

**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**

12 DECEMBER 2025

DAY 16



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

PROCEEDINGS ON 12 DECEMBER 2025

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

ADV BATOHI: Morning, Judge. Good morning, all.

CHAIRPERSON: Good morning, Advocate Chauke.

ADV BATOHI: Good morning.

CHAIRPERSON: Our apology for a delay. Mornings are a bit difficult after a long week. We also acknowledge that it has been a long slog for you, Advocate Batohi. At least today is
10 Friday. We will all pause a little early by lunchtime. As we do, Counsel, we should acknowledge that it cannot be easy for you being on the witness stand for a long time. But thank you, we are making some progress, and we hope that Advocate Ngcukaitobi, we would finish with Advocate Batohi's evidence before we go on recess, hopefully, without being directive, but let us see how far we go.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. I get the message.

CHAIRPERSON: Advocate Batohi, you are still under oath.

20 **ADV BATOHI:** Noted, Chairperson.

CHAIRPERSON: Thank you. You may proceed, Counsel.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. Advocate Batohi, I want to move on to a different topic. You mentioned a few times that out of all of the cases, the one case that was prosecuted resulted in an acquittal, correct?

ADV BATOHI: Yes, that is correct.

ADV NGCUKAITOBI SC: Now that case was the case of Esikhawini, which is recorded as CAS 03/04/2010, correct?

ADV BATOHI: I cannot recall the CAS number.

ADV NGCUKAITOBI SC: Okay, well, I can help you. If you can go to file 3, page 74.

ADV BATOHI: 374?

ADV NGCUKAITOBI SC: Page 74 at file 3. That is the statement of the mother of Kwazi Ndlovu, who was killed by
10 Warrant Officer Padayachee, and there is a case number at the top.

ADV BATOHI: I see that.

ADV NGCUKAITOBI SC: So, do you accept that the one case that was prosecuted that resulted in an acquittal ...[intervenes].

ADV BATOHI: I accept that.

ADV NGCUKAITOBI SC: Is that case? Yes. Now, that statement of the mother starts at 74 to 79, is that correct?

ADV BATOHI: That is so.

20 **ADV NGCUKAITOBI SC**: The statement of the father ...[intervenes].

CHAIRPERSON: I beg your pardon. Is the name there ...[intervenes].

ADV NGCUKAITOBI SC: Yes, Lindiwe Desire Ndlovu.

CHAIRPERSON: Desire Ndlovu.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Is that Ndlovu?

ADV NGCUKAITOBI SC: Yes, Ndlovu.

CHAIRPERSON: Yes, thank you.

ADV NGCUKAITOBI SC: Lindiwe Desire Ndlovu, that is the mother of Kwazi Ndlovu, the 16-year-old boy. The statement of the father, Sibusiso, Wiseman Ndlovu. starts at page 80 until page 87. Is that correct?

ADV BATOHI: That is so.

10 **ADV NGCUKAITOBI SC:** And a supplementary statement from the father, Wiseman Sibusiso Ndlovu, is at page 88.

ADV BATOHI: That is so.

ADV NGCUKAITOBI SC: Yes. Now, I just want to understand the reason why you have singled out this case as the only case that resulted in an acquittal. Is it to say that it proves that you were right in the withdrawal of the cases, or it proves that the DPP was right in the withdrawal of the other cases?

ADV BATOHI: It is just a fact.

20 **ADV NGCUKAITOBI SC:** Okay, it is a neutral fact, it does not prove anything.

ADV BATOHI: Well, they were declined, the DPP declined and prosecuted this case, and there was a withdrawal. That is a fact.

ADV NGCUKAITOBI SC: I do not think you are answering me. I was asking for the reason why that fact was important

for you to repeatedly mention. Is it because it supports your thesis that there was no evidence, or it was just a neutral fact?

ADV BATOHI: It is a fact. You can make what you want of it.

ADV NGCUKAITOBI SC: And you will not answer why you thought that fact was important to be mentioned.

ADV BATOHI: There is lots of facts that I have mentioned, some are important, some less important.

10 **ADV NGCUKAITOBI SC**: I am not asking you about other facts. I am asking you about this particular fact. You will not answer why you thought that fact was important to mention or not?

ADV BATOHI: I think it is part of what happened in this matter. It was important that I gave the complete picture.

ADV NGCUKAITOBI SC: Now, what you did not disclose in your alleged complete picture is that the mother of Mr Ndovu, through Ms Mary De Haas, complained bitterly about the conduct of the prosecutor in suppressing evidence. You
20 remember that complaint?

ADV BATOHI: Mary De Haas has written a number of letters to me. I cannot recall one specifically about this matter.

ADV NGCUKAITOBI SC: I do not understand that. Ms De Haas was always assisting the mother of the child, Mrs. Lindiwe Ndlovu. She wrote to you, complaining bitterly about

the conduct of Advocate Sankar, in which she stated that Advocate Sankar was guilty of dereliction of duty, guilty of suppression of evidence in the way that case was prosecuted. You say you do not remember that?

ADV BATOHI: I am trying to think back. I think you are right. There was a complaint about this, which I forwarded to the DPP, who inquired into the matter and found that there was no improper conduct, if I recall correctly, on his part.

ADV NGCUKAITOBI SC: Now can you just explain to
10 ...[intervenes].

CHAIRPERSON: Before you do that, Counsel, who is Advocate Sankar?

ADV NGCUKAITOBI SC: Advocate Sankar was the prosecutor assigned to prosecute this case.

CHAIRPERSON: The Esikhawini matter?

ADV NGCUKAITOBI SC: The Esikhawini matter which was a murder charge against Warrant Officer Padayachee.

CHAIRPERSON: And the answer, Advocate Batohi, is that the matter was forwarded to the DPP. Would it have been
20 the DPP KZN, and who was that?

ADV BATOHI: That is correct. It would be Advocate Elaine Zungu, sorry, now Harrison. Advocate Elaine Harrison.

CHAIRPERSON: I beg your pardon.

ADV BATOHI: Advocate Elaine Harrison.

CHAIRPERSON: Elaine Harrison. Thank you.

ADV NGCUKAITOBI SC: Now I am not yet there, Advocate Batohi. I am still on the question of non-disclosure. Why have you not disclosed that there was a complaint of suppression of evidence against the prosecutor who prosecuted this case?

ADV BATOHI: It was not, I did not mean to withhold evidence. It is just something that I did not think about. It is not non-disclosure. I have got nothing to hide with that.

ADV NGCUKAITOBI SC: Yes. The problem with that
10 statement is that yesterday you were going on about justice for victims. You have repeatedly mentioned that the only case that was prosecuted resulted in an acquittal. Any sensible person would have thought that a complete picture would oblige you to disclose that there was a complaint of suppression of evidence against the NPA's prosecutor.

ADV BATOHI: I cannot recall what exactly the complaint was, but I did not intend to withhold anything or not disclose it for any reason.

ADV NGCUKAITOBI SC: That is why I am asking you for the
20 reason why this was not brought to the attention of the panel. You say it was not your intention to withhold it, but as a fact, you never told the panel. If you read your statement under oath, your statement simply blithely says the one case that was prosecuted resulted in an acquittal never actually engages with the complaint that came afterwards.

ADV BATOHI: The matter was dealt with. I did not intend to withhold it, any evidence. It just did not occur to me at the time that it would be relevant in this context.

ADV NGCUKAITOBI SC: You say that it is because you did not think it was relevant?

ADV BATOHI: In this context, yes.

ADV NGCUKAITOBI SC: Now, if you go to page 154 of file 3, that document is the complaint by Mrs De Haas on behalf of Mrs Ndlovu, the mother of the child.

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

CHAIRPERSON: What document? Is that ...[intervenes].

ADV NGCUKAITOBI SC: Page 154, Madam Chair.

CHAIRPERSON: 154.

ADV NGCUKAITOBI SC: 154.

CHAIRPERSON: I beg your pardon ...[intervenes].

ADV NGCUKAITOBI SC: Of file 3.

CHAIRPERSON: I beg your pardon.

ADV NGCUKAITOBI SC: At paragraph 2, this is what is stated.

20 “Under A of my letter of 18 November 2022, I criticize your failure to prosecute members of Organized Crime in what became known as the Cato Manor Squad for killing Kwazi Ndlovu, a child asleep on a sofa in his own home, despite the

evidence available to the prosecution. This was a particularly heinous crime and when, after a very long struggle on my part on behalf of the heartbroken parents of the child, there was a prosecution, it was only one member, a certain Warrant Officer Padayachee, when it should have been common purpose.”

10 Do you see that?

ADV BATOHI: I do.

ADV NGCUKAITOBI SC: -:

“Padayachee had for years stood accused of serious crimes in the Umbilo area, Durban, including drug running and murder. But had I known the cruelty

I would subject the parents to at the hands of the prosecution, I would not have motivated for a prosecution since I believe that justice was deliberately defeated.”

20

Now, I stated to you at the beginning that your prosecutors stood accused of defeating the ends of justice. You said you did not remember that. Do you now remember it, now that I am reading it?

ADV BATOHI: I do

ADV NGCUKAITOBI SC: Yes. Then she continues.

“The case should have been held in Empangeni Regional Court, where the parents live, but they were made to travel to and from Durban on a daily basis without the support of family and friends, because the SPP, Advocate Sankar ...”

10 That is where the name comes from, Madam Chair.

“Said that he needed an experienced magistrate available to Durban to hear it.”

And you see that here what she is talking about is the inconvenience placed on the poor parents of Kwazi Ndlovu having to travel long distances without the support of the state. Correct?

ADV BATOHI: I see that.

ADV NGCUKAITOBI SC: Yes. And then it continues.

20 “The magistrate who heard it was acting. However, Sankar's failure to use the reports we had provided him from the three experts, the late Frank Dutton, top pathologist, Dr Steve Naidoo, and top ballistic expert, Cobus Steyl, I

believe constitutes defeating the ends of justice.”

Now I said to you that your prosecutors were accused of suppression of evidence. Remember that?

ADV BATOHI: I do.

ADV NGCUKAITOBI SC: Yes. Then it continues:

10 “Hardly any witnesses were called and cross-examined. I may take my complaint about Advocate Sankar, who went out of his way to persuade the parents to settle for an inquest, despite there being all the evidence needed, which he did not use to prosecute further.”

Can you just explain to me when it was stated to you that Advocate Sankar had tried to force the parents to settle for an inquest instead of a prosecution, why you did not intervene?

ADV BATOHI: I did ask the DPP to look into the matter.

20 **ADV NGCUKAITOBI SC**: I am not asking about the DPP. I am asking about yourself, why did you not intervene as the NDPP?

ADV BATOHI: That is my intervention.

ADV NGCUKAITOBI SC: We do not even have any letters, any statements from you to the DPP in this record because

of your decision not to disclose these facts.

ADV BATOHI: It was not a decision not to disclose these facts.

ADV NGCUKAITOBI SC: Well, I thought you said you considered it irrelevant. I would regard that to be a decision.

ADV BATOHI: It was not a decision not to disclose these facts. The matter did not come up.

ADV NGCUKAITOBI SC: Yes, so you are saying to me, a parent of a child who has just been killed by the police, writes
10 to the NDPP and says to you, your prosecutor stand accused of defeating the ends of justice because they have suppressed evidence and they have tried to force the family to settle for an inquest, the only intervention you can make is to refer it to the DPP?

ADV BATOHI: That is a very serious issue. And of course, the first step is to ask the DPP to look into the matter, which is what I did.

ADV NGCUKAITOBI SC: Is there any report from the DPP that exists in your office?

20 **ADV BATOHI:** There should be.

ADV NGCUKAITOBI SC: Is there any independent investigation that was conducted in this matter?

ADV BATOHI: There was not.

ADV NGCUKAITOBI SC: There was no independent investigation?

ADV BATOHI: There was no independent investigation.

ADV NGCUKAITOBI SC: Just explain this ...[intervenes].

CHAIRPERSON: I beg your pardon. And this DPP you are referring to is the same Madam Harrison?

ADV BATOHI: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Why did you not call for an independent investigation? This is, your prosecutors are accused of committing crimes.

ADV BATOHI: The DPP looked into the matter and sent me
10 a report on the matter, and I can assume that because of what she said in the report, we did not consider it necessary in the circumstances.

ADV NGCUKAITOBI SC: Well, I do not understand that. The prosecutor is accused of defeating the ends of justice. It is brought to the attention of the NDPP. The NDPP fails to conduct an independent investigation to verify what transpired and comes to an inquiry and says she is basing her answers on an assumption. Is that what you want us to believe?

20 **ADV BATOHI**: No, I am saying that I referred the matter to the DPP, who looked into the matter and provided a report on it.

