires an opportunity to prepare her own statement. That being the case ...[intervenes].

**CHAIRPERSON**: She has, she needed an opportunity to?

**ADV SKOSANA SC**: To prepare a statement of her own.

**CHAIRPERSON**: Her own statement.

**ADV SKOSANA SC**: Of her own.

**CHAIRPERSON**: Her own statement.

20 **ADV SKOSANA SC**: Yes, and provided to me to be able to settle this, and then we could finalize our consultation. Also, one must remember that we needed to provide statements to the team of Advocate Chauke.

**CHAIRPERSON**: And these witnesses, as you said, are high-profile witnesses?

**ADV SKOSANA SC:** Ja, witnesses, ja, ja, they are advocates in the NPP's office.

**CHAIRPERSON:** Yes.

**ADV SKOSANA SC:** Yes.

**CHAIRPERSON:** So she is an advocate, she could prepare her own statement.

**ADV SKOSANA SC:** She could prepare her own statement, and which days passed, and I made follow-ups as much as I could, where is your statement, it is not coming through, it is  
10 not coming forth. That in, and I am giving just a broad overview of what happened. That was now up to last week. It is only on Thursday, to our greatest surprise, that the witness informed me that she is not prepared anymore to testify and she gave us the reasons for doing so. She gave us a statement, quite a long statement, for us to go through, a report, some report that she had previously prepared for the office of the NDPP.

Now, that was now Thursday, last week. And on Friday, I also received a WhatsApp message from the second  
20 witness, who informed me again that because of his commitments, because of his commitments, or the commitments that he has made this year in his life, you know, the studies, and he counted a number of things, he is no longer prepared to testify in this enquiry, and which we conveyed, I conveyed to the team.

So, in essence, our plan, and these two witnesses, I must mention that, in terms of our estimation, the first witness would have taken, our estimation, about 8 to 10 days. The second one, 6 to 7 days. And we had contemplated that in the event Advocate Batohi does not return, we would be able to cover that period. And the rest of the colleagues, during their testimony, the testimony of these witnesses, they would be going out, they would be excused like, just like it happened to me, to go out and consult with these other witnesses, so  
10 that the proceedings are not interrupted, we can proceed with the case.

I also want to mention that Advocate Mohlamonyane SC, on the other hand, was also consulting with a different witness, who also would, according to our estimation, would take about 10 days to 15 days, that is our estimation of the testimony, and received a message from his attorneys that the witness will not be able to testify ...[intervenes].

**CHAIRPERSON:** His attorneys, are you referring to Advocate Mohlamonyane?

20 **ADV SKOSANA SC:** Sorry ...[intervenes].

**CHAIRPERSON:** His attorneys?

**ADV SKOSANA SC:** Sorry, the attendees of the witness, who has separate attorneys. So, we were informed that they need to consult with this witness, prepare the witness, and in what they are doing, the witness will only be available to

testify towards the end of February, February 2026, in this enquiry, because they want to make sure that they secure the rights of their client who ...[intervenes].

**CHAIRPERSON:** If I may ask, is that Major General Booyesen, because I saw a letter from an attorney, which expressed sentiments to that effect. Is that the attorney, attorney Koen? Is that the attorney?

**ADV SKOSANA SC:** Madam Chair, you are right on the point, yes.

10 **CHAIRPERSON:** Well, that takes us to the third witness. You have spoken about two witnesses. This one is the third witness.

**ADV SKOSANA SC:** The third witness, ja. I am informed that the witnesses, and that would take about two more, well, I think three, in the Cato Manor one, who, my colleagues, we allocated each other, one another, they had difficulty getting hold of the witnesses in the first place during the festive season, some of whom were not prepared to meet them during the festive season.

20 **CHAIRPERSON:** Are you speaking for or on behalf of Advocate Mtsweni, for instance? I remember at one stage last year, he asked that he be excused to go and consult. Are you speaking on his behalf as regards, when you say my other colleagues?

**ADV SKOSANA SC:** I am speaking on, ja, on behalf of

Advocate Mtsweni and Advocate, what is his surname ...[indistinct]. Sorry, Madam Chair, the, ja, I am used to the first name.

**CHAIRPERSON:** Let us first hear what the position is with regard to Advocate Mtsweni, because I remember he had to be excused last year to go and consult with the witness, and what has happened with regard to that consultation? I just want to establish whether the evidence-leading team has prepared witnesses for us to proceed. And if there are  
10 challenges, precisely what are those challenges?

**ADV SKOSANA SC:** Yes. Yes, Madam Chair, maybe to also add or to clarify is that as far as the witnesses relating to the Mdluli case, we must be honest that we had not consulted, and the plan of the evidence leaders was that that would take place once we see towards the end of the case relating to the Cato Manor. And we would like to also emphasize that what has really disturbed us and put our plan off track is what happened last week, because, with the two witnesses, because had that not happened, we are sure that we would  
20 be able to proceed even if in the light of this postponement that we are asking for with those two witnesses, and they would take long, time long enough for the other issues to be resolved that we are dealing with regarding Advocate Batohi.

**CHAIRPERSON:** But let us get to the specifics. How many witnesses did you list in the list were to testify in relation to

the Cato Manor matter, because you have spoken to two witnesses who collapsed that you had consulted with, and the third witness who is supposedly collapsing is Advocate Booyesen. We have seen the correspondence.

**ADV SKOSANA SC:** Yes.

**CHAIRPERSON:** There are other witnesses in your list as regards the Cato Manor matter. What is the position in relation to those witnesses? You mentioned that your colleagues have not been able to consult. In relation to which  
10 witnesses were they not able to consult? Pardon. Yes, sir. I am sorry. In relation to which witnesses have your colleagues not been able to consult?

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

**CHAIRPERSON:** In relation to the Cato Manor matter.

**ADV SKOSANA SC:** The Cato Manor matter, because we had resolved and planned that we would deal with those witnesses and be able to conclude that and the consultation in relation to the Mdluli case would take place when we see that we have covered the Cato Manor and towards the end of  
20 it of course, we would ask for an excuse of some of the colleagues to go and consult so that there is no interruption. But with ...[intervenes].

**CHAIRPERSON:** How many witnesses were allocated to each one of you?

**ADV SKOSANA SC:** I personally had at least three. Ja, but

I must indicate that for this period, I was focusing on the witnesses that I was going to call.

**CHAIRPERSON:** So you consulted only with two witnesses who have collapsed.

**ADV SKOSANA SC:** Who have collapsed, yes.

**CHAIRPERSON:** The third one?

**ADV SKOSANA SC:** As of last week. The third one I had not consulted with. I had not even had an opportunity to do so because my focus was on the two witnesses. And one  
10 would appreciate that the issues and information on this matter is quite involved and I, my focus was on them. I have not yet consulted with the third witness.

**CHAIRPERSON:** Advocate Mtsweni, how many witnesses?

**ADV MTSWENI:** Thank you, Madam Chair. Chair, according to the record, to the allocation, it was two witnesses.

**CHAIRPERSON:** And what has happened with your roll?

**ADV MTSWENI:** No, in fact, it is three, Madam Chair. I apologize. It is three.

**CHAIRPERSON:** [Indistinct]... [microphone off]

20 **ADV MTSWENI:** Yes.

**CHAIRPERSON:** How many have you consulted with?

**ADV MTSWENI:** Chair, I have not been, I am going to be honest, I have not consulted with either of them because the idea was that we would, once we resume, the idea was that we would have been excused to consult with them so that we

can prepare the statements. Their evidence is not long, so I anticipated that within a week or two.

**CHAIRPERSON:** Please speak to the microphone.

**ADV MTSWENI:** I had not consulted with either of them at this stage because the idea was that we were still familiarizing ourselves because, like for example, there is an officer here whose evidence is interlinked with both the Cato Manor and the Mdluli matter. And due to the voluminous nature of the papers, one had to start familiarizing  
10 themselves with, myself with the Cato Manor, then use the festive season to familiarize myself with the Mdluli matter. Then the idea was once the hearing resumes, I would then ask to be excused so that I can go and consult with them, prepare the statements, and the anticipation was that it would not have taken me more than two weeks to finalize their statements. So, hence, I had not consulted with them. But the idea was that I was not going to sit here throughout the evidence of Ms Batohi or these other witnesses.

**CHAIRPERSON:** Last year, you asked to be excused to  
20 consult with some witness, if my recollection is correct.

**ADV MTSWENI:** Yes, yes. At that stage, the idea was between Advocate Skosana and I was that we would share the two witnesses, Advocate Noko and Mlodjo. But because the chair refused that I should be excused, then, hence, Advocates Kosana had to also consult with Advocate Noko

and Advocate Mlotshwa. But because Chair refused that I should be excused, then hence Advocate Skosana had to also consult with Advocate Noko and Advocate Mlotshwa. But the idea was that we were going to share the two witnesses together.

**CHAIRPERSON:** If my understanding is correct, on the division of labour, not much has been achieved by the evidence-leading team. And I am saying this with the greatest of respect, but look, we are now on the fourth month, 10 or if I may say, the third month or the second month, and we are still talking in terms of we have, you have not consulted with witnesses.

**ADV MTSWENI:** Chair, unfortunately, but what one cannot lose sight of the fact is the stage at which we came into the matter.

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

**ADV MTSWENI:** I am saying inasmuch as that is correct, sight cannot, should not be lost of the stage at which we came into the matter. We came into the matter when the hearing 20 had resumed, and we were expected to, amongst others, familiarize ourselves with the papers, also be here to assist the evidence leader during the reading of the evidence. So the only time that we had so that we can focus and delve into the papers was over the festive season, because the last two, the weeks that, the two weeks that were, we came into the

matter, we had to be here, and at the same time, use the after-hours to read through the papers.

**CHAIRPERSON:** Of the three witnesses, who could be ready to start in due course? Have you started? Maybe it is a fair question. Have you started?

**MR MTSWENI:** Chair, not yet, but I can start immediately. And depending on the availability, I can try and be ready within a week.

**CHAIRPERSON:** I am not trying to dictate how you should  
10 run your side of the matter.

**MR MTSWENI:** I appreciate that, Chair, but ...[intervenes].

**CHAIRPERSON:** But ...[intervenes].

**ADV MTSWENI:** At the end of the day, also I have a role to play here, and if that role means that I have to be dictated to, I would welcome the dictation.

**CHAIRPERSON:** I cannot dictate to you. You are here to gather evidence and present it to us.

**ADV MTSWENI:** Yes, that is what I am saying.

**CHAIRPERSON:** I do not even know what your, who are your  
20 witnesses. You have just given us a list in December, and you expect that you would have gone out of your way to try to ripen this hearing.

**ADV MTSWENI:** I appreciate that, Chair, but hence, I do not want to be seen to be giving excuses. But also, Chair, one has to appreciate that it was festive season. Some of these

witnesses had their holidays planned, and one could not just give them a call over Christmas holidays and say, hi, can you avail yourself for a consultation? One had to respect that as well.

**CHAIRPERSON:** Yes.

**ADV MTSWENI:** Yes. So had it not been, but if we did not have a festive holidays in between, the criticism would be justified under the circumstances, Chair.

**ADV BALOYI-MERE:** Are you saying the criticism is not  
10 justified?

**ADV TSWENI:** Not necessarily, Madam Mere. I am just saying that maybe, I am lost for words.

**CHAIRPERSON:** It is not even a criticism. It is a fair statement from the bench.

**ADV MTSWENI:** Yes, which I appreciate.

**CHAIRPERSON:** I think you must withdraw that.

**ADV MTSWENI:** I withdraw the statement as a criticism, unreservedly so.

**CHAIRPERSON:** Yes, thank you. Yes, thank you, Re  
20 Mtsweni. And the junior counsel, were you allocated witnesses to consult with?

**ADV KHOOE:** Yes, Chair. I was allocated two witnesses in the Mdluli case and, two weeks ago. And I also must say that because I came at a very late stage just before the adjournment, I had to go through the record and familiarize

myself with it and I used the December holidays to do just that. And because we are still going according to the plan that we had, I did not foresee that it would collapse completely within two days. So I have not consulted with them. But I am going out to do that.

**CHAIRPERSON:** You see, I am asking all these questions, Counsel, to make sure that eventually, if we are to say a postponement is warranted, we know on what basis we are granting you the indulgence and for how long.

10 **ADV KHOOE:** Yes, Chair.

**CHAIRPERSON:** Because as I mentioned to senior counsel earlier, as you know, postponement is not there for the taking. It is an indulgence.

**ADV KHOOE:** Correct, Chair.

**CHAIRPERSON:** And we do not have an application in front of us that will inform us as to whether the request should be granted or not. And am I correct that your, the witnesses that have been allocated to you also relate to the Cato Manor case?

20 **ADV KHOOE:** No, Chair, it is the Mdluli case.

**CHAIRPERSON:** The Mdluli matter.

**ADV KHOOE:** Yes.

**CHAIRPERSON:** Have you started? You have not started at all?

**ADV KHOOE:** Consulting with the witnesses?

**CHAIRPERSON:** Consulting.

**ADV KHOOE:** No, I have not.

**CHAIRPERSON:** When do you plan to start that consultation?

**ADV KHOOE:** I will have to contact the witnesses as soon as we adjourn, and then I will just take it from there, Chair.

**CHAIRPERSON:** Thank you. My sister?

**ADV BALOYI-MERE SC:** If I may ask, was there any particular reason why you decided to concentrate only on the  
10 Cato Manor witnesses without taking statements from the Mdluli witnesses, not with the aim of calling a witness in the Cato Manor and then calling a witness in the Mdluli matter and then confusing the record, but I would like to know if there was any specific reason why you decided to treat them as two separate matters to a point that you want to finalize only, you want to consult these witnesses first before you go to the other witnesses.

**ADV SKOSANA SC:** I am not sure whether there is really any particular reason, but I may say that, look, having joined  
20 these proceedings also in the middle, I found the evidence being led already of Advocate Batohi, and looking at how things were, is that the focus was mainly on the Cato Manor. Of course, her evidence covered, to some extent, the Mdluli matter. But it seemed to us, and when we discussed it, that it would be proper and logical to deal with that part of the

case and complete it and then focus on the other part of the case.

I must mention also that Advocate Kooe was given those witnesses for Mdluli, particularly because we needed to give her an opportunity to familiarize herself with the information and the facts of the matter. And that would have given an opportunity to do that if things were to happen in the normal way. But firstly is that we understand, and we all did not know what is going to happen now that Advocate Batohi  
10 took the decision in December, number one.

Number two, our plan was that we are going to fill that gap so that there is no interruption through these witnesses. That is why my absolute focus, and those witnesses would have, if they were prepared to testify, covered quite a great area of the case, evidence of the case. So we, in all reasonableness that we had, we thought that would secure and avoid interrupting these proceedings if we were to secure these witnesses. And all indications from them, and I speak personally, because I spoke to them, were  
20 that they were more than willing to testify and they gave me some statement, and as I indicated, I consulted for many hours with one of them.