ADV NGCUKAITOBI SC: No, I think we have moved past that stage. We know that you did so. I am asking you about why, when your own prosecutors are accused of effectively

throwing away a case, you do not subject that to an independent investigation.

ADV BATOHI: The first step is to ask the DPP for a report and depending on what is in that report, we consider whether further steps are necessary. In this particular case, I am assuming, because I do not have the report before me, that on the basis of that report, no further steps were considered necessary.

10 **ADV NGCUKAITOBI SC**: Well, I would imagine you would remember this because the letter is dated the 12th of December 2024. It is a fairly recent occurrence. You would know why you elected not to conduct an independent investigation despite the grave accusation brought to your personal attention by a grieving parent.

ADV BATOHI: I cannot say now.

ADV NGCUKAITOBI SC: You cannot say?

ADV BATOHI: No.

ADV NGCUKAITOBI SC: Then it continues.

20 “I believe that the blame for effectively defeating the ends of justice is a collective one, for which the prosecuting authority is responsible, because it had fought tooth and nail against the prosecution from the time the child was killed, with the exception of when top

Hawks members and the prosecutors from other provinces arrested those who had been killed. Having gone through the sham of a prosecution has traumatized the parents of the boy further, especially as to rub salt into the wound, the police had claimed at the time of the killing that the child was a criminal, and their funeral policyholder refused to cover the funeral costs on the basis that the police had said he was a criminal. It is clear from character references from his teachers that he was a quiet and a well-behaved boy. So, in addition to inflicting secondary victimization on the parents, they have engaged in character assassination of a child.”

Just tell me, do you honestly believe that the actions that you took to inquire into a travesty of justice, as alleged, were sufficient for you as the NDPP?

ADV BATOHI: This is a matter when all of the dockets came back to me, all the murder dockets, this is the one that I questioned, because I looked at the docket and the evidence in this matter, and initially there was a decision not to

prosecute. And I sent it back, and I said, look at this more carefully. There is, I cannot recall the detail, but I sent it back to the DPP to reconsider the matter, saying that I thought that this matter should be prosecuted. And they did reconsider the matter, and the DPP decided to prosecute in this matter.

ADV NGCUKAITOBI SC: I do not think you are answering my question. I am talking about the complaint that came thereafter, that the prosecution was intentionally botched. I
10 am asking you if you honestly believe that your reaction of handing this to the DPP, not even knowing why, what the DPP said and why there was no independent investigation, do you honestly believe, sitting there as the NDPP, that that was sufficient?

ADV NGCUKAITOBI SC: I do honestly believe that was sufficient in the circumstances.

ADV BATOHI: Even though you do not even know why no independent investigation was held.

ADV BATOHI: I can assume that it is on the basis of the
20 DPP's report that was the case, because if there was anything in that report to suggest otherwise, we would have had an investigation.

ADV NGCUKAITOBI SC: But you do not even tell us what that report said.

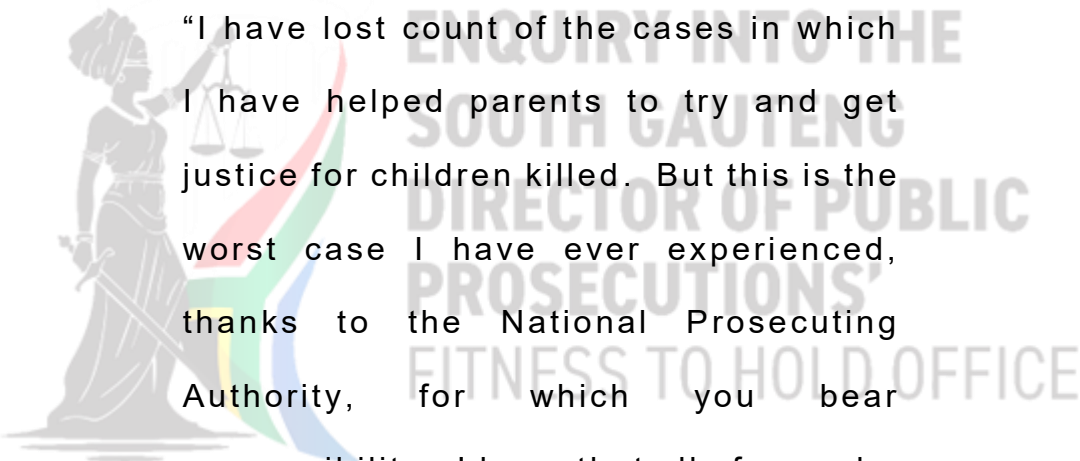
ADV BATOHI: I cannot, because I do not have it in front of

me. But I do have my letter, which is being ...[intervenes].

ADV NGCUKAITOBI SC: But I am coming to your letter, and you are running ahead of yourself. I am still asking you about your evidence that you gave this to the DPP. I am asking whether you honestly believe that where your prosecutors were accused of intentionally defeating bans of justice, that was sufficient.

ADV BATOHI: I do.

ADV NGCUKAITOBI SC: Yes. Then the writer of the letter
10 continues:



“I have lost count of the cases in which I have helped parents to try and get justice for children killed. But this is the worst case I have ever experienced, thanks to the National Prosecuting Authority, for which you bear responsibility. I hope that all of you who are complicit in this travesty of justice will experience at least twinges of
20 conscience.”

Now, you then submitted a response which you have been keen to move towards.

ADV BATOHI: No, I just mentioned it was there.

ADV NGCUKAITOBI SC: Yes, well, that is what I am going to ask you. This document here, this letter, was submitted

by us. We received it from external witnesses who watched your evidence, and they were horrified at the fact that you claimed that there was no, there was an acquittal on Kwazi Ndlovu, but you never disclosed that you yourself were made aware of the suppression of evidence. That is why it is there. It has not been brought there by you. It has been brought here by Mr Chauke because people approached him and were horrified at your evidence. Can you explain why is this letter introduced by Mr Chauke and not by you?

10 **ADV BATOHI**: I mentioned earlier, and my response remains the same, there was no intention to suppress anything.

ADV NGCUKAITOBI SC: Advocate Batohi, you must have mentioned this acquittal at least three times. It is in your statement, so it is something that was uppermost in your mind.

ADV BATOHI: It was not uppermost. It was one of the facts relating to this matter. It gave the full picture, that was all.

ADV NGCUKAITOBI SC: An accusation that a prosecutor has thrown away your case will not be uppermost in your mind?

20 **ADV BATOHI**: It is a very serious issue, and it will be.

ADV NGCUKAITOBI SC: This is why I am saying you had a duty to disclose it. You were intentionally withholding it from this panel.

ADV BATOHI: That is not the case.

ADV NGCUKAITOBI SC: Now, we can then go through this

letter which you suppressed.

CHAIRPERSON: I beg your pardon. If I may just recap, what answer did you give, Advocate Batohi, as to why this letter was not brought to our attention by the evidence leading team?

ADV BATOHI: Chairperson, I said that it is not something that I thought about. It was not intentional in the sense that we wanted to suppress it.

CHAIRPERSON: This is despite what you have just said that
10 it is a very serious matter?

ADV BATOHI: It is a serious matter if a prosecutor is accused of attempting to defeat the ends of justice.

CHAIRPERSON: However, nonetheless, considered that it is not a matter that you thought was not necessary to bring forth ...[intervenes].

ADV BATOHI: I did not, Chairperson.

CHAIRPERSON: Thank you.

MS RAMAGAGA: Just one question, Advocate Batohi. If I understood this letter correctly and I was listening
20 attentively, the reason, one of the reasons for the matter to be referred to, is it Durban? Ja, to be referred to the place where it was to be tried was that the magistrate that would be presiding over the matter was a magistrate with experience. Is that correct?

ADV BATOHI: I do not - I see that in the letter, Chairperson.

MS RAMAGAGA: Yes, the letter says one of the reasons was that the magistrate was an experienced magistrate. One of the reasons ...[intervenes].

ADV BATOHI: I see that in the letter, Chairperson.

MS RAMAGAGA: And then further on, the letter says that was in acting magistrate.

ADV BATOHI: I see that as well.

MS RAMAGAGA: You see that? And this came to your attention when?

10 **ADV BATOHI**: In December last year.

MS RAMAGAGA: In December last year. And - okay, that is fine. Thank you.

ADV NGCUKAITOBI SC: Thank you. If I can look at your letter in some detail now, you would accept that even though you referred to the report of the DPP, that report was never finished to Ms De Haas, who was representing the family, correct?

ADV BATOHI: That is correct.

20 **ADV NGCUKAITOBI SC**: Yes. Your letter also does not respond to the most, to the serious claim that the prosecutor attempted to force the parents to settle for an inquest instead of a prosecution. There is not a single line there that responds to that issue.

ADV BATOHI: That is so.

ADV NGCUKAITOBI SC: Which makes me believe that the

report you received that you purport to be relying on also did not deal with that issue of attempting to force victims of crime to settle for an inquest.

ADV BATOHI: Possibly.

ADV NGCUKAITOBI SC: Why not? Why do not you address the allegation that there is a prosecutor who is forcing the parents of a deceased child to settle for an inquest?

ADV BATOHI: I cannot answer that question because if it is true, it is a very serious issue. Initially, there was a decision
10 to hold an inquest in this matter, which was overturned.

ADV NGCUKAITOBI SC: I am not asking you that. I am asking you, the accusation against your prosecutor is they were forcing the parents, attempting to force, not forcing, the parents to settle for an inquest instead of a prosecution. You claim that is a serious matter. It is brought to your attention. It is not dealt with by your DPP. You also not address it. I am asking you why?

ADV BATOHI: The matter did proceed to a trial. That is the only reason I can think of in terms of why that matter was not
20 dealt with any further, that decision was changed.

ADV NGCUKAITOBI SC: No, I am asking you about the conduct of the prosecutor. Remember that you are the one who brought an issue of conduct of the prosecutor to this panel. I am asking you, there is an egregious claim brought to your attention of an attempt to force an inquest on the

parents. Why have you not made any inquiries about the conduct of the prosecutor?

ADV BATOHI: I cannot say anything more than I have already said on this matter.

ADV NGCUKAITOBI SC: So, you do not know why?

ADV BATOHI: I can only imagine it is because the matter did proceed to trial.

ADV NGCUKAITOBI SC: That is just your imagination.

ADV BATOHI: Assumption.

10 **ADV NGCUKAITOBI SC**: It is just your assumption?

ADV BATOHI: Mm-hmm.

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

CHAIRPERSON: The assumption that the matter was eventually tried.

ADV BATOHI: No, no, no, that nothing further happened because the matter went to trial.

CHAIRPERSON: Thank you.

ADV NGCUKAITOBI SC: Yes. Now, if you turn the page to page 160 in the third paragraph, there you say, Advocate
20 Sankar consulted with Mr Steyl and Dr Naidoo. Now, Madam Chair, Mr Steyl was the ballistic expert.

CHAIRPERSON: Tell us first what this letter is. That part of 160 is part of the letter by?

ADV NGCUKAITOBI SC: This is the letter, if you turn to page 161.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI SC: It is a letter signed by Advocate Batohi directly.

CHAIRPERSON: Thank you.

ADV NGCUKAITOBI SC: To the parents via Ms De Haas explaining herself on the allegations of prosecutorial misconduct that were alleged against Advocate Sankar.

CHAIRPERSON: Thank you.

ADV NGCUKAITOBI SC: Thank you. Now, one of the points
10 you make in the third paragraph is that Advocate Sankar consulted with Mr Steyl and Dr Naidoo, and both conceded during the thorough consultations that they were unable to answer the single question whether the deceased was armed with a firearm when he was shot by Warrant Officer Padayachee beyond a reasonable doubt. Do you see that?

ADV BATOHI: I do see that.

ADV NGCUKAITOBI SC: Can you just stick for now to the consultation with Mr Steyl and Dr Naidoo. There was another ballistic expert by Colonel Mangena in this case. Do you
20 remember that?

ADV BATOHI: I do not.

ADV NGCUKAITOBI SC: You do not? Okay, let me show it to you. If you go to file 1, Madam Chair, I am just waiting for my junior to show me the page.

CHAIRPERSON: Which letter?

ADV NGCUKAITOBI SC: There is another report by a ballistic expert. Page 367. Sorry, it is file 2 actually - no, this ends at 331. 367, file 2.

ADV BATOHI: Sorry, what is the number again?

ADV NGCUKAITOBI SC: 367, file 2. So, you will see there that is an expert affidavit of Christian, I think he is a captain, of Captain Christian Mangena in this Esikhawini case 03/04/2010, correct?

ADV BATOHI: That is so.

10 **ADV NGCUKAITOBI SC:** Yes. Now, your, the advocate who ran this case, Advocate Sankar ...[intervenes].

CHAIRPERSON: I beg your pardon, Counsel. I am sorry to interrupt you. That seemed to be a continuation from 458. Is that document, 467 ...[intervenes].

ADV NGCUKAITOBI SC: No, Madam Chair, are you at 367?

CHAIRPERSON: Oh, 3, oh, I am sorry. I was looking at the 467.

ADV NGCUKAITOBI SC: No, I understand.

CHAIRPERSON: I am sorry, I am sorry.

20 **ADV NGCUKAITOBI SC:** Yes.

CHAIRPERSON: My apology.

ADV NGCUKAITOBI SC: Yes, thank you. Now, Advocate Batohi, the advocate who has assigned to hear the matter, to prosecute the matter, Advocate Sankar, appears not to have consulted with Captain Mangena. Is that correct?

ADV BATOHI: That is so.

ADV NGCUKAITOBI SC: Do you know why?

ADV BATOHI: I do not.

ADV NGCUKAITOBI SC: Did you ask why?

ADV BATOHI: I did not even know that there was, this was a witness in this matter at the time.

ADV NGCUKAITOBI SC: You did not know that Christian Mangena was a witness in the matter?

ADV BATOHI: I did not know that there was another ballistics expert in this matter.

ADV NGCUKAITOBI SC: This is, for me, very strange. We got this ballistics report from the dockets that you sent us. How can you not know that there was this report?

ADV BATOHI: At the time that I got the report from the DPP, I would not have had the docket. I would have had no knowledge of what was in the docket.

ADV NGCUKAITOBI SC: Well, this was in December 2024. These dockets had been with the NDPP's office since 2019.

CHAIRPERSON: Counsel, are this part of those 23 ...[intervenes].

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Or the dockets that you spoke about earlier?

ADV NGCUKAITOBI SC: Indeed, indeed. So, this is an extract from that docket.

CHAIRPERSON: Yes. In fairness to Advocate Batohi, she made it clear earlier that she had never read those dockets.

ADV NGCUKAITOBI SC: No, Chair, I am making a different point that this particular case is brought to her attention on the basis that the prosecutors have thrown the case away because they failed to call relevant ballistic reports. That is the point I am making. She has responded in a letter in full trying to justify the misconduct. This is the only point I am making here. I understand the general point that she never
10 read the documents.

Advocate Batohi, I am sorry we have to deal with this point again. I am asking you the question around the failure to consult Captain Mangena, who was a ballistic expert. My understanding is that your answer is you do not know because you did not even know that there was another report.

ADV BATOHI: I was not aware at the time that there was another ballistics expert.

ADV NGCUKAITOBI SC: Yes. Now, let us look at what he says, this ballistic expert, at page 382. These are his
20 conclusions.

“After examination of the crime scene and observation of the crime scene photos and post-mortem, I am of the opinion that:

12.1 The deceased ...”

And the deceased, Chair, is the 16-year-old boy who was watching football.

“The deceased was hit by at least three bullets. Four fired cartridge cases were collected from the crime scene, it means four shots were fired and one bullet missed him and perforated the sofa at hole marked W2.”

That is the first.

10

“12.2 The bullet that perforated the right arm of the deceased at wounds 3A and 3B also perforated the sofa at hole marked W1.

12.3 Looking at the position of the deceased, I am of the opinion that wounds marked 2A and 4A were inflicted by the same bullet.”

And 12.4 is important. It says:

20

“The bloodstain pattern on the back of the sofa next to the right arm of the deceased is classified as forward spatter. This pattern is caused as the bullet exits the target, and a larger amount of high force impact spatter is directed in the same direction as the

bullet. The amount of high force spatter created will depend upon the caliber of the bullet fired. The bigger the caliber, the greater the spatter. The positions of the spatter and the wound sustained indicate that the arm of the deceased during the incident was almost positioned where it is current positioned. There was slight movement of the arm after the incident.”

Now, this is a case where your, the policeman claim that this young man had a gun and was trying to shoot at them. The picture he is analysing there is at 385. Can you turn to that picture? Now he says:

“After the analysis of the sheer velocity of the bullets, he came to the conclusion that the position of those arms was where it is at the moment and there was only a slight movement.”

Can you see that?

ADV BATOHI: I do.

ADV NGCUKAITOBI SC: Yes. But he says that slight movement was after the incident. Can you see that?

ADV BATOHI: I see that.

ADV NGCUKAITOBI SC: Yes. Then he continues:

“The injuries and damages caused by all four bullets had characteristics of high-velocity bullets. This is most probably 5.56mm caliber bullets supported by a number of fired 5.56 times 45mm caliber cartridges.”

Now, other reports say that those bullets are only shot by R4’s and R5’s. Those are machine guns. Do you know that?

10 **ADV BATOHI**: No, but I accept it.

ADV NGCUKAITOBI SC: But they also say what those bullets do, the 5.56 caliber bullets, explode inside the body of the victim. Do you know that?

ADV BATOHI: I am not aware.

ADV NGCUKAITOBI SC: And that is why the experts then say, when you use this type of a bullet that is intended to turn and explode inside the body of the victim, it is only consistent with the intention to kill. Do you know that?

ADV BATOHI: I am not aware of that.

20 **ADV NGCUKAITOBI SC**: It is expressly not consistent with an intention to arrest a suspect. Do you know that?

ADV BATOHI: No, I am not.

ADV NGCUKAITOBI SC: Now, Captain Mangena continues at 12.6.

“Looking at the wounds sustained, the

bloodstain pattern and the bullet holes, all these confirm that the deceased was shot while in a lying position on the sofa.”

Now, we know that lying position because we have page 385. But the expert is explicitly clear that his opinion is that this young man was shot while lying on a sofa. Do you have any comment on that?

ADV BATOHI: I see that, and it is very concerning that this witness, expert was not consulted, I agree with that, and was not called at the trial.

ADV NGCUKAITOBI SC: Advocate Batohi, it is no help for you to be concerned today. When this was brought to your attention in December 2024, that here is an expert report, it is in the docket, your prosecutors do not consult with him, he is not called as a witness, so to come after the event and to say you are concerned about it really helps no one because the parents told you this.

But then there is a further problem at 12.7. They say:

“The current position of the deceased shows slight upward movement of the left arm, and the position of the firearm is unexplainable.”

Now we can go back to page 385. This is why it was

concluded that that firearm was most probably planted by the killers of this young man.

CHAIRPERSON: What does that mean, that it was planted?

ADV NGCUKAITOBI SC: That it was put after they shot him. I know planting is a slang. But that firearm was put there after they shot this young man. Any comment?

ADV BATOHI: Chairperson, all I can say is that, you know, I must accept this expert's evidence, and it is very concerning that this particular expert would not have been led at the trial.

10 **ADV NGCUKAITOBI SC:** Well, sorry, Advocate Batohi, it is not about not leading him at the trial. They did not even consult with him.

ADV BATOHI: That is correct.

ADV NGCUKAITOBI SC: To understand that there are witnesses in his evidence, etcetera.

ADV BATOHI: That is correct. And that is also very concerning.

ADV NGCUKAITOBI SC: But the report is in the docket.

ADV BATOHI: As I mentioned, I was not aware of that.

20 **ADV NGCUKAITOBI SC:** And this is why your conclusion that focuses on the opinions of Mr Steyl and Dr Naidoo, completely misses the point.

ADV BATOHI: I agree with you now that I am aware that there was another ballistics expert.

ADV NGCUKAITOBI SC: And this is why, if you look at one,

two, three, four, five, on the fifth paragraph, where you talk about ...[intervenes].

ADV BATOHI: Sorry, what page are you at again?

ADV NGCUKAITOBI SC: Page 160 of your letter, the fifth paragraph.

ADV BATOHI: Ja.

ADV NGCUKAITOBI SC: When you are telling the parents that these experts were expressing an opinion based on the position of the firearm in the photographs, that is just wrong
10 because the conclusions are not based on the position of the firearm. We have just looked at all of the seven conclusions. The firearm is only mentioned, the position is mentioned once at 12.7, page 382, as unexplainable. The rest of the opinions of Captain Mangena are based on a detailed analysis of the crime scene.

ADV BATOHI: I see that, and I agree with you.

ADV NGCUKAITOBI SC: Now ...[intervenes].

CHAIRPERSON: The specific paragraphs in page, on page 160 have been what you referred us earlier to, the third
20 paragraph and the fourth paragraph, I suppose?

ADV NGCUKAITOBI SC: One, two, three, four, the fifth paragraph, Madam Chair. That is the one I was talking about.

CHAIRPERSON: The suspicion?

ADV NGCUKAITOBI SC: Yes, Yes.

CHAIRPERSON: The suspicion.

ADV NGCUKAITOBI SC: The real point here is that Advocate Batohi concluded that the reason those witnesses were irrelevant is because their opinion was based on the positioning of the firearm. But that is just wrong. When you actually read the opinion of Captain Mangena, the firearm positioning is mentioned only once. The opinion is based on an analysis of the crime scene as a whole. Advocate Batohi, you can respond to that comment.

ADV BATOHI: Yes, all I can say at this point is that it is
10 extremely concerning that this because, as I said, this was a matter that I referred back to the DPP because I thought that it was a matter that needed to be prosecuted. The DPP reconsidered the matter, prosecuted the matter, but it is now concerning to know that there was another ballistics report and that this expert was not called. And I certainly will not leave it at that. It is after the fact, but it is something that I will need to look into.

ADV NGCUKAITOBI SC: Now there is a further problem with your letter which says that the reason Mr Steyl and Dr Naidoo
20 were not called really revolves around the positioning of the firearm, which is what we have looked at, the fifth paragraph of page 160. It makes me believe that you did not read even the opinion of Mr Steyl and Dr Naidoo. Did you read it?

ADV BATOHI: I did not read anything. I said I did not read the dockets.

ADV NGCUKAITOBI SC: No, I am asking about the specific ...[intervenes].

ADV BATOHI: I did not.

ADV NGCUKAITOBI SC: Because we asked for this opinion. Madam Chair, it is at file 3, page 90. Page nine zero, file 3. Yes. Now, my concern here is that your statement in the fifth paragraph, that these witnesses could not give evidence beyond a reasonable doubt about the positioning of the firearm as the only basis to draw from those reports shows to
10 me it can only have been made by a person who did not read the actual report of Mr Steyl and Dr Naidoo, that is why I want to go through this report with you. If we start at page 91, under E, main factual findings - sorry, I will go to that. I just forgot there was a question I had to ask before this. Advocate Batohi, you know this report that we are dealing with was not in the docket. Did you know that?

ADV BATOHI: No, I am not aware of that.

ADV NGCUKAITOBI SC: Yes. We received this again from third parties who were horrified at the evidence you were
20 giving when they were watching it on television. Why would a report like this not be in the docket?

ADV BATOHI: It should be in the docket.

ADV NGCUKAITOBI SC: But ...[incomplete].

ADV BATOHI: I cannot answer that. It should be in the docket. Unless there has been some reason to suppress

evidence, it should be in the docket.

ADV NGCUKAITOBI SC: Well, this is the whole point that was made, that this case has been intentionally botched. You are talking about this report because we assume when you say Mr Steyly and Dr Naidoo, the only joint report that we could find is this one, but it was not in the docket that you disclosed. We found it from third parties.

Now, what they say here at the main factual findings under E1-2:

10 “Kwazi was 16 years old and in grade 10
at school. When the father retired to
bed between 10:30 and 11pm, Kwazi
was still watching soccer on television.
The yard outside had three vehicles, a
white Mercedes-Benz used by Mrs
Ndlovu, a red BMW used by Mr Ndlovu,
and a third vehicle, a bakkie, belonging
to a friend of the family. Whilst both
parents were fast asleep, there was a
20 violent and a sudden loud sound early in
the morning, as the kitchen door was
broken in and footsteps were heard of
persons entering the kitchen before the
parents could get out of their bedroom.
And then several gunshots were heard,

causing the parents to scramble from the bed to the floor with their younger son, Sazi. Their bedroom door was shortly thereafter opened and the husband made to lie prone, face down, in the passage outside of the bedroom, bedroom one and lounge. Men were shortly thronging the house.”

Turn over to page 92.

10

“The interval between the storming of the door and the gunshots were approximately several seconds from the parents' recall. The parents were both fast asleep at this time, and they related that they think in retrospect that Kwazi had either fallen asleep upon the couch in the lounge that night, but at that moment, when abruptly awoken, were under the impression that Kwazi was asleep in his own room.”

20

What I want to put to you about this, this is a factual narrative conveyed to these experts by the parents, but it is perfectly compatible with the expert opinion of Captain Mangena, who says, upon his examination of the scene, this child was shot while asleep.

ADV BATOHI: I agree with you.