And it was really a sudden and unexpected turn of event when they said they are no longer prepared to testify. To some extent, and I am not saying perhaps, to some extent

we are to blame, but essentially what has happened is what we really could not reasonably anticipate or expect to happen, particularly in regard to these two witnesses.

**CHAIRPERSON:** It is, however, correct that when you were appointed, I think Advocate Skosana, Advocate Mtsweni first before you, I think. I think Advocate Mtsweni was appointed before you, correct?

**ADV SKOSANA SC:** Yes.

**CHAIRPERSON:** And subsequently after you, the junior  
10 counsel was appointed. When you were appointed at that time, Advocate Batohi's statement, or statement under oath, was before you, as it was before us, and that statement encompasses both issues, the Cato Manor issue and the Mdluli matter, which in my view, and correct me if I am incorrect, would have given you a start, all of you, those who are located to consult, at least to start with some witnesses, junior counsel, especially with relation to the Mdluli matter there, because the statement was there. The affidavit was there. It is not like everything that surfaced during cross-  
20 examination was mentioned for the first time.

There were other issues that she raised in her statement which would have enabled you to identify the relevant witnesses. So why is it that that was not done, just to expedite the matter? I am trying to understand, fine, the two or three witnesses have collapsed, but for the rest, why

is it that consultation was not done?

I am just thinking, Advocate Mohlamonyane was leading, and then you have the three of you sitting here, and then at one stage you asked to be excused, and I am trying to think, to understand, why is it that whilst you were presented with Advocate Batohi's statement under oath, little seems to have been done, very little, it appears, over a period of a month, maybe I should say that, or closer to a month, and now we have to take a week's adjournment according to  
10 your request.

**ADV SKOSANA SC:** Ja, well, as far as that is concerned, and may I also indicate, insofar as our juniors are concerned, that is now me with Advocate Mohlamonyane, I fully take the blame that I, you know, we gave them. I did, I thought that we were going to have these witnesses, and I kind of gave them assurance, taking from the relations and the communication with these witnesses, that really you may consult, but take your time, prepare yourself, but these are the two witnesses that you are going to call, and they may  
20 take over this kind of time.

So on that basis, I think I take the blame there. Maybe I should have insisted that they must proceed and consult as quickly or as urgently as possible, and that did not happen, for which I profusely apologize. Perhaps we could have done better, but where we are now, we have now this

situation where we do not have a witness who can testify immediately, and one must keep in mind that there is also some form of agreement, agreement between the parties to share witness statement, in other words, whoever needs to be called next, we need to present a statement in advance for that.

So that is another aspect, Madam Chair, that should be taken into account that in our request for a week is that there will need to be a statement prepared and given to the  
10 other team. And I also must mention that while we know that the issue about the evidence of Advocate Batohi started on the 15<sup>th</sup> of December, and perhaps one could have anticipated that she might, she might not come back, but the developments continued, and if I am correct, the last development when the Minister said, finally decided on the appeal was on the 8<sup>th</sup> of January, if I am correct, which really then started putting more pressure on.

Now it looks like the issue of her acquiring that legal counsel that she had asked for is coming to fore, it looks like  
20 it is not going to happen, and that might create problems for this enquiry. I just wanted to bring that in, that that is one element that must be taken into account, that there is a date of 15 December which we acknowledge and we accept, but there are quite a few developments that took place that need to be taken into account.

**CHAIRPERSON:** You are stating that what would have caused problems for this enquiry?

**ADV SKOSANA SC:** No, I was mentioning only that we know that on the 15<sup>th</sup>, after the 15<sup>th</sup> of December, there was then an application by Advocate Batohi, although we have not seen that application, for the appointment of a team, a legal team.

**CHAIRPERSON:** A request, was a request to the ...[intervenes].

10 **ADV SKOSANA SC:** Ja ...[indistinct] application, request ja.

**CHAIRPERSON:** The State Attorney.

**ADV SKOSANA SC:** Yes.

**CHAIRPERSON:** And to the Minister.

**ADV SKOSANA SC:** Later to the Minister.

**CHAIRPERSON:** There was no application before us.

**ADV SKOSANA SC:** Yes, all I was indicating is that that issue and the final outcome of that came after the Minister had decided, that it is now on the 8<sup>th</sup> of January, 2026, and of course followed by what we have now found about the  
20 possible conflict of interest as well. I am just mentioning that those are factors that one should take into account.

**ADV BALOYI-MERE SC:** So, according to what you have submitted, you interviewed two witnesses and they collapsed. We have communication from Major General Booyesen, and you say he says he will only be available towards the end of

February, and then the remaining witnesses have not been consulted.

**ADV SKOSANA SC:** Ja, that is in essence yes.

**ADV BALOYI-MERE SC:** Now you are here now asking for a stand-down, a pause, a postponement, but one cannot avoid wondering what happens after the week that you would have requested, say that request is granted, would you have witnesses then, or we are going to sit again the whole day, having a conversation with the enquiry being put on pause?

10           Because as it is now, you do not have a witness statement that is almost ready, and from your correspondence that we have seen, you were supposed to have exchanged witness statements by the 19<sup>th</sup>. When was the 19<sup>th</sup>? Last week, Monday. And it did not happen, and we are here. Today is the 26<sup>th</sup>. You want us to come back next week, which is February. I am not sure what is the date next week, Monday, but will we still be in the same position, or the position would have changed? Let us not put Advocate Batohi into the equation, because her issue is a different issue. I  
20 am talking about the evidence-leading team and the evidence that they are supposed to lead here through witnesses.

**ADV SKOSANA SC:** Well, maybe to start with the date of 19 January. That date was not a date on which the parties agree, and I am not saying it was unreasonable for the, for Advocate Chauke's team to suggest that date, but we could

not agree for the exchange of witness statements. We do not agree, particularly because of the difficulties that we are experiencing with our witnesses. We could not agree to that date.

As far as the second question about whether by Monday we would be ready, I have discussed that with my team, and I was given an assurance. Of course, one takes into account that you know, if an individual or a witness says, I cannot consult or I cannot, I am not available on this particular date, it might create difficulties, but that we will be able to have a witness by Monday to continue in the event that there are still issues about the evidence of Advocate Batohi. We would be able to have a witness to continue with this enquiry on Monday.

**MS RAMAGAGA**: Advocate Skosana, maybe let me ask Advocate Mohlamonyane, because you correctly point that when you came, the train was already moving. He was at the helm as the chief evidence leader. I take it, Advocate Mohlamonyane, if you are able to listen as you are moving about, have you been listening?

**ADV MOHLAMONYANE SC**: I have been listening.

**MS RAMAGAGA**: Okay, thank you. Now, I take it that you work as a team, irrespective of who arrived when, but otherwise, as the team was growing, you continued to work as a team. Is that a correct assumption?

**ADV MOHLAMONYANE SC:** It is, Madam Ramagaga. It is correct.

**MS RAMAGAGA:** Right, thank you. Now, maybe let us first talk about the witnesses or the persons that you have identified as witnesses to this enquiry. Am I correct when I say that the calibre of persons that you have identified as witnesses and appear on your list of witnesses, they are not lay persons. They are persons who can be assumed to be having reasonable knowledge of what is expected of them.

10 Will that be correct? Generally speaking ...[intervenes].

**ADV MOHLAMONYANE SC:** Generally speaking, Madam Ramagaga, that is correct, save for two of them, but generally speaking.

**MS RAMAGAGA:** That is why I am qualifying it with general. Right, thank you. Now, because the main crop seems to be the understanding crop alone. Moving forward, questions that I will ask will be taking that into consideration. Now, the

calibre of those persons is such that they do qualify to assist in developing the draft statements that you would then work  
20 on and maybe improve on them in due course. Is that correct?

**ADV MOHLAMONYANE SC:** That is correct, Madam Ramagaga, and perhaps I should indicate to you at this stage, with your permission, what I encountered with my witness, and I am going to be very direct.

**MS RAMAGAGA:** Would you prefer to deal with that first or should I finish and then you can ...[incomplete].

**ADV MOHLAMONYANE SC:** You may finish, Madam Ramagaga.

**MS RAMAGAGA:** Right, thank you.

**ADV MOHLAMONYANE SC:** I will deal with that later.

**MS RAMAGAGA:** Yes. Thus far, we are in agreement that they could and they have the capacity to develop the draft statements which you can, could then work on and improve  
10 on.

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

**MS RAMAGAGA:** Thank you. And before you put the names of those persons in the list of witnesses, did you speak to them? And when I say did you, I am talking about you as a collective, understanding that you are at the helm and you engage and set rules on how to do things. Did you engage?  
The answer, if it is unison, it will be yes or no. But if each has his or her own answer, you will answer on behalf of each, indicating that this one has experienced this, or this one has  
20 not contacted them at all, or so forth. What is the state of affairs?

**ADV MOHLAMONYANE SC:** Let me indicate to the panel, Madam Ramagaga, that I was being assisted by Advocate Hulley SC in identifying the witnesses. And before I was joined by the team, as you see it, I already had certain

witnesses, potential witnesses, who we will need as evidence leaders to come and testify and assist this enquiry. After doing so, I then prepared a list. And I must point out at this stage that I prepared that list without consulting those witnesses, without inquiring from them as to whether they will be prepared to testify or not.

I was just working on the basis that they are potential witnesses. And in the event that a witness refuses to come and testify because we do not have, as an enquiry, subpoena  
10 powers, we will then inform the panel and our opponents and the Chauke team that such and such a witness, who we have identified, has reneged or has decided not to testify.

Now, after having done that, after being joined by the rest of the team, the evidence leaders team, we then allocated specific witnesses and I was allocated General Johan Booyesen. I must mention at this stage that General Johan Booyesen, as far back as November, December, had prepared draft statements for us after consulting, after interviewing him and talking to him in Cape Town on or about  
20 the 6<sup>th</sup> of November, if my memory serves me well, 6 November, 2025. And indeed, he promised to send draft statements. Indeed, he did so until he gave us a final one.

Now, some time ago, a few days ago, maybe two weeks ago, I started working on the last draft and I called him last weekend to say to him, General, I am working on your

statement, the last one that you sent to us. He sent the statement to me and Advocate Hulley SC. I said to him, I am working on that statement. I am trying to finalize and settle it and I am of the view that you and I should sit in Cape Town. I will fly down to Cape Town on two consecutive days to finalize your statement. We are agreeable about that.

I extended an olive hand to him and said, your lawyer or your advocate can be present if she wishes or if they wish. I do not have a problem with that. And he offered me, he  
10 offered to give me, rather, let me correct myself. He asked me as to whether he can give my mobile number to his advocate. I said, yes, you can do that. And then we got into a conversation with his advocate and his advocate indicated to me that they are working on his statement.

**MS RAMAGAGA**: Final statement?

**ADV MOHLAMONYANE SC**: Yes, they are working on his statement. I said, I have already started working on that statement. She said, no, we are working on that statement because our client's rights have been trampled on and no one  
20 has protected our client, and our client has to be protected. After speaking to her, I then reverted to General Booyesen to say, General Booyesen, I am in this situation. Your advocate is saying one, two, three to me. Now, I want to find out from you as to whether you would still come to the enquiry to testify.

He emphatically indicated to me that he is prepared to testify. He does not want to be seen to be a recalcitrant witness, but he has concerns. His concerns are the Danikas issue. The Danikas clips that were flighted on air and everybody else in South Africa has seen that and it paints a very bad picture on him and he wants to deal with that in his, fully, decisively in his affidavit. And he is saying to me that in the course of doing that, he has documentation, some of which is not currently in his possession. It is lying around  
10 elsewhere and he still has to ...[intervenes].

**MS RAMAGAGA:** I have been trying to just indicate that remember that now I am not looking for full information.

**ADV MOHLAMONYANE SC:** Yes.

**MS RAMAGAGA:** At least you are giving me, you are giving the panel an idea about General Booyesen in particular. But the main gravamen of my questions is to check about whether you know, capacity to develop draft statements and you have illustrated in your address that yes, there are some of them of course and General Booyesen is one of those that have  
20 participated in the evolution of the draft statement thus far. That is correct?

**ADV MOHLAMONYANE SC:** That is correct, but ...[intervenes].

**MS RAMAGAGA:** Yes.

**ADV MOHLAMONYANE SC:** With the assistance

...[intervenes].

**MS RAMAGAGA**: With the assistance of the, his legal team.

**ADV MOHLAMONYANE SC**: His legal team.

**MS RAMAGAGA**: Which is fine.

**ADV MOHLAMONYANE SC**: Yes.

**MS RAMAGAGA**: Yes. Now the, is he the only person that you have consulted with or from whom you have sought a draft statement or what is the position?

**ADV MOHLAMONYANE SC**: So far yes, Madam Ramagaga.

10 That is the only witness that I consulted with, that I contacted, apart from initially contacting Advocate Mlotshwa when I was still alone here.

**MS RAMAGAGA**: Yes.

**ADV MOHLAMONYANE SC**: Before I was joined by my fellow colleagues.

**MS RAMAGAGA**: Okay, yes.

**ADV MOHLAMONYANE SC**: Yes.

**MS RAMAGAGA**: We will come back to that if necessary. I am still on the issue of just general questions. Now the  
20 witnesses that you have identified or persons that you have identified as witnesses to this enquiry, was that list drawn from the names that appear in Advocate Batohi's affidavit or evidence or are they also constituted of any persons who could have made representations out of interest? What is the position? Is it exclusively from the affidavit or is it a mix of

things? And if it is, please indicate. Thanks.

**ADV MOHLAMONYANE SC:** It is a mix of things and I am not able to say which ones have, did Advocate Batohi mention in her affidavit. But the majority of the witnesses who are on this list was through the help of Advocate Hulley SC who helped me to identify a witness by telling me that this one is relevant. Look at document X, Y, Z, or documents X, Y, Z about this witness is relevant on this aspect. And some of the witnesses I identified myself but in the main I was  
10 assisted by Advocate Hulley SC.

**MS RAMAGAGA:** Okay, that is fine. At the beginning when I started asking you questions, you wanted to talk about whether it is a particular witness or witnesses, remember? Have you addressed that in your answer, especially that long answer or do you still want to talk about what happened?

**ADV MOHLAMONYANE SC:** Not quite. I think I have addressed the issue of Advocate Johan Booyesen. I am sorry, not Advocate Johan Booyesen, General Johan Booyesen, adequately. He says to me, if I, without being seen to be  
20 repetitive, he is prepared to testify. But he can only do so at the, beyond February because even his lawyer, his advocate, is indicating to me that that statement will only be available at the end of February.

**MS RAMAGAGA:** Okay, thank you. But then you also mentioned right towards the end, you mentioned Advocate

Mlotshwa.

**ADV MOHLAMONYANE SC:** Yes, Madam Ramagaga, I did mention Advocate Mlotshwa.

**MS RAMAGAGA:** Ja, is there anything that you want to say ...[intervenes].

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

**MS RAMAGAGA:** About her availability and draft statements or so?

**ADV MOHLAMONYANE SC:** Let me indicate this at the  
10 outset. This enquiry started on the 17<sup>th</sup>. We started on the  
17<sup>th</sup> of November 2025 and if I am not wrong, Advocate Batohi  
started leading her evidence on the Wednesday, the  
Wednesday of that week. On the Saturday, I picked up a  
phone and spoke to Advocate Mlotshwa with a view to find  
out about his availability for a consultation, the Saturday, the  
22<sup>nd</sup> of November.