ADV NGCUKAITOBI SC: Yes. If you then skip E5 to E7, you go to E1.8, this have now killed the child. Mr Padayachee has killed the child. Then this is what happens.

“Mrs Ndlovu did not know or suspect that ...” [intervenes].

CHAIRPERSON: Are you reading at:

ADV NGCUKAITOBI SC: E1.8.

CHAIRPERSON: E1.8.

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

“Mrs Ndlovu did not ...” [intervenes].

CHAIRPERSON: Where does he say Mr Padayachee has killed a child? Are you putting it to the witness?

ADV NGCUKAITOBI SC: Yes, when they talk about the shooting, it has already happened by this time, because the shooting is at E1.3.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI SC: Yes. So, the child has now been killed, but this is now the aftermath. E1.8:

20 “Mrs Ndlovu did not know or suspect Kwazi was injured and repeatedly requested for her to remove Kwazi from the room or the house, and so that she could remove both sons to their grandmother's care after the incident of

the entry of the police. She was repeatedly told that they were still questioning Kwazi. It was only when her husband returned from H2 section with the police that he told her what he now suspected and was the reason for a crime scene police cordon tape applied around the scene. Mrs Ndlovu then stormed through the tape cordon and

10 peered into the lounge window, where she saw her son with an injury to the arm and a firearm at his side. She shortly thereafter entered with the paramedics who arrived and also managed to obtain some pictures on her cellphone.”

The reason why this is important is that Captain Mangena says, his examination is that the crime scene must have been tampered with because there is the inexplicability

20 of the firearm. When Mrs Ndlovu was denied entry to the room where the child was killed, that too is compatible with an attempt to tamper with the crime scene. Otherwise, why would you stop a parent from entering the room where the child has been killed?

ADV BATOHI: That is possible, I agree.

ADV NGCUKAITOBI SC: Now, if we then look at what they say, their conclusions at page 102, sorry, not 102, I think let us start at 101. We are going to still go to 102, 101 at E8.3.

They say:

“The four rifle cartridge cases indicate that at least four rifle shots were fired. If so, then one shot of this did not impact on the deceased.”

Now, that again is consistent with Captain
10 Mangena's conclusion that one of the bullets shot through the sofa and three landed on the body of the child. Correct?

ADV BATOHI: That is correct.

ADV NGCUKAITOBI SC: Yes.

“Where this additional shot had impacted is not apparent in the photographs. The padded couch will not easily reveal such perforations in a photograph. but its actual examination showed a single direct impact of its two
20 perforations.”

That, again, is Captain Mangena came to the same conclusion. Then they say:

“It is evident from the photographs that the body position had been altered at least slightly after death.”

Remember that this is also the same conclusion of Captain Mangena, that they tampered with the body after the death, correct?

ADV BATOHI: Yes, that is correct.

ADV NGCUKAITOBI SC: Yes.

10 “However, the location of the wounds on the body, the lack of other bloodstains anywhere else in the visible surroundings other than that noted in C above, and the location of the cartridge cases on the floor all suggest that the deceased was lying in that general supine position upon the couch as shown on the photographs when he was shot.”

Again, Captain Mangena also came to the same conclusion that this child was shot while in a sleeping position. Correct?

ADV BATOHI: That is correct.

20 **ADV NGCUKAITOBI SC**: Yes. Then in paragraph 3:

“Considering the incapacitating effect of the gunshots, it would also be most likely that the deceased did not also make any significant voluntary movement after the injuries. Such

gunshots are very destructive and must be considered immediately incapacitating for most of these cases, not allowing for the victim to be capable of any reactive or retaliative actions. The death would also have occurred very shortly, within a few seconds, if not immediately, after the gunshots, when considering the effect of such high-velocity gunshots to the head with a lodged bullet.”

Now, you remember that I said to you, what the experts say is that this 5.56mm bullets shot through an R4 and an R5 are weapons of killing and that is perfectly consistent with the conclusion reached by the expert, that these are very destructive and immediately incapacitating. Do you accept that?

ADV BATOHI: I do not doubt that.

ADV NGCUKAITOBI SC: And then paragraph 4:

“The temporal sequence of body shots which shot was sustained first, second and third cannot be determined from the photographs or autopsy findings.”

So, there is no finding there. Then paragraph 5 is also a very concerning paragraph. It says:

“The general appearance of the posture of the deceased is that of relaxation in the supine position. This is not reconcilable with the usual posture adopted in firing a weapon.”

You remember that Warren Officer Padayachee claimed in his statement that this young boy had a gun and was trying to shoot at him, and he shot him four times in self-defence. But the experts say that narrative is inconsistent
10 with the posture of the deceased, which was of a relaxation in a supine position, not reconcilable with the posture adopted in firing a weapon. Do you accept that?

ADV BATOHI: I see that, yes.

ADV NGCUKAITOBI SC: Yes. Number 6:

“The absence of any handgun cartridges at the scene suggests that the handgun
was not fired.”

So even though if you go to, even though if you go to page 385, yes, even though if you go to page 385, there is
20 a gun.

CHAIRPERSON: That is your volume?

ADV NGCUKAITOBI SC: Volume 2, Madam Chair. Thank you. So even though if you go to page 385, you see under the left elbow of this young man, there is a weapon. The experts say he was supine when he was shot. No cartridges

could be found, meaning that handgun was not fired.

ADV BATOHI: That is correct.

ADV NGCUKAITOBI SC: Yes. Then, paragraph 7, which is also compatible with Captain Mangena:

10 “The position of the handgun on the couch is also not easily reconcilable with the final rest of the weapon if it had been held in the right hand at the time of sustaining a high-velocity destructive shot through that right forearm. If the weapon was held in the left hand, it would have landed on the body of the deceased or close to his upper thigh region. The possibility that this was not the actual position of the weapon, as depicted in the LCRC photographs at death, must be considered.”

20 They are not as forthright as Captain Mangena, but the general thrust is the same, that it is impossible, it is improbable, let me not say impossible, for this weapon to have been held by this young man at the time of the shooting. Do you have any comment?

ADV BATOHI: I agree with that.

ADV NGCUKAITOBI SC: Yes. Now, then I wanted to then go to 102, and then if you turn to 103, there is two more

conclusions there.

CHAIRPERSON: You have just finished 102 at 7.

ADV NGCUKAITOBI SC: Yes, 102 at 7. I want to turn to 103 at 6.

CHAIRPERSON: At 6.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI SC: Yes. There are, sorry, I said two, or three conclusions that are crucial to put to you. The one
10 is at 6, where they say:

“The evidence suggests that the deceased was in a reclining position at the time of the injuries.”

So, they have used supine, they are now using reclining, but it all comes with the same thing.

“The general position and posture of the deceased suggest that he may not have had advance warning of the shots. The appearance of the blood staining
20 indicates that the deceased was lying, as depicted in the photographs at the time of the shooting, that he was likely in a relaxed position upon the couch when he sustained the injuries.”

So that is consistent with what we have read so far,

correct?

ADV BATOHI: That is correct.

ADV NGCUKAITOBI SC: Yes. Then if you look at paragraph 8:

“Assuming that the deceased was right-handed, the observation above may also not be reconcilable with the deceased having held a gun in his right hand at the time of sustaining the gunshots.”

10 And the reason why they mention this is because they are reading these statements of Warrant Officer Padayachee that say this young man was carrying a gun on his right hand, and they are saying this is just irreconcilable with the facts. Correct?

ADV BATOHI: I agree.

ADV NGCUKAITOBI SC: In paragraph 9:

“The handgun seen in photographs does not appear to be cocked, and no spent handgun cartridges were found ...”

20 It should be spent.

“Handgun cartridges were found at the scene.”

So, they make a different point here, that not only was the gun not shot, it was not even cocked. Correct?

ADV BATOHI: That is correct.

ADV NGCUKAITOBI SC: Yes. And then the handgun was not fired, so we have already dealt with that in the previous section. But they make a further opinion.

“It is also our opinion that the handgun positioning, as seen in the photographs, requires investigation, as there is a possibility that this could have been an altered scene.”

Now, this comes into that whole thing that this gun
10 was most probably put there after the shooting, which is the conclusion of Captain Mangena. Do you see that?

ADV BATOHI: Yes, I do.

ADV NGCUKAITOBI SC: Yes. Now, thank you. Now, the reason I have had to go through this is because in your report or your response, rather, to the family, you give a thoroughly misleading account of what the expert says, and you do not even submit to them the expert report. Was that because of what the DPP told you?

ADV BATOHI: It is not misleading on my part. It was what I
20 assume I would have received from the DPP. The way the process works in the office is that when there are these issues, it goes through the division called NPS in my office, where the DPP’s report to the Deputy National, they would send reports to the NPS, they look at the reports, they draft a response for me, and then the file comes through to me,

and I then look at the file and decide whether the draft needs any changes, etcetera, and then I send it, but that is the process. So, in this case, I can only say that this was because of what the DPP sent to me, but I have to add that it is, I agree, very, very concerning that these witnesses were not called, given what we have just read now in these reports.

ADV NGCUKAITOBI SC: No, you see, Advocate Batohi, the issue of the witnesses not being called is one issue. What I am probing now is you, in a letter that you have signed, giving
10 a misleading picture of the evidence of the ballistics.

ADV BATOHI: It was what I would have written on the basis of what the DPP provided. And you may rest assured that this is something I have to follow up on.

ADV NGCUKAITOBI SC: No, this is the problem I have, is that you have repeatedly, in the course of this testimony, singled out this case as the one example that was prosecuted leading to an acquittal, which is why we have had to go through a thorough examination of what happened. You did not even ensure that this report we have been dealing with is
20 part of the docket.

ADV BATOHI: I was not even aware of it, and I did not disclose the docket, so there was, I was not involved in that process at all. So, to attribute that to me is, I think, really unfair.

ADV NGCUKAITOBI SC: No, but you refer to their report in

your letter. I am not attributing it to you. You are attributing it to yourself.

ADV BATOHI: Can you refer me? Sorry, I have just, which pages are again?

ADV NGCUKAITOBI SC: Page 160 of file 3.

ADV BATOHI: 160. Yes.

ADV NGCUKAITOBI SC: At paragraph, the third paragraph. where you are talking about the consultation of Advocate Sankar with Steyl, Mr Steyl and Dr Naidoo.

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

ADV NGCUKAITOBI SC: Yes. Now this is why we have had to find their report in order to understand what did they conclude in their report, to see whether the conclusions you made were fair conclusions or unfair conclusions. We came to the conclusions that not only were they unfair, they were also misleading.

ADV BATOHI: These conclusions were, as I can only assume, I do not have the report now, but that is the way the process works, is the DPP would have provided a report and
20 this would have been drafted on the basis of that report. But I have to emphasize on the basis of what has emerged today, I will have to look into this matter further. There seems to be something that was not right.

ADV NGCUKAITOBI SC: Yes. Now, this is part and parcel of the problem. You know, you have brought in a senior

Director of Public Prosecutions of extensive experience who went through these dockets, came to the conclusion that at least in the Kwazi Ndlovu case, there should have been a prosecution. Having gone through these dockets, and you have said there was no evidence, there was no evidence, there was no evidence. You have singled this one out, you have said they were withdrawn. We tried to prosecute. There was an acquittal. We go through this on a cursory basis.

The three most important witnesses, Steyl, Mr Steyl, 10 Dr Naidoo, Captain Mangena, are not called. The parents come to you and they say evidence has been suppressed. No independent investigation. I think that on that summary, it is fair to conclude that you have been complicit in denying the parents of Kwazi Ndlovu justice.

ADV BATOHI: If I may comment on that.

ADV NGCUKAITOBI SC: Yes.

ADV BATOHI: That is certainly not a conclusion that is justified in these circumstances. As I explained, firstly, to deal with the issue of no evidence that I have mentioned, I 20 thought I made it quite clear that it was no evidence relating to the racketeering charges and that is why all of the dockets were sent to the DPP to look into each one of them to see if there was evidence to charge in respect of each of the dockets. This particular case, I was not aware of these reports of the ballistics experts. Having been made aware of

them today, I will certainly take steps to look into this matter, because it is on the basis of what has been read out now, it appears that these witnesses should have been called for the trial, at the trial.

ADV NGCUKAITOBI SC: No, you see, my problem, Advocate Batohi, it does not help for you to talk about racketeering, because this was one of the predicate offenses, so it was part of racketeering.

ADV BATOHI: It does help to talk about racketeering, 10 because racketeering has very specific elements that you need evidence to prove. And the conclusion that they came to is that there was no evidence to support the elements of the racketeering charges. And that is why I again emphasize the dockets were sent back for the DPP to consider each one of them to decide whether charges should be brought in respect of any charges in those dockets.

ADV NGCUKAITOBI SC: No, I think we are not talking about the same thing. I am simply putting to you that this is one of the predicate offenses in the racketeering charge. Is that 20 correct or not?

ADV BATOHI: This would have been one of the predicate offenses ...[intervenes].

ADV NGCUKAITOBI SC: Yes.

ADV BATOHI: In the racketeering charges, but you need two predicate offenses to satisfy that element for racketeering.

ADV NGCUKAITOBI SC: No, do not worry, we will go through all of them. But I am simply putting to you that this would have been necessary for the racketeering charge because it is one of the predicate offenses.

ADV BATOHI: It would have been one of the predicate offenses, that is correct.

ADV NGCUKAITOBI SC: Yes. Now, you now say, well, I am going to investigate this matter further and I will be taking action because I can see that witnesses that should have
10 been called were not called. The problem with all of that, it seems to me to be regret after the event that you failed to do your job diligently at the time.

ADV BATOHI: That is not correct. I relied on the DPP's report. I was not aware of these documents and reports. Now that I am aware of it, I am not going to ignore it.

ADV NGCUKAITOBI SC: Yes. Madam Chair, I am going to move to another topic. I see that it is 10 to 11. It might be a convenient time.

CHAIRPERSON: Before we do, if I may. This report of the
20 DPP, Madam Harrison, I suppose?

ADV BATOHI: That is correct, Chairperson.

CHAIRPERSON: Can it still be found?

ADV BATOHI: It should be on the file, Chairperson.

CHAIRPERSON: Which file?

ADV BATOHI: On the file in the office. Sorry, in the office

file.

CHAIRPERSON: Is it possible that it can be made available to us?

ADV BATOHI: Yes, Chairperson, it can be.

CHAIRPERSON: When?

ADV BATOHI: On Monday.

CHAIRPERSON: On Monday the 15th. Please assist the NPA team, please assist in that document being filed of record so that all the parties, including ourselves, the panel, we should
10 have a look at it. We should have it by Monday. Remember, we are online, so the document can be made available to us even tomorrow. Thank you.

MS RAMAGAGA: May I? Advocate Batohi, it is on record that you have not read the dockets relating to the racketeering charges.

ADV NGCUKAITOBI SC: That is correct, Chairperson.

MS RAMAGAGA: And what I would like to know is your approach towards dockets in particular. Is it your approach that you have insulated yourself from reading dockets as a
20 general approach, or what is the position?

ADV BATOHI: Chairperson, as a general approach, I do not read the dockets. I get reports, and evidence is summarized, depending on the circumstances that led to the matter being brought to my attention. If I, there is something in it that I, sometimes I do statements, I ask for statements, but as a

general rule, I rely on reports from the DPP's.

MS RAMAGAGA: So it would be safe to see you have insulated yourself from reading the case docket?

ADV BATOHI: I would not say I have insulated myself. It is just that it is very difficult for a DPP, for a National Director to be reading dockets. So, it is reasonable to expect that you would rely on reports from the prosecutors in the matter, or the DPP.

MS RAMAGAGA: Thank you.

10 **CHAIRPERSON:** Thank you, Counsellor. Advocate Batohi, we will take the tea adjournment until 11:15. We adjourn.

ENQUIRY ADJOURNS

ENQUIRY RESUMES

CHAIRPERSON: Good afternoon, I see, Junior, you have moved positions. Have you been adopted? [Laughter] Is this okay.

ADV MOHLAMONYANE SC: I have actually asked Advocate Ngcukaitobi to inform the panel as to the reason why he is here. He is a welcome visitor.

20 **CHAIRPERSON:** It is okay, you can adopt him. I will approve the adoption. [Laughter] Remember, we are a family here. Thank you. Advocate Batohi, you are still under oath. Thank you.

ADV BATOHI: Noted, Chair.

CHAIRPERSON: You may proceed, counsel.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. Advocate Batohi, during the adjournment, I was requested to put two more propositions to you on the matter of the young man Kwazi Ndlovu. The first one is whether you admit that Kwazi Ndlovu was not a wanted suspect.

ADV BATOHI: [Pause] All I can say is the evidence certainly seems to indicate that he was not a wanted suspect.

ADV NGCUKAITOBI SC: Yes. The second one is that the evidence is also clear that this was simply a case of mistaken
10 identity. They got to the wrong house and they shot the wrong person.

ADV BATOHI: It seems to appear from the evidence that that is possible.

ADV NGCUKAITOBI SC: Thank you. Could we move on then to the next topic? We spoke at length, well you spoke at length, about, I think his title is Colonel Ari Danikas, who was a police reservist. Do you remember that?

ADV BATOHI: We spoke about his statement being unsigned.

20 **ADV NGCUKAITOBI SC:** Yes, I know we did, but I want to confirm if that is consistent with your recollection.

ADV BATOHI: Yes, we did, I did speak about him.

ADV NGCUKAITOBI SC: Now, he was assigned to the Cato Manor Unit, working directly under Major General Booysen between the years 2000 until he fled the country in 2008.

Correct?

ADV BATOHI: I think that is correct. I do not have his statement in front of me, but it seems to resonate.

ADV NGCUKAITOBI SC: Yes. Well, we can go through it. Now, according to him, he left this country because he was terrified that he would be killed by the members of the Cato Manor team. Correct?

ADV BATOHI: I cannot recall that.

ADV NGCUKAITOBI SC: Yes, all right, but you can say yes
10 or no.

ADV BATOHI: I cannot say yes or no.

ADV NGCUKAITOBI SC: Yes, thank you very much. Could I ask you to go to file 2 at page 515?

CHAIRPERSON: Page?

ADV NGCUKAITOBI SC: 515, file 2, Madam Chair. Now, there is an email written for your personal attention addressed to Ms B Makeke by Colonel Danikas. Correct?

ADV BATOHI: That is correct.

ADV NGCUKAITOBI SC: Who is Ms Makeke?

20 **ADV BATOHI:** She is the Head of Communications in the NPA.

ADV NGCUKAITOBI SC: Yes. Did she bring this letter to your attention?

ADV BATOHI: I do not recall seeing this letter.

ADV NGCUKAITOBI SC: But if a letter is addressed for your

attention ...[intervenes]

ADV BATOHI: I see that.

ADV NGCUKAITOBI SC: Would there be any reason why the head of communications ...[intervenes]

CHAIRPERSON: Advocate Batohi, please just wait for counsel to finish. You just interrupted and said, I see that, when he is talking. Just pause and wait for him to ask you a question and answer.

ADV BATOHI: Noted, Chairperson.

10 **CHAIRPERSON**: Let us do that, please.

ADV BATOHI: I thought he was finished. I take note.

CHAIRPERSON: Advocate Batohi, please.

ADV BATOHI: Sure, I will do that.

ADV NGCUKAITOBI SC: Thank you. If a letter is addressed for your attention, is there any reason why Ms Makeke would not take it to you?

ADV BATOHI: It should come to me.

ADV NGCUKAITOBI SC: So, we can assume that it did go to you.

20 **ADV BATOHI**: No, we cannot assume that.

ADV NGCUKAITOBI SC: Well, that is why I have just asked you. A letter is addressed on the 7th of August 2019 to Ms Makeke for your attention. Is there any reason why she would not bring it to your attention? You said it should come to you.

ADV BATOHI: That is right.

ADV NGCUKAITOBI SC: So, what are you saying now? When I say to you, we can assume that it did come to your attention.

ADV BATOHI: No, we need to check why it did not, because I certainly cannot recall having received this email.

ADV NGCUKAITOBI SC: Well, is Ms Makeke still employed by the NPA?

ADV BATOHI: Yes.

ADV NGCUKAITOBI SC: So, it should not be difficult to ask
10 her, to check her emails, whether she forwarded this to you or not.

ADV BATOHI: That is correct.

ADV NGCUKAITOBI SC: Yes. I am more interested in the content of this email. This is brought to your office for your attention on the 7th of August 2019. Firstly, he says:

“My name is Aris Danikas. I was
approached back in 2011 by the South
African authorities to assist them with an
ongoing criminal investigation of a police
20 unit called Cato Manor, as well as General
Booyesen. I was visited three times by
members of the police and the NPA
between 2012 and 2016 in Greece. By
then, I was forced to return to Europe after
living in South Africa for nearly 20 years.

The reason for my sudden and secret departure from South Africa is disclosed in my official statement, issued via an MLA request in 2017.”

That is what he brought to your attention in the first place, correct?

ADV BATOHI: That is what is in the email.

ADV NGCUKAITOBI SC: Yes.

10 “At this point, I would like to strongly protest of the manner I was handled as a state witness for the prosecution. Not only was my safety compromised repeatedly by not receiving any kind of protection, as promised by many officials, such as Advocate Dawood Maema, as well as General Mabula, but furthermore, my human rights were violated when the NPA submitted my unauthorised draft notes as a commission statement to the Courts in support of their charges of racketeering against the accused.”

20 Now, you have repeatedly mentioned that unsigned statement, but do you see that he actually owns them as his draft notes?

ADV BATOHI: I see that.

ADV NGCUKAITOBI SC: Yes. Then, in the next paragraph, he says:

“Later on, the NPA did receive a statement by me, only to use it as an excuse to justify previous reinstated charges of racketeering. Although there was hardly any feedback of the progress of the case to me, I had to eventually find out via the media that the case was dropped recently.”

10 Remember that yesterday I asked you whether there was any attempt to contact some of the witnesses that were crucial on your part when you dropped the case. You said that you did not, correct?

ADV BATOHI: That is correct.

ADV NGCUKAITOBI SC: And here is a witness that is expressly complaining, to your office at least, about not being consulted when the case was dropped, correct?

ADV BATOHI: That is correct.

ADV NGCUKAITOBI SC: Then he says:

20 “In the meantime, I received last week a hate letter from Booyesen himself with fabricated and unproven allegations against my character attached.”

Is that correct? That is what he says?

ADV BATOHI: That is what he says, yes.

ADV NGCUKAITOBI SC: Now, let us just look at those attachments. Go to page 518. So, according to Colonel Danikas, Mr Johan Booysen wrote to him in a WhatsApp on the 26th of July 2019. And that is a copy of a WhatsApp sent to Colonel Danikas. You would not know about that, would you?

ADV BATOHI: I have not seen this. It is the first time I am seeing any of this.

ADV NGCUKAITOBI SC: Well, these were submitted as part
10 of our evidence last week already.

ADV BATOHI: I know. I have not had time to go through all of your information.

ADV NGCUKAITOBI SC: But in addition to that, it was attached in 2019 already to your office.

ADV BATOHI: I said that was so.

ADV NGCUKAITOBI SC: Yes. Now, he says, General Booysen says to Mr Danikas, and at this point, you must remember, Major General Booysen is an accused in a murder case. He is also an accused in a POCA infringement. He is
20 texting a witness and says the following:

“Hi, Manaka Draft Dodger, you are making a fool of yourself. Why do not you come and testify in South Africa? You are a coward.”

Let us just stop there. Now, Major General Booysen knows

full well why Mr Danikas fled the country. It is because he was scared of a possibility of murder by the Cato Manor Unit. Is that correct?

ADV BATOHI: I have no idea. You should ask that of Major General Booysen.

ADV NGCUKAITOBI SC: Well, I am putting it to you. It was public and common knowledge ...[intervenes]

ADV BATOHI: I have no idea.

ADV NGCUKAITOBI SC: ...it was even part of the statement.

10 You do not know.

ADV BATOHI: I do not know about that.

ADV NGCUKAITOBI SC: Yes. Now, what I am interested in is the statement, why do not you come and testify in South Africa? You are a coward. That strikes me as a direct intimidation of a witness, which would be a crime. Would you accept that?

ADV BATOHI: [Pause] I do not know.

ADV NGCUKAITOBI SC: You do not know?

ADV BATOHI: No, I do not know. I really do not know
20 whether it would amount to intimidation.

ADV NGCUKAITOBI SC: The words, where a witness has fled the country because he is afraid of you, you say to them, come and testify, you are a coward. Do not you regard that to be intimidation?

ADV BATOHI: I am not sure. We will have to look at the

whole context before we decide it is.

ADV NGCUKAITOBI SC: So you are not prepared to ...[intervenes]

CHAIRPERSON: I beg your pardon. What context do you have in mind?

ADV BATOHI: Chairperson, if there is, there must be, the matter must be investigated and we must get all the evidence before we can make a decision. I cannot, on the basis of one statement, say that this is intimidation, Chairperson.

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

ADV NGCUKAITOBI SC: So you are not prepared to say, an accused person who makes a contact with a witness in their case, knowing full well that that witness has fled the country because they are scared of them, an accused person saying, come to South Africa to testify, you are a coward. You are not prepared to admit that that would amount to intimidation.