Advocate Mlotshwa was more than willing to testify.  
What he indicated to me as his problem was that he no longer  
has in his possession his statements and he asked me to send  
20 him his statements that he made when he testified in the  
Mokgoro Enquiry and the Zondo Commission and I made them  
available to him. He even sent me clips when he was  
testifying and I conveyed that to my co-evidence leaders  
when they joined me. I also indicated that to Advocate Hulley  
and today the situation is different.

**MS RAMAGAGA:** What is the state of affairs? What has changed?

**ADV MOHLAMONYANE SC:** What has changed is what Advocate Themba Skosana has indicated to the panel that Advocate Mlotshwa is now giving several reasons about his unavailability during the course of this year. One of his reasons why he will not have time, if I may use that pun, to come over to testify in this enquiry is that one, he is preparing for the 7<sup>th</sup> I think, I am speaking under correction, 7<sup>th</sup> 10 Comrades marathon. Two, he has registered a Master's degree with one university, I believe it must be one of the universities in KZN.

Another reason is he is saddled with matters, his own personal matters that he deals with as a practitioner. He is now in private practice. He is a member of the Pietermaritzburg Bar in KZN and that he will be having matters, his hands will be full, so to put it, and he will not be able to assist.

**MS RAMAGAGA:** Okay, thank you. So thus far, is the 20 witness, is General Booysen the only witness that you can tell us is available for the Cato Manor issues or is there another one that you can say as far as I am aware, this witness or these witnesses are still committed to the cause?

**ADV MOHLAMONYANE SC:** One of the witnesses that I believe is still committed to the cause is Advocate S Riley

and she has been allocated to Advocate Mtsweni and I have given Advocate Mtsweni her mobile number, which I asked from the NPA team and as soon as, I believe, we leave this chamber, he will get in contact with her.

The next one is the one allocated to me, General Nhlanhla Mkhwanazi, whose evidence, according to what we have, will not be long and I said to myself, well, this one will not be long, I will see him later after I shall have dealt with the Johan, General Johan Booysen's issue. So I parked it, maybe at my own peril or at the peril of the panel, rather the evidence leaders. I just parked it because I wanted to first deal with, because I thought she will not, he will not be a complicated witness, but maybe upon hindsight, because I should not have used, I should not have acted in the manner in which I acted, I should have consulted him. Upon hindsight, I realized that.

**MS RAMAGAGA:** No, thank you very much, Advocate Mohlamonyane.

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

**CHAIRPERSON:** I am making just a general statement to the evidence leading team. You were appointed by the President to execute your function and if the witnesses or potential witnesses who are officials in the NPA, makes it difficult for you to execute your function, should you not place that in writing and address that to the Minister that we have

been given this task, we are not able to perform our function because of this, that, and that, especially the witnesses who are officials or advocates in the NPA.

**ADV MOHLAMONYANE SC:** May I answer, Madam Chair?

**CHAIRPERSON:** Yes, I just want to know.

**ADV MOHLAMONYANE SC:** Yes, you are correct, Madam Chair. That would be ideal. That would be a proper position to take to inform the Minister about the hindrances that we encounter. But in this matter, about these two witnesses that  
10 Advocate Skosana SC has referred to, one is Advocate Simphiwe Cyril Mlotshwa who is no longer in the Public Service. He is in private practice now. I am not sure whether we can report him to the Minister.

The second one is Advocate Moipone Noko. She is also the former DPP of KZN. In 2012, thereabout, she was appointed the DPP. And as indicated already by Advocate Skosana SC, she was willing to testify, but she has changed colours now. I wonder whether it would be appropriate to report them to the Minister. They are no longer in the Public  
20 Service, Madam Chair. Thank you.

**CHAIRPERSON:** [Indistinct]... [microphone off] Noko.

**ADV MOHLAMONYANE SC:** Ja, Advocate Noko is no longer in the Public Service. She has resigned.

**CHAIRPERSON:** And Advocate Mlotshwa?

**ADV MOHLAMONYANE SC:** Advocate Mlotshwa is in private

practice now. He is in private practice as a member of the Pietermaritzburg Bar.

**CHAIRPERSON:** I am not thinking in terms of reporting as such, but just placing information before the Minister, because at a critical time, these advocates served under the auspices of the Department, not necessarily that they be investigated, but just to place information for the Minister to understand the challenges you are confronted with as evidence leaders.

10 **ADV MOHLAMONYANE SC:** I agree. I am inclined to agree with you, Madam Chair.

**CHAIRPERSON:** I may be wrong, but it is a matter that on your own you can consider.

**ADV MOHLAMONYANE SC:** We will indeed consider that. Thank you, Madam Chair.

**ADV BALOYI-MERE SC:** Maybe just to add, although they are in private practice, but they are within a regulated space.

**ADV MOHLAMONYANE SC:** Yes, of course, Madam Baloyi-Mere.

20 **ADV BALOYI-MERE SC:** So you can deal with them within that regulated space.

**ADV MOHLAMONYANE SC:** Especially that they are members of the LPC, Legal Practice Counsel. I am not sure about Noko, but she is still an advocate. She is still holding the title of advocate.

**ADV BALOYI-MERE SC:** As long as she still holds ...[intervenes].

**ADV MOHLAMONYANE SC:** Yes.

**ADV BALOYI-MERE SC:** And she is a member of, any legal practitioner in South Africa is regulated by the LPC.

**ADV MOHLAMONYANE SC:** Indeed.

**ADV BALOYI-MERE SC:** So you can deal with them within that space.

**ADV MOHLAMONYANE SC:** We will do that. We will  
10 consider that. Thank you, Madam Baloyi-Mere.

**CHAIRPERSON:** That said, what is your final proposal, Advocate Skosana? I know that you have intimated that Advocate Hulley might want to say something.

**ADV SKOSANA SC:** Yes.

**CHAIRPERSON:** But from your side, what is the final proposal you wish to make to us for consideration?

**ADV SKOSANA SC:** Madam Chair, our proposal is that we request the postponement or adjournment of these proceedings until Monday And on the basis that on Monday  
20 we should, and perhaps Advocate Hulley will touch on that if he is given an opportunity. On Monday, we will have some headway insofar as the issue of the evidence of Advocate Batohi is concerned, number one.

Number two, if not, if Advocate Batohi is unable to continue with her testimony by Monday, we will make sure

that we have a witness to continue giving evidence before this enquiry.

**CHAIRPERSON:** You are making an undertaking that if Advocate Batohi's issue is not resolved or she is not able to take the witness stand, you as evidence leaders will be ready to proceed?

**ADV SKOSANA SC:** Yes, indeed, we are making that undertaking.

**CHAIRPERSON:** Supposedly, you would have exchanged  
10 the witness statement in advance with the Advocate Chauke's team.

**ADV SKOSANA SC:** Yes. Madam Chair, at least there would be witness statements, maybe not all the statements, but there should be a statement of a witness, the witness we would have prepared for Monday will have the statement of that witness, also shared ...[intervenes].

**CHAIRPERSON:** My question is whether you would have exchanged the statement that is available with Advocate Chauke's team in advance, probably on Friday.

20 **ADV SKOSANA SC:** Yes.

**CHAIRPERSON:** If we are to proceed on Monday with that particular witness. I am trying to be, make sure that you are making this undertaking seriously, understanding that the other side must have had a sight of the statement.

**ADV SKOSANA SC:** Indeed, Madam Chair, the undertaking

is to also share a statement of that witness in advance before Monday.