ADV BATOHI: I am not sure. I will have to look at all the facts, as I said.

20 **ADV NGCUKAITOBI SC:** Yes, I am not asking you that question. I am saying you are not prepared to admit that that would amount to intimidation. Yes or no?

ADV BATOHI: I cannot admit that without all the facts.

ADV NGCUKAITOBI SC: Yes. And then when he says you are making a fool of yourself, are you prepared to admit that he is insulting the witness?

ADV BATOHI: Yes.

ADV NGCUKAITOBI SC: Yes. And when he says you are a coward, what does that tell you?

ADV BATOHI: I think we should ask General Booyesen these questions.

ADV NGCUKAITOBI SC: I am asking you as the NDPP Head who is responsible for exercising prosecutorial authority on all our behalf in this country, when you see something like this, an accused person makes a contact with a witness
10 ...[intervenes]

ADV BATOHI: He should not be contacting a witness. That is correct.

ADV NGCUKAITOBI SC: Yes, but I do not understand then why we went through all of this. If you know that this contact is itself illegal, why we have had to go through this?

ADV BATOHI: I was not asked whether he should be contacting the witness. I agree he should not be contacting a witness.

ADV NGCUKAITOBI SC: Yes. But not only does he contact
20 the witness, he is threatening them and intimidating them, which is something you are not prepared to admit.

ADV BATOHI: I cannot admit that.

ADV NGCUKAITOBI SC: Now, there is a second WhatsApp message which is at page 519, where Major General Booyesen sends another WhatsApp to Mr Danikas. And he says:

“You tried your luck with my juvenile daughter when we were in France.”

And then he says:

“I told you then ...[intervenes]”

CHAIRPERSON: Sorry, counsel, is this not a continuation of that WhatsApp? Because this was July ...[intervenes]

ADV NGCUKAITOBI SC: Yes, yes, sorry, Madam Chair.

CHAIRPERSON: It could be a continuation.

ADV NGCUKAITOBI SC: No, it is. Actually, to show that it
10 is a continuation, look at the time on your left at 518. Thank you for the question, Chair. So, that same message continues at 519. And it says:

“You tried your luck with my juvenile daughter when we were in France.”

And then look at the words that come thereafter:

“I told you then that I will F you up.”

Now, are you prepared to accept that if an accused person tells a witness that I will F you up? That would be a case of intimidation.

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

ADV NGCUKAITOBI SC: Yes. Now, if you then go further down, 1, 2, 3, 4, to the statement that starts with, it is a pity. Can you see that?

ADV BATOHI: I see that.

ADV NGCUKAITOBI SC: Now, here again says to the

witness:

“It is a pity you did a bad job when you cut your wrists when your girlfriend dumped you.”

Now, cutting your wrists is associated with suicide, correct?

ADV BATOHI: Mmm-mmm, that is correct.

ADV NGCUKAITOBI SC: When he says, it is a pity you did a bad job, what he is telling the witness is that you should have killed yourself.

10 **ADV BATOHI**: I agree.

ADV NGCUKAITOBI SC: Now, again, you have a witness, you have a witness being told by an accused that he should have killed himself. That seems to be an extreme case of witness intimidation and witness tampering.

ADV BATOHI: It appears to be so, I agree.

ADV NGCUKAITOBI SC: Yes. Now, that is done by the person of very, very high office. He is a Major General in the police and held the Provincial Commander of serious and violent crime in KwaZulu-Natal. He must know that what he
20 is doing is illegal, correct?

ADV BATOHI: He should know that.

ADV NGCUKAITOBI SC: Yes. But, moreover, it is brought to the attention of the NPA. We see absolutely no action being taken against Major General Booyesen for witness tampering, witness intimidation, witness threatening, witness

insulting. Correct?

ADV BATOHI: I have not seen this letter and it is correct, it appears that there was no action taken. I mean this email.

ADV NGCUKAITOBI SC: Yes. Can you explain what would be the motive, if you can speculate, if you do not want to fine, why would it be in the interest of Major General Booysen to tamper with a witness?

ADV BATOHI: I think you should ask him that.

ADV NGCUKAITOBI SC: Yes. Indeed, I am told that you
10 intend calling him or the NPA intends calling him as a witness.

ADV BATOHI: I do not know. The evidence leader decides on who to call.

ADV NGCUKAITOBI SC: But I thought you repeatedly told us that there were witnesses that were coming which you did not name. Is he one of them?

ADV BATOHI: I think the evidence leader will confirm whether he is or not. I do not know.

ADV NGCUKAITOBI SC: To your knowledge, you said you
20 do not know.

ADV BATOHI: I do not know.

ADV NGCUKAITOBI SC: Yes.

ADV BATOHI: It is his decision.

ADV NGCUKAITOBI SC: Did you consult with him before these hearings?

ADV BATOHI: No, I have not.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Do you remember that you were given by the evidence leading team a document signalling the list of names of witnesses they intend to call quite early during the hearing. And Major General Booyesen was on that list.

ADV BATOHI: Okay. So I assume then he will be called.

CHAIRPERSON: I beg your pardon?

ADV BATOHI: I assume he will then be called.

10 **CHAIRPERSON:** I am asking you a question. Do you remember, if you do, that we were given a list a witness list quite early during this enquiry, where the evidence leading team gave us a list of names of witnesses they said they intended to call and Major General Booyesen was on that list?

ADV BATOHI: I do not recall, Chairperson, if I have seen that. But I do recall some conversation about sharing lists of witnesses.

CHAIRPERSON: That is better, thank you.

20 **MS RAMAGAGA:** Just a follow-up. Did you participate in the exercise of assisting the evidence leaders to identify witnesses that will be called?

ADV BATOHI: We had some conversations... [clearing throat] Excuse me. We had some conversations around witnesses that can be considered but always making it clear and the evidence leader himself making it clear that he will

decide who to call.

MS RAMAGAGA: Is General Booysen one of the witnesses that were proposed to be considered by the evidence leaders?

ADV BATOHI: His name must have come up as one of the potential witnesses, I am sure.

MS RAMAGAGA: From the NPA?

ADV BATOHI: Yes.

MS RAMAGAGA: Thank you.

10 **ADV NGCUKAITOBI SC**: Yes. Now, Advocate Batohi, we are still on this topic where an accused contacts a witness which, you say, is illegal. Not only do they contact the witness, they threaten to F them up and then they tell them that they should have killed themselves. That witness comes to the NPA, particularly to your office, through Ms Makeke and reports it. And no steps are taken against Major General Booysen who is a very senior figure in the police. Now, that conduct on the part of the NPA, is that normal? Is that acceptable?

20 **ADV BATOHI**: It is not acceptable that this matter was not brought to my attention or dealt with.

ADV NGCUKAITOBI SC: Well, now you have changed your version that this matter was not brought to your attention. Initially you said you were not sure if it was brought to your attention or not.

ADV BATOHI: When I read the WhatsApp, I do not recall at all seeing something like this. And then I realised it could not have been brought to my attention because I have definitely not seen a WhatsApp like this.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: We are in effect finding process and it is open to this enquiry to make sure that all relevant information for this purpose should be gathered and be brought to our attention. Now that you mentioned that B Makeke, Ms
10 Makeke, is still an employee of the NPA, should she not be brought here, either at the instance of the evidence leading team, if not, it may be at our instance? Would you like to make an investigation as the Head of the NPA to ascertain from her about this communication ...[intervenes]

ADV BATOHI: Yes, Chairperson, I will do that.

CHAIRPERSON: ...before we even consider whether she should come and testify or not?

ADV BATOHI: I will check with her, Chairperson.

CHAIRPERSON: And when do we know that you would have
20 spoken to her?

ADV BATOHI: By Monday.

CHAIRPERSON: Evidence Leader, we should know by Monday. I am speaking through you, senior counsel. By Monday we should know about the position of Ms Makeke and whether this communication happened. If not, you will

consider your position.

ADV MOHLAMONYANE SC: Indeed, Madam Chair.

CHAIRPERSON: Acknowledging your role before us. This is not a criminal case. This is an enquiry. And when a matter is brought to our attention that seems to be necessary to consider, you will consider your position and if you do not, it may be necessary for us to implore you to call that witness.

ADV MOHLAMONYANE SC: It is taken, Madam Chair.

CHAIRPERSON: I will leave it there, with the view that we
10 will know on Monday what the position is because Advocate Batohi makes it clear that she does not remember if this email communication that was directed to her, was actually brought to her attention. You may proceed, counsel.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. Advocate Batohi, can you go to page 520? Now, that is a response from the Acting Deputy National Director of Public Prosecutions. It looks like it is Advocate S Mzinyathi, although it has been PP-signed on his behalf. Who is Advocate S Mzinyathi?

20 **ADV BATOHI:** He is the, he would have been Acting Deputy National Director at the time.

ADV NGCUKAITOBI SC: Does he work in your office?

ADV BATOHI: Yes, he does. He is a Deputy National Director in charge of the National Prosecution Service. Well, he was acting at the time and he is acting at the moment as

well.

CHAIRPERSON: Please, counsel, take me back to where you were.

ADV NGCUKAITOBI SC: Page 520 of the same bundle.

CHAIRPERSON: 520.

ADV NGCUKAITOBI SC: Volume 2.

CHAIRPERSON: Thank you.

ADV NGCUKAITOBI SC: Yes. So, do you know how this communication from Mr Danikas, which was not addressed to
10 him but was addressed to you, ended up on his desk?

ADV BATOHI: It seems like it was forwarded to him. He is a Deputy National Director and he is the Head of the National Prosecution Service. So, this would have been one of the matters. The NPS deals with representations, that is their portfolio, so it looks like he responded to that letter, that email.

ADV NGCUKAITOBI SC: Yes. It is clear that it came to his attention.

ADV BATOHI: That is correct.

20 **ADV NGCUKAITOBI SC:** But the question is whether it came to his attention from you or from someone else.

ADV BATOHI: I did not send it to him.

ADV NGCUKAITOBI SC: Yes. And you did not ask him to attend to it because it is correspondence to the NDPP.

ADV BATOHI: He has delegated authority to deal with

matters, representations. The Deputy National Director of NPS has delegated authority to deal with representations.

ADV NGCUKAITOBI SC: Yes. Well, representations is one thing. A report of a crime, witness tampering, is not representations. Now, the witness was reporting a crime to you, witness tampering, which we have gone through. That would not be representations. That is why I ask you whether it is not you who asked Advocate Mzinyathi to address the crime that was being reported to you.

10 **ADV BATOHI:** I really cannot recall sending this to him. I cannot recall having received this email or sending it to him.

ADV NGCUKAITOBI SC: Now, when you actually look at the content of what he says, he says he acknowledges the receipt of the communication. It says dated 8 August, but when you actually look at 515, it is 7th of August. But maybe very little turns on that. But then he says:

“It has been forwarded to the Acting
Director of Public Prosecutions of
KwaZulu-Natal for her further attention. “

20 Was the Acting Director also at that stage Ms Elaine Harrison?

ADV BATOHI: Yes, that is correct.

ADV NGCUKAITOBI SC: Yes. Can you explain what the logic of sending a reported crime to the Acting Director of Public Prosecutions could possibly be?

ADV BATOHI: I can only imagine that given that this matter was a KZN matter, he forwarded it to the DPP to deal with it as appropriate in KZN.

ADV NGCUKAITOBI SC: Well, we know for a fact that in the case of Major General Booyesen, it was not a KZN matter, it was an NDPP matter because of the provisions of section 2 of POCA. So can you then answer my question? Why would the NDPP's office send a crime that has been reported to it in relation to a matter within its exclusive jurisdiction to the
10 DPP's office of KZN?

ADV BATOHI: I can only imagine and repeat what I said, and that is why Advocate Mzinyathi saw fit to send it to the DPP KZN.

ADV NGCUKAITOBI SC: Yes, but ...[intervenes]

ADV BATOHI: Given that it was a KZN matter.

ADV NGCUKAITOBI SC: But we know, Advocate Batohi, that racketeering is not a KZN matter, it is an NDPP matter. And that is why this answer you have given simply misses the point. There is a witness in a racketeering case who has
20 been intimidated and threatened by an accused. He reports that crime to you via Ms Makeke. No one does anything. It is forwarded to KZN. Why is that so?

ADV BATOHI: I can only give you the answer that I did. That was what Advocate Mzinyathi thought ought to be done in the circumstances.

ADV NGCUKAITOBI SC: Then the letter goes further. It says:

“You are requested to direct any further correspondence regarding this matter to the aforesaid Acting Director. The contact persons at the said office are Ms Ashiga Serturan and Notando Mbisi and their contact details are as follows...”

It seems that your office is washing its hands over this
10 reported crime. Correct?