**CHAIRPERSON:** Thank you, Advocate Skosana. Thank you, Counsel, all of you. Advocate Ngcukaitobi?

**ADV NGCUKAITOBI SC:** Madam Chair, I suppose there is very little for me to say at this point other than to ask who is this witness that will be called on Monday so that we can start preparing.

**CHAIRPERSON:** Do you know, Advocate Skosana, or do you  
10 have an idea, more or less?

**ADV SKOSANA SC:** Well, the first available witness, but at this stage we contemplate Advocate Riley is the one that we think ...[intervenes].

**CHAIRPERSON:** Advocate Riley?

**ADV SKOSANA SC:** To be called on Monday, yes.

**CHAIRPERSON:** I hope that when Advocate Riley finishes her testimony, other witnesses will be lined up so that we obviate further adjournment for you to consult with witnesses. So, from here, if we give you the full week, we should be able  
20 to proceed uninterrupted so that we finish your witnesses and enable Advocate Chauke's team to lead him if he reaches that stage. Can I get an undertaking from your side again, Advocate Skosana?

**ADV SKOSANA SC:** Yes, that is our serious intention, Madam Chair, and we would do everything in our power to

achieve that.

**CHAIRPERSON:** Of course, if there is no evidence, there is no evidence. If the evidence-leading team is unable to source some information, you can only do so much, is it not?

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

**CHAIRPERSON:** In which event, the team for Advocate Chauke will assess its position and decide what they want to do. Advocate Riley, they say.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. I  
10 suppose it also comes with the undertaking that on Friday we will get her affidavit or statement.

**CHAIRPERSON:** Yes, indeed.

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

**CHAIRPERSON:** I know that you earlier indicated your  
opposition to a week's postponement, and this engagement  
has unravelled quite a lot of information when we were trying  
to ascertain what has been done, who has been consulted,  
why are we not ready now, why cannot we get at least one or  
two witnesses to kick-start this thing, and are you still in the  
20 same position if you, you could even start on Wednesday with  
whom?

**ADV NGCUKAITOBI SC:** No, Madam Chair, we, they must  
call the next witness. Let us deal with it. I would rather save  
my energy for the witnesses.

**CHAIRPERSON:** Yes. Yes, thank you. We will adjourn just

for a few minutes to put our heads together and decide on this request by the evidence-leading team. I beg your pardon. My sister reminds me that a request has been made for Advocate Hulley to say something. You may come forward, Counsel. I know that there is another – you can shift a bit. Yes, thank you.

**ADV HULLEY SC:** Thank you, Madam Chair. There is no burning desire on my part to say anything *per se* other than to explain what our position is. So what we had requested  
10 from the panel, pursuant to a letter which was addressed to you, Madam Chair, as the Chairperson of the panel, was a request to allow us to consult with Advocate Batohi while she was under cross-examination in order to advise her.

The context to that, much of which has already been canvassed, was that we were initially briefed to act on behalf of the NPA. Those instructions were given to us by the State Attorney and I imagine that it came from the Exco of the NPA, which would have included, amongst others, Advocate Batohi. When Advocate Batohi, on the 15<sup>th</sup> of December, stood down  
20 in order to seek legal counsel, her desire was to seek the advice of counsel other than myself and Advocate Leketo.

We, myself and Advocate Leketo, had initially been briefed, as I said, on behalf of the NPA. You may well recall from previous exchanges that we had that I was at pains to point out that we were acting for the NPA and we were not

part of the evidence leader's team.

At any rate, all of that was, all of that culminated ultimately in the request by Advocate Batohi to the State Attorney to have the counsel that she wished to have appointed to assist her in giving advice pursuant to the indication that she had given to the panel on the 15<sup>th</sup> of December. That request, as I understand it, ultimately percolated up to the level of the Solicitor General, who declined to make the appointments. Reasons were given and  
10 the Solicitor General concluded by stating that she had the right of appeal and she should appeal to the Minister.

The Minister was then, after, as I understand it, after some further correspondence was exchanged with the Solicitor General, the Solicitor General indicated that he stood by the decision that had been taken. What then transpired was that Advocate Batohi then appealed to the Minister and the Minister's response was that there should be a consultation, sorry, that she should rather seek the advice of myself, of me, and Advocate Leketo.

20 We, after considering the correspondence, we then, we decided to write to the panel, as I have indicated, to make the request to the panel that we should be allowed to consult with her because it was anticipated that we would need to consult on matters that may well involve, may well involve issues that were canvassed in the, during the course of the,

of cross-examination.

Now, subsequent to that and nearing the present date, it became, we, I certainly had occasion to reflect upon this and how would I be able to consult with her and how would I be able to properly address some of the issues that were reflected in the request to the State Attorney. It seemed to me that it was inevitable that a conflict of interest was going to arise on the one hand between Advocate Batohi and the various options that may confront her and the NPA, bear  
10 in mind that my brief came to me to represent the NPA and not to represent Advocate Batohi and that her request had been made initially for other counsel to represent her.

Now, it was in that context that we approached the panel this morning and indicated that we believe that we are heading inevitably towards a conflict of interest. We cannot, we would not be able to properly discharge our mandate to either one of those clients to be able to canvass every aspect that was in the best interest of either one of those two clients.

Now, at the moment, we are unable to take  
20 instructions from our client, which is the NPA. Until now, our client has been represented by Advocate Batohi as well as the Exco. So where necessary, I have had to take instructions from the Exco, but since late, since the latter part of last year and the early part of this year, that Exco has been somewhat denuded of some of its members. Some of the

members have fallen away. They have either resigned or retired. I stand corrected, I do not know which. And at least two of them are simply acting members.

So the upshot of it all is simply that they are unable to provide me with instructions, even if they were desirous to do so. It is possibly in the context of that, having explained it to the evidence leaders, it is possibly in the context of that, that the suggestion was made that we should stand down until Monday, because Monday is the date on which the new  
10 National Director of Public Prosecutions takes office.

But I do not anticipate, unlike, and I do not wish to comment necessarily on the stance adopted by the evidence leaders, but I certainly do not have the confidence necessarily because I simply have not spoken with the new National Director of Public Prosecutions, whether he would even entertain my presence on Monday. So that is something that still has to happen.

So I cannot give any undertaking as to when that would happen. My experience, having worked with different  
20 organs of State and different departments, my experience has always been that I am going to be requested to provide some kind of a memorandum in order to bring the individual who is going to have to take the decision up to speed. I anticipate that that would happen with the new National Director of Public Prosecutions.

The, to put together, and, of course, at this stage, I simply have not been asked to put together anything, not a memorandum or otherwise. So I am still hoping to get an audience with the new National Director of Public Prosecutions. I might be, I would like to think that I would be a priority for him, bearing in mind the circumstances of this matter. But I am simply, I have not spoken with him and I am not in a position to comment either way.

So that is the position where we find ourselves in,  
10 and my position applies equally to my junior, Advocate Leketo. There was a question that was posed, if I recall correctly, by Advocate Baloyi-Mere, as to whether, when the Minister had been approached, had she been approached about the potential conflict of interest. The short answer to that is no. But let me, there were certain aspects of the Minister's letter that I thought may require me to revert to her, if I was permitted to do so.

The one concern that we had when we considered whether we ought to go back to the Minister was we had no  
20 understanding of the regulatory framework that gave rise to the Minister's position as the appeal body. So we read through all the legislation, the State Attorney Act, we read through the regulations and we read through the policy that we had been referred to. We were unable to find any particular document or instrument that could talk to the

question of whether the Minister was *functus officio*, as it were. So we did consider the possibility of going back to the Minister, not specifically on the question that was raised, but on certain other aspects of the letter. But that is as far as we could take it. That is where we stand at this point in time.

**CHAIRPERSON:** Given the fact that a decision has been taken already by the Minister, assuming she had no power to decide on the matter, if she is *functus officio*, but a decision has been taken, will there be any harm in you and your junior or even the NPA presenting this difficulty to the Minister that you anticipate, because as I understand the correspondence, the Minister decided on the basis that you and the junior are here and you could represent Advocate Batohi at the personal level. That is how I understood ...[intervenes].

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

**CHAIRPERSON:** Yes, the correspondence. But if the Minister is to be advised that the converse is true, you are actually not in a position to represent her because of this potential conflict, a matter which was most probably, as I understand now, not brought to her attention. That might just resolve this whole conundrum and the Minister may revisit whether she is *functus* or not. She may just maybe reflect or the Solicitor General himself may even reconsider the position and decide otherwise.

**ADV HULLEY SC:** Madam Chair, it cannot do any harm to

revert to either one of them. It would seem to me that given the level to which it has advanced, the appropriate person, if we are to go back, the appropriate person to go back to would be the Minister now that she is seized with the matter. As I said, this issue arose, the question of the conflict of interest arose fairly recently. So up until last week, it was not always apparent to us that there would have been a conflict of interest. It was upon reflection that we came to appreciate that there would be a conflict of interest.

10 **CHAIRPERSON:** Yes, if I may guide.

**ADV HULLEY SC:** But I take your point, if I may conclude. I take your point.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** And certainly during the course of the debate between the panel and the evidence leaders team, it struck me as being a rather sensible approach to adopt.

**CHAIRPERSON:** Counsel, if I may guide, if you may consider that approach, that the new NDPP has not taken office as yet, as you speak.

20 **ADV HULLEY SC:** That is so.

**CHAIRPERSON:** Advocate Batohi is still the NDPP. And also given the fact that these are polycentric issues that will entail a decision made or to be made by a member of the Executive. You know, when you talk money in Government, especially because the NDP or NPA falls within the auspices

of the Department, of the Ministry, am I right?

**ADV HULLEY SC:** So the ...[intervenes].

**CHAIRPERSON:** I am not sure whether I am putting it correct, but it is an institution in respect of which the NDPP works hand in hand with the Minister of Justice.

**ADV HULLEY SC:** That is so, M'Lady. The, if I understand correctly, functional responsibility ends at the National Director of Public Prosecutions or operational responsibility, but insofar as the responsibility for finances are concerned,  
10 that responsibility ends with the Department of Justice.

**CHAIRPERSON:** Yes. The issues that we are dealing with now concerns finance, budgetary matters, and the Minister seems to be the right person to go to insofar as Advocate Batohi's request is concerned. So if it is discovered, as you will be talking to one another, that there is a conflict of interest, a matter that might not have been brought to the table of the Minister or even the Secretary General, Solicitor General rather ...[intervenes].

**ADV HULLEY SC:** The Solicitor General.

20 **CHAIRPERSON:** The Solicitor General may reconsider, the Minister may also reconsider, and we may not even be here now. We should have made a headway. So it seems to me that on the challenges that you and your junior are confronted with, which is quite understandable, perhaps now that the Minister has decided that you must represent her or consult

with her, and you are now confronted with all these sorts of legal challenges, because even if you were to be appointed to represent her, the question that then arise is whether you have a right to consult with her on matters that arise during consultation, I mean cross-examination.

That opens all other difficult challenges, as you know. So it seems to me that the buck stops with the Minister, and if she is to appreciate these challenges that you are placing before us, she may just as well decide otherwise.

10 A week, I am not sure, but it seems to me that the first person to communicate with is the Minister, because the new NDPP is not yet, has not assumed office. Advocate Batohi, you cannot talk to her. She is the NDPP, but because of these issues that you are grappling with, you cannot talk to her. And the Minister is the last place to go to if the Solicitor General does not give you out, and he thinks that you are not entitled.

I am sure you will start there, and then the matter will then go to the Minister. He is here, you can discuss the matter without necessarily having to write letters to each other. And I am sure the Solicitor General appreciates the very challenges that you are presenting to us. Thank you. I am not sure whether my sisters would like to ask you any questions.

**ADV BALOYI-MERE SC:** I have just one. I am sorry, I

thought I would keep quiet, because it is late in the day, but I cannot help myself. You painted a picture that you, it seems like literally Exco within the NPA does not exist anymore. You said some have left, and some are acting, two.

**ADV HULLEY SC:** Two of them are acting, that is correct.

**ADV BALOYI-MERE SC:** Are acting. And how many have left?

**ADV HULLEY SC:** If I understand correctly, one has left, and Advocate Batohi is the other one.

10 **ADV BALOYI-MERE SC:** Is here. How many members ...[intervenes].

**ADV HULLEY SC:** I think, yes, I think there may be one vacancy. I think there was supposed to be four, I stand corrected, four Deputy National Directors of Public Prosecution, all of whom would be *ex officio* members of the Executive. Two of those are acting, one has left, and I think there might be a vacancy. I can take instructions.

**ADV BALOYI-MERE SC:** And then there is Advocate Batohi.

**ADV HULLEY SC:** And then there is Advocate Batohi.

20 **ADV BALOYI-MERE SC:** So it means you only have one person, or two? So the ...[intervenes].

**ADV HULLEY SC:** We only have two acting appointments.

**ADV BALOYI-MERE SC:** Yes, they can never quorate.

**ADV HULLEY SC:** They cannot quorate, and even if they were quorate, I would be very surprised if they would take a

decision of this nature.

**ADV BALOYI-MERE SC:** If they would take a decision. So what you are literally saying to us is that you are now sitting here without anyone giving you instructions. You are sitting here, you have since received your instructions right at the onset, and as we go along, you do not have.

**ADV HULLEY SC:** Well, sometimes when the head has been chopped off, the body continues to operate, despite the head being absent. But in this case, that is not the case, because  
10 management, you still have a Manco, you still have the rest. I mean, the operations continue, despite the problems that may confront the Exco. Thank you, Madam Baloyi-Mere.

**MS RAMAGAGA:** Yes. Advocate Hulley, on the issue of the Exco, I would like to establish maybe what circumstances or the process leading to your appointment to represent the NPA. Now, or the recommendation for the State Attorney to appoint. I get it as a process. So what I would like to establish is whether the decision to recommend that you be appointed to represent the NPA, did it come from Exco, or did  
20 it come from Advocate Batohi as the head of the institution, or what is the position, because that information will assist us to weigh on what you have just informed us of that the Exco, the NPA Exco, seems to be dysfunctional or paralyzed because of other reasons outside their control. If it does not quorate, we understand. If he does not quorate, it would not

make decisions or whatever, whatever the case is, that is actually paralyzing that body in particular.

**ADV HULLEY SC:** Thank you, Madam Ramagaga. I must not be seen to be saying that the Exco is dysfunctional or that it is impotent at the moment. I am not saying that at all. I think it is specifically in relation to this issue. I would imagine that in relation to other issues, Advocate Batohi would be quite competent to continue to take the helm. It is specifically in relation to this matter. But in relation to the question that  
10 you posed to me about how I was briefed, quite frankly, Madam Ramagaga, I actually do not know. All I know is that I get a brief from the State Attorney and in the context of this, it would, of course, be preceded by a telephone call, am I available for this, because I have been involved in the matter previously, as you would be aware. But it is in that context that I would have been briefed and asked to respond to a request to participate.

**MS RAMAGAGA:** So it will be fair to say you will not know as to whether it becomes necessary, or it is actually  
20 necessary, for Manco to sit and agree about a recommendation for the appointment or not?