ADV BATOHI: I think Advocate Mzinyathi did what he thought was appropriate and forwarded to the DPP for appropriate action.

ADV NGCUKAITOBI SC: Well, I am putting the question again. That your office washed its hands of the crime that was reported by a witness allegedly committed by Major General Booysen in relation to a matter that was exclusively within the NDPP's office.

ADV BATOHI: I cannot agree with that because Advocate
20 Mzinyathi forwarded it to the DPP KZN for further action.

ADV NGCUKAITOBI SC: Yes, but your office itself, the NDPP's office, took no action in the matter. Hence my proposition that they washed their hands over a matter where they had exclusive jurisdiction.

ADV BATOHI: That is not correct. The action that he took

was to forward it to the KZN DPP.

ADV NGCUKAITOBI SC: And you endorse that action?

ADV BATOHI: Well, it should have been brought to my attention given the high profile nature of this matter.

ADV NGCUKAITOBI SC: You are not answering. You endorse the action of not dealing with the matter at the NDPP level?

ADV BATOHI: As I said, given the high profile nature of this matter it should have been brought to my attention. But
10 Advocate Mzinyathi thought it best to forward it to the DPP KZN.

ADV NGCUKAITOBI SC: So you do not endorse that action?

ADV BATOHI: I endorse it to the extent that he thought it was appropriate.

ADV NGCUKAITOBI SC: That is what I am putting to you. Was it appropriate or not?

ADV BATOHI: Well, I have answered that. I said he ought to have brought it to my attention as well.

ADV NGCUKAITOBI SC: So it was inappropriate not to bring
20 it to the attention of the NDPP's office?

ADV BATOHI: Perhaps an oversight on his part?

ADV NGCUKAITOBI SC: Sorry?

ADV BATOHI: Perhaps an oversight on his part?

ADV NGCUKAITOBI SC: This is what I do not understand. You were talking yesterday about justice for the victims Here

is a witness who says, I am reporting to you, I am a whistleblower, I am reporting to you that the person I am blowing the whistle against is intimidating me. There is no response to that at all.

ADV BATOHI: Justice for victims is extremely important and one of our strategic initiatives in the NPA. It takes a high priority in terms of our work. Victims are our customers that we serve. In this case, as I said, it appears to have been, given the high profile nature of this matter, Advocate
10 Mzinyathi ought to have forwarded this to me as well, as send it to the KZN DPP. Why he did not, I am not sure, but he, as I said, he thought this was appropriate action to send it to the DPP and KZN to deal with the matter in the province.

ADV NGCUKAITOBI SC: Then, the province itself responds to Mr Danikas at page 521.

CHAIRPERSON: The province?

ADV NGCUKAITOBI SC: The, sorry, the Director of Public Prosecutions in KwaZulu-Natal. I apologise, Chair. And this is what they say.

20 “The office of the DPP, KZN is not conducting any investigation into the Cato Manor unit.”

Correct?

ADV BATOHI: Yes, I see that.

ADV NGCUKAITOBI SC:

“This office is only reviewing individual dockets to determine whether any person is responsible for the death of the deceased in each docket. If you have any evidence of crimes committed, you are advised to liaise with the South African Police Service, who will no doubt investigate the same.”

There are several issues that arise here. The first one is that
10 the crime that was reported against Major General Booyesen has again not been responded to here. Correct?

ADV BATOHI: What the office is saying is that he should report it to the police station, who will investigate the matter.

ADV NGCUKAITOBI SC: I am not understanding. This is a witness who has consulted extensively with the members of the NPA. It is in the middle of well, it is already been withdrawn, but he is protesting against the withdrawal and he says to you as the NPA I am being intimidated, here is the evidence. The NPA says go to a police station. Is that how
20 the NPA reacts to cases of witness intimidation?

ADV BATOHI: Well, it depends on the circumstances and I mean the first step is to report the matter to the police so that they investigate it and then a docket is opened and we can make a decision in the matter. This was a high profile matter, no doubt, and could have been dealt with differently in the

circumstances.

ADV NGCUKAITOBI SC: So, the conduct of the DPP in KwaZulu-Natal in also washing their hands of the matter by saying that a witness intimidated like this must go to the police station. Was that appropriate or not?

ADV BATOHI: [Pause] I think it is in instances where there is a complaint of any crime. The first step is to go to the police station as I said. So, I cannot say it is inappropriate but as I said given the high profile nature of this matter
10 perhaps it could have been dealt with differently.

ADV NGCUKAITOBI SC: Yes. Now, as matters stand, that issue of the conduct of Major General Booyesen in intimidating a witness threatening to F them up has never been enquired into by the NPA. Correct?

ADV BATOHI: That is correct.

ADV NGCUKAITOBI SC: Yes. Now, let us go back then to some additional points that are made by Colonel Danikas. If you go back to page 515... I am told his actual title was Inspector Danikas. Now, in the last paragraph of page 515,
20 Inspector Danikas says:

“I would like to point out that I have witnessed specific crimes being committed by members of the Cato Manor Unit and General Booyesen himself dated up to 2008. I have provided a detailed statement and

supporting evidence of such crimes committed by the accused.”

Now, this is not a case anymore of a witness consulting with the police. He is telling you directly, at least according to him because he is writing to you, that I am here, I am a witness, I have seen Major General Booyesen committing crimes, I have also got supporting evidence. And that is brought, at least to the attention of Advocate Mzinyathi. And that, again, is not addressed. Do you have any comment?

10 **ADV BATOHI:** I do not have any comment but clearly he is referring to a witness statement that he had made previously with regard to the racketeering matter.

ADV NGCUKAITOBI SC: Yes, yes, but there is something more, Advocate Batohi. He is saying, in case there were any doubts here I am. I am a witness, I am available, I would assist the NPA. In that context no action is taken because we know for sure that this did come to the attention of Advocate Mzinyathi.

ADV BATOHI: It is difficult for me to comment on this
20 because this was in the context of the racketeering matter and he had not signed his statement in that matter and... I am not sure why, you know, the matter was dealt with in this way but mmm... I really cannot comment on this beyond that.

ADV NGCUKAITOBI SC: Yes, well he is telling you that he has provided a detailed statement.

ADV BATOHI: That is correct.

ADV NGCUKAITOBI SC: And we know that to be correct because if you go to page 497 to 514, is a statement written in Greek and with a stamp of the 12th of October 2018, the same bundle. 497 to 514.

CHAIRPERSON: 497.

ADV NGCUKAITOBI SC: Yes, 497 to 514 and then the official English translation of that statement is at 480 right up to 496. All of them with stamps and sworn by official
10 translators. There they are. And we got this from Inspector Danikas himself, who was also shocked at listening to your evidence.

CHAIRPERSON: I beg your pardon, counsel, I beg your pardon. Will this 482 official translation be the same or similar to what we find at 454?

ADV NGCUKAITOBI SC: Yes, they are. Madam Chair, they are... yes, so that was the first one. The substance of it is the same. In other words, the narration of the events but it is not word to word.

20 **CHAIRPERSON:** Thank you.

ADV NGCUKAITOBI SC: In fact, there are three now that you are on that question. So there is 454 up until 457 and then there is another slightly improved version, 458 up until 472 and then the signed version, the Greek version that is signed is 497 to 514, the sworn translation is 480 to 496. And

that Greek version is dated 12 October 2018 and the sworn English translation also same date 12 October 2018. So the point I am putting to you, Advocate Batohi, by that time 2019, you could be under no illusion there was a signed statement from Inspector Danikas.

ADV BATOHI: I have not seen this statement. I know there was a Greek statement that was signed. I am aware of that. But I have not seen, this is the first time I am seeing a translation that is dated 12 October 2018.

10 **ADV NGCUKAITOBI SC:** Well, I understood this to be part and parcel of the file. Part of the problem, of course, is that you never really read anything.

ADV BATOHI: That is not a problem. There was a team that was put together to look at the files in detail.

ADV NGCUKAITOBI SC: Well, I mean, it enables you, every time a question is put to you, to simply say you are seeing it for the first time.

ADV BATOHI: This is not even referred to in my recollection. I need to check. Is that it is not referred to in the report, 20 either, of De Kock.

ADV NGCUKAITOBI SC: That is actually a lie. It is referred to in the report of De Kock. What they claim, incorrectly, is that Mr Danikas' signature was superimposed. But the English version is referred to in the De Kock report, which actually places a further question as to whether I even read

the De Kock, report if you say this statement is not referred to there.

ADV BATOHI: I did, I did read it, and I am also aware that there was evidence of Mr Danikas' statement being superimposed on one of the documents. So, whether it is this document that we have before us that is being referred to in the statement, or it is another, whether it is another translation, this is an official translation.

ADV NGCUKAITOBI SC: Yes.

10 **ADV BATOHI:** And whether it is this one, or whether there is another translation that they are deferring to, I think that needs to be clarified.

ADV NGCUKAITOBI SC: Now, Advocate Batohi, please. You just gave evidence that the challenge you have is that the English official translation is not referred to in the De Kock report. I showed you, well, I told you that that is false, it is referred to in that report. You are now changing and coming with a different version.

ADV BATOHI: May I comment on that? I am not coming to
20 a different version, I am not changing at all, because the English official version, this one that we have now, 480, I am not sure that they are referring to this. My recollection is that there is mention of... a statement, a translation, that is not the official translation, and there is also, there is evidence of his signature, Danika's signature, being superimposed onto

one of the translations. It cannot be this official one, because it appears to be official, but there is evidence that that was done with a translation, and my recollection is that is what is being referred to in the De Kock report. That is my recollection.

ADV NGCUKAITOBI SC: You know, all right, let us do this, maybe it will be simpler, because it is very difficult ...[intervenes]

ADV BATOHI: Just look at the report, it will be helpful.

10 **ADV NGCUKAITOBI SC:** ...to keep up. Go to SB3172.

ADV BATOHI: SB3, that is my affidavit.

CHAIRPERSON: SB?

ADV NGCUKAITOBI SC: SB3, the relevant page is 172.

ADV BATOHI: 172.

ADV NGCUKAITOBI SC: Yes, so if you look at SB3172, at paragraph 118, this is what is stated in that paragraph:

20 “Danikas’ statement in Greek was only signed on 26 October 2016, months after the NDPP signed the authorisation on 13 February 2016.”

But this is the crucial part:

“The English translation was made available to the prosecution on 12 October 2018.”

If you then go back to volume 2, you look at page 496, at the

bottom of that page of the English official translation, you see the date 20 October 2018.

CHAIRPERSON: File?

ADV NGCUKAITOBI SC: File 2.

CHAIRPERSON: File 2.

ADV NGCUKAITOBI SC: Yes, 496.

CHAIRPERSON: 496.

ADV NGCUKAITOBI SC: And there is a stamp at the bottom, 12 October 2018, which resonates directly with the
10 recollection of the authors of the De Kock report. Advocate Batohi, I am not going to press this anymore. I think we have explored what we could on the statement, unless you have any points you want to add.

ADV BATOHI: Well, I am just not clear, because as you see, in 119, it is, you know, there is evidence of, you know, a signature being superimposed on an English version.

ADV NGCUKAITOBI SC: Yes?

ADV BATOHI: So again, ja, this, I cannot say anything more. I am confused about this. I need to look into it, so that I can
20 understand better what exactly happened here.

ADV NGCUKAITOBI SC: Yes, I thought that we were leaving it on the basis that you are confused about it. That is why I said I am leaving this topic, unless you want to comment.

ADV BATOHI: No, I will have to look into this.

ADV NGCUKAITOBI SC: Yes, all right. Can we then

...[intervenes]

CHAIRPERSON: What does that mean? Does it mean that this aspect, and many others that you said you want to look at them, need to be revisited?

ADV BATOHI: Chairperson, it might mean that I need to look into this and understand what exactly was before the panel when they considered this matter.

CHAIRPERSON: Would you like us to pause for five minutes, so that we can look at it?

10 **ADV BATOHI:** No, Chairperson, I think I can deal with it once we adjourn, and then we can deal with it on Monday, in the interest of time.

CHAIRPERSON: How long would you require to look at this aspect? You need such a long time?

ADV BATOHI: Yes, Chairperson, I need to check the report. I need to speak to the panel, Advocate Riley who is in Cape Town, and just get an understanding of what exactly was they had before them at the time. It might take more than five minutes.

20 **CHAIRPERSON:** And remember, this is not the only instance where you testified that you need to look at things. You might remember, if you do not, your team, or the evidence-leading team, will assist you with regards to those instances that we have been noting here, where you testified you need to look at the evidence, the records, the documents. They will then

have to reflect on their notes, or even on the transcription, because we get a transcript every morning. That transcript will be available certainly by Monday morning. But before that, the team, Advocate Mohlamonyane and Advocate Skosana, you have to facilitate that ...[intervenes]

ADV SKOSANA SC: Madam Chair.