**ADV HULLEY SC:** Are we talking about Manco or Exco?

**MS RAMAGAGA:** Exco. I beg your, is it Exco? Manco?

**ADV HULLEY SC:** So Exco is ...[intervenes].

**MS RAMAGAGA:** Let me just place it on record because I

may have used it interchangeably that whoever, whenever the record reflects Exco or Manco, I am using the term interchangeably.

**ADV HULLEY SC:** Very well.

**MS RAMAGAGA:** Thank you.

**ADV HULLEY SC:** Yes, okay so we are talking about Exco. My understanding is that that decision is one that has to be taken by Exco.

**MS RAMAGAGA:** Okay.

10 **ADV HULLEY SC:** That is my understanding.

**MS RAMAGAGA:** Right. Okay, then, thank you.

**ADV HULLEY SC:** Thank you, Madam Ramagaga.

**MS RAMAGAGA:** Thanks.

**CHAIRPERSON:** Which decision is this, by the way?

**ADV HULLEY SC:** Pardon?

**CHAIRPERSON:** Which decision is this, by the way?

**ADV HULLEY SC:** To eliminate the possibility of a conflict of interest so that if the, whatever decision is taken ultimately by Advocate Batohi to allow that the NPA accepts that the  
20 fortunes of the two are inextricably tied and that they would go with whatever decision so I can advise both of them and the advice I give to Advocate Batohi would be the advice that the NPA would accept.

You made the point earlier, Madam Chairperson, about approaching the Minister / the Solicitor General of the

various options that confront me or the various options that suggest themselves to me. It would strike me that that is the most simple of the two options which is to approach the Solicitor General or the Minister. It is something that could resolve the issue much quicker than the other one.

**CHAIRPERSON:** Counsel, that seems to be the better approach given the circumstances. But you will weigh your options and you will indicate finally to the Minister what your challenges are. And I am sure the evidence-leaving team will  
10 do the same.

**ADV HULLEY SC:** As it pleases, M’Lady.

**CHAIRPERSON:** Yes, thank you. Thank you very much for apprising us of all this information and hopefully you will be in a position to execute your mandate, your initial mandate and proceed to assist as you have been doing. And if a potential conflict arises or has been found, you, the team will take appropriate steps. What those steps will be, we have engaged with all of you and you will decide how to approach the matter.

20 **ADV HULLEY SC:** Thank you, Madam Chair.

**CHAIRPERSON:** We need a few minutes to confer with one another regarding the requests that you have placed on the table. We will reconvene in 10 minutes, at about 20 to 6. We will reconvene and make, give a direction.

**ADV HULLEY SC:** Thank you, Madam Chair. Whilst I have

got the mic and it is been a long time since I have had the mic, I may as well make the most of it. What Advocate Batohi has communicated to me just before she departed was that she was going to have some difficulty coming back this week. She has got meetings with various people, including the President, in the forthcoming days. So she has asked if she can be excused. It seems like it would be inevitable that she will be excused anyway, but that she not be required to return whenever we are going to, whether it be on Tuesday or  
10 whether it be on Friday. But whatever decision is taken, if she can be excused and then I can communicate that to her through one of her assistants who is here tonight.

**CHAIRPERSON:** Advocate Hulley, it does not appear to us that there is anything that can really be done given the circumstances. Even if she were to attend, she would not be testifying pending the determination of the very issue that ...[intervenes].

**ADV HULLEY SC:** Indeed.

**CHAIRPERSON:** Has given rise to all these debates and  
20 exchange throughout the day. Yes, she is excused. I am sure by Monday she will be here.

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

**CHAIRPERSON:** Yes, thank you. We will adjourn until 20 to 6. Just give us 15 to 20 minutes to decide and we will come back. We will adjourn. Thank you.

**ENQUIRY ADJOURNS**

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**ENQUIRY RESUMES**

**CHAIRPERSON:** Good afternoon, everyone. Our apologies for taking a little longer. There were some few other matters that we needed to consider, given the request for a postponement to next week, Monday. We have drafted a very brief ruling which reads as follows.

The evidence-leading team applied from the Bar for a postponement of the enquiry for a period of a week, that is until Monday, the 2<sup>nd</sup> February 2026. The request is made because of two issues that have arisen. The first, concerning a potential conflict of interest between the NPA legal team, namely Advocate Hulley SC and Advocate Leketo, and their proposed role to represent Advocate Batohi.

Advocate Batohi had unsuccessfully requested the Solicitor General to appoint a further legal team to represent her. She was advised of her right, following the refusal by the Solicitor General, to appeal to the Minister of Justice and Constitutional Development. Advocate Batohi did appeal the decision of the Solicitor General. On or about the 8<sup>th</sup> of January 2026, the Minister advised Advocate Batohi to use the services of Advocate Hulley SC and his junior, Advocate Leketo, who, as I have mentioned, have been instructed to represent the NPA.

On or about the 9<sup>th</sup> of January, 2026, Advocate Hulley addressed a letter to the panel, requesting to consult with Advocate Batohi, following the decision first by the Solicitor General and subsequently by the Minister. As mentioned in the letter, the consultation was to cover aspects that Advocate Batohi was testifying on whilst under cross-examination.

Advocate Chauke's legal team wrote, signifying their intention to oppose the request to consult with Advocate Batohi whilst under cross-examination. The evidence-leading team seeks to confer with the State Attorney with a view to establish whether such potential conflict of interest exists and, if so, what appropriate steps they should take.

During engagement with the evidence-leading team, considering the request for a postponement, it emerged that neither the Solicitor General, nor the Minister, had been apprised of such potential conflict of interest. Therefore, the team requested time to consult and make an assessment whether such conflict exists.

The second issue giving rise to the request for a postponement concerned or concerns challenges with potential witnesses, especially in relation to the Cato Manor matter. Seemingly, some of the witnesses who had been identified and had been consulted with, have now withdrawn their availability. Other witnesses, including those with

regard to the Mdluli matter, are yet to be consulted by the evidence-leading team. The request for a postponement made from the bar necessitated varied questions from the panel, because a postponement is not there for the taking.

There can be no doubt that the request for a postponement for a further week will cause a further delay in finalising this matter or rather with making progress in relation to this matter. Thus far, only one witness, Advocate Batohi, has testified and is still under cross-examination.

10 Having considered the request and the submissions made by the legal teams, we agree that a postponement is under the circumstances warranted.

However, the request until Monday, the 2<sup>nd</sup> of February 2026 cannot be granted because such a postponement to that date will go beyond the period allocated by the President for the enquiry. It must be mentioned that the request for extension of the period allocated has been made to the President and the panel still awaits the decision from the President in that regard.

20 It must also be mentioned that the evidence-leading team has made an undertaking to provide the witness statements to Advocate Chauke's legal team by Friday, the 30<sup>th</sup> of January 2026. The further undertaking was that the enquiry will proceed without further interruptions.

Accordingly, the matter is postponed to Thursday,

the 29<sup>th</sup> of January 2026 and we request all the parties to be here on Thursday, the 29<sup>th</sup> of January 2026. We so order.

**ADV SKOSANA SC:** As you please.

**ADV MOHLAMONYANE SC:** As it pleases.

**CHAIRPERSON:** We will adjourn until Thursday, the 29<sup>th</sup> of January this year.

**ENQUIRY ADJOURNS UNTIL 29 JANUARY 2026**

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ENQUIRY INTO THE  
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CASE NUMBER : N/A  
RECORDED AT : PRETORIA  
DATE HELD : 27 NOVEMBER 2025  
NUMBER OF PAGES : 151

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