CHAIRPERSON: I beg your pardon, and assist us. Because a lot of evidence is left hanging where Advocate Batohi says I would like to look at it. I would like to re-look at it. And we
10 cannot proceed without affording her an opportunity to do exactly that. So please make a note. We have made notes of those aspects. But it is your role as well to assist us as we search for the correct facts. That should assist you, Advocate Batohi. We will also defer this aspect and the evidence-leading team will remind you of those instances where you would like to reflect.

ADV BATOHI: Noted, Chairperson.

CHAIRPERSON: Thank you, Advocate Ngcukaitobi.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. Look,
20 the only issue, Advocate Batohi, we ended up getting side-tracked, was to simply say that your statement that ...[intervenes]

ADV SKOSANA SC: Chair, sorry, I am sorry to interrupt. I just wanted – it looks like Mohlamonyane maybe did not understand, I just wanted to clear up when we ...[intervenes]

CHAIRPERSON: I thought you will say Advocate Mohlamonyane SC.

ADV SKOSANA SC: Oh, Mohlamonyane SC, yes. Sorry, Madam Chair. I just wanted – we are more than willing to assist in the respect that the Madam Chair has indicated. I just wanted to clear up the issue of us discussing with Advocate Batohi, while she is under cross-examination. We might experience difficulties with that because it is with regard to issues that she is being cross-examined about. So,
10 just that, to seek clarity in that regard.

CHAIRPERSON: Any objection, Advocate Ngcukaitobi?

ADV NGCUKAITOBI SC: Madam Chair, no, we will not accept that Advocate Batohi should consult on these matters at all. I know that she says she wants to consult Mr Riley. We again will not accept that. She can only do it with our consent. I thought what she wanted was to read up on her notes, which would be acceptable, but we will not accept that she is entitled to consult with people during the cross-examination. I am sorry.

20 **CHAIRPERSON:** Yes, Advocate Skosana. I thought my statement was very clear. A follow-up on Advocate Batohi's answers not once, not twice where she said she needs to look into the matters. And I was saying to her, it seems to me that there are many aspects that are left hanging. And I asked her whether she would like us to revert back to those issues

and she said she will need time. What I requested you to do is to find those aspects of her testimony where she kept on saying, I would like to look into this, so that she can actually look into those aspects.

I do not, I did not think that we are talking about you consulting with anybody. All of you are taking notes as we do. You should be in a position, SC, to reflect on that evidence. And please remember, all of you have a duty to assist this panel. To bring to this panel's attention all matters
10 either for or against. It is your responsibility as evidence leaders.

So I implore you with due respect to assist and look into those aspects of her testimony where she said she would like time to reflect so that she can properly reflect on those matters. You are a team of three, excluding your adopted child next to you this morning, to go through the transcript and assist advocate Batohi and us. We do have notes, but I will not page back and look at all those instances. I suppose that is clear.

20 **ADV SKOSANA SC:** Thank you, Madam Chair. I think I understand and I have taken note of some of those, maybe not all of them, but I have noted the instances where she says she would like to look at the matter and so on. The only difficulty is that how do we tell her? Like the Madam Chair has said, if we say this aspect on page so and so, this is the

page number or this is what you can look at. How do we actually relate that to her when there is an objection?

CHAIRPERSON: Advocate Skosana, you are complicating a very simple matter. If you pull out those instances, you can even remember, it is when you were asked this question and then convey that to her through Advocate Hulley or Junior, if you cannot talk to her. But what is important or even the lady next to her, because we seek to assist and once we have identified those aspects according to your notes, SC, you can
10 even bring it to the attention of the junior counsel behind you to communicate those pages or those aspects, because the idea is to assist the witness to capture those instances so that she can reflect upon them and answer on Monday. I do not want us to leave things hanging here and then when you go to the transcript to write the report, we find that we have failed in our duty to afford her an opportunity to address those matters.

ADV SKOSANA SC: We will do our best Madam Chair.

CHAIRPERSON: My sister, would you like to make a
20 suggestion?

MS RAMAGAGA: Maybe to make things easy, because the question of which items are still outstanding, it is something public, all of us here have been making notes, and to obviate the, you know, the potential of questions around how you communicate, the alternative would be to draw those, you

draw the list, the document, that states as to which matters she has to revert to. That reminds her, she also knows, but just a reminder, in case one or two of those things have slipped up, and send that to the Secretariat, so that the Secretariat can send that to everyone, rather than her having contact with you, evidence leaders or even the NPA.

CHAIRPERSON: Well, senior counsel, you know exactly what you are supposed to do. I need not guide you on such a basic thing. I think we should proceed.

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

ADV BALOYI-MERE SC: Chair, before we proceed, I may have misunderstood the witness, but amongst the things that she said she wanted to do, she said she wants to go and check, reconsider De Kock's memorandum, and consult with Riley. Did I hear you correctly?

ADV BATOHI: I did say that, yes.

ADV BALOYI-MERE SC: And think it would be, I do not think that is the correct procedure to do, to follow when you are under cross-examination. So, what has already been
20 suggested by my sisters is what you should do. You should get the documents, read through them, and form your own opinion.

ADV BATOHI: Yes, no, that was made clear from Advocate Ngcukaitobi as well, so I did not intend to speak to her after that.

ADV BALOYI-MERE SC: Okay, thank you.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. Advocate Batohi, the reason we ended up on this detour is actually straightforward. Paragraph 118 of the De Kock report makes it clear that they did have the official English translation dated the 12th of October 2018. Is that correct?

ADV BATOHI: I thought this was my affidavit, but SB3... Yes, SB3 is the De Kock report. So my apologies for that.

ADV NGCUKAITOBI SC: I am saying paragraph 118 of that
10 report...

ADV BATOHI: Yes, sorry, I am just going to...

ADV NGCUKAITOBI SC: It is clear that the English translation was given to the prosecutors on the 12th of October 2018.

ADV BATOHI: Yes, was given to the... It does not say that they had the English translation. If I could just get back to... What paragraph is that, 118? If you will bear with me, what page is that?

ADV NGCUKAITOBI SC: SB3172.

20 **ADV BATOHI:** 172. Yes. It says the English translation was made available to the prosecution on 12th of October 2018.

ADV NGCUKAITOBI SC: Yes.

ADV BATOHI: So they say that the team, the prosecution team got it.

ADV NGCUKAITOBI SC: Yes.

ADV BATOHI: Whether they had it themselves, I do not know.

ADV NGCUKAITOBI SC: No.

ADV BATOHI: And then they go on to say at 119...

ADV NGCUKAITOBI SC: Who has asked you about 119?

ADV BATOHI: I am just trying to get the context right...

ADV NGCUKAITOBI SC: All right.

ADV BATOHI: ...in order to answer your question properly.

10 **ADV NGCUKAITOBI SC:** Well, my question is simple. Paragraph 118 says that the English translation was made available to the prosecution on 12th October 2018. That is my question.

ADV BATOHI: That is what it says. That is correct.

ADV NGCUKAITOBI SC: Yes. Now, your statement earlier that this official translation was not referenced in the De Kock report is a false statement. That is all I am saying.

ADV BATOHI: It is not a false statement.

ADV NGCUKAITOBI SC: Yes.

20 **ADV BATOHI:** Because as I tried to explain, if you look at paragraph 119, according to Maema, he is still in possession of the original statements and none were filed in the docket. So that means it appears that they did not have it, the De Kock team. None of the statements was made available to the defence. He also stated in an email dated 24th April 2019

that the signature of Danikas on the Greek version of his statement was just superimposed on the English version.

That is what Maema said. And, therefore, they concluded Danikas never signed the English translation as he pointed out a number of mistakes. So I am still – it is not false. I am still confused about this because we have what appears to be a signed official version dated 12th October 2018, but we also have, at paragraph 119, the panel saying that Maema had indicated that the English translation had not
10 been signed by Danikas. So that is my confusion because it appears that it was signed.

CHAIRPERSON: The panel, are you referring to Maema's team?

ADV BATOHI: No, the De Kock panel, Chairperson.

CHAIRPERSON: Okay, Advocate de Kock's team.

ADV BATOHI: That is correct, the 2019 panel. So that is where my confusion comes up, when you read 118 and 119. And that is why I thought I would speak to Advocate Riley, but I will not speak to her now.

20 **ADV NGCUKAITOBI SC:** Look, ...[intervenes]

ADV BATOHI: But I will have to consider how I can... I do not know that I will be able to say anything more on this if I do not speak to Advocate Riley. Maybe she needs to explain that.

ADV NGCUKAITOBI SC: Advocate Batohi, your confusion is

an attempt to evade my question. My question is simple. You stated to this panel that the English translation is not referenced, it is not referred to. That is why we did the exercise of going to paragraph 118 and we found that it is referenced. That is what I am saying is false.

ADV BATOHI: As I explained previously, it is not false. I had... I had not... My confusion is that I was not sure that they were referring to this particular signed document, because my understanding is that the English translation had
10 not been signed. So that is why when I saw a signed document – you are right, the date is the same. But my understanding from 119 is that there was no signed document, but that his signature had been superimposed on an English version. And that is where my confusion came up. So there is nothing false about it.

ADV NGCUKAITOBI SC: Even on that confusion, it is clear that the statement is referred to in the report.

ADV BATOHI: The statement... well, you are right. The statement is referred to in the report. But I was confused
20 about it.

ADV NGCUKAITOBI SC: Well, we will ask the panel to draw its own conclusions about whether your confusion, alleged confusion, is an invention to avoid an obvious fact, that you misled the panel.

ADV BATOHI: It is not misleading. If you read paragraph

119, I am trying to explain why I did not think that it was this signed document at 480 that was being referred to in 118.

ADV NGCUKAITOBI SC: Yes. If we then return ...[intervenes]

ADV BALOYI-MERE SC: Before you move off this one, Advocate Batohi, just for clarity of my mind, you say when you read paragraph 118 or maybe let me preface this by saying you, on several occasions, you mentioned that you relied on De Kock's memoranda.

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

ADV BALOYI-MERE SC: Now, you say paragraph 118. When you read paragraph 118 and then moved to 119, you became confused. Is the confusion coming up today or back then when you read the De Kock memo?

ADV BATOHI: No, it is only coming up today because I am seeing this document that has been presented.

ADV BALOYI-MERE SC: Okay, thank you.

ADV NGCUKAITOBI SC: Yes. Now, if I can then continue with page 515 at the bottom of that page, 515 of file 2, at the
20 bottom of that page where Mr Danikas says:

“It appears that they are untouchable, projected via the media as heroes and victims while I have suffered targeted media attack orchestrated by the accused. None of the fabricated allegations against

me have ever been proven, neither any evidence ever being produced. On the contrary, I can provide proof and solid evidence that Booyesen has lied on multiple occasions under oath regarding the Cato Manor case and myself. There are repeated criminal patterns established, such as the ones I have witnessed and reported within my statement previously. I

10

have witnessed torture within the Cato Manor office of a suspect. Such reports of torturing suspects by Cato Manor offices have been reported previously by the media as well. I have submitted a video of such incident and such similarities as mentioned below on another case.”

And then there he then encloses the torture video. Madam Chair, can we play that video because we asked Mr Danikas for it. He gave it to us.

20 **CHAIRPERSON:** Yes, thank you. So, have you made arrangements?

ADV NGCUKAITOBI SC: Yes, that is why we have asked the junior to come here. And what you will see, according to Mr Danikas, are four men surrounding a man. It is a bit graphic, so I beg for forgiveness. But it is the video that he

gave to advocate Batohi's office, so she will not be surprised to see it.

ADV BATOHI: I have indicated I did not get this email. So I will look at it now.

ADV NGCUKAITOBI SC: Just stop there. Yes, stop there. Yes, stop there. Now, according to that video, the four men surrounding the person that is sitting on the chair were all members of the Cato Manor Unit. That will be the testimony of Inspector Danikas that will be called to this enquiry.

10 **CHAIRPERSON:** Is this the best depiction that you have? Because I do not see four men there.

ADV NGCUKAITOBI SC: Yes, well, there are one, two, three, four. They are standing. And then there is a man sitting down who is naked.

CHAIRPERSON: Is it possible to minimise it to see the four men?

ADV NGCUKAITOBI SC: I am not sure about his techno skills. I know he has got many other skills.

20 **CHAIRPERSON:** Is it possible to minimise and just look at the pictures of the four men there?

ADV NGCUKAITOBI SC: But using the mouse. Yes, all right. Thank you. Will you do that, please?

CHAIRPERSON: Please point to the first man.

ADV BALOYI-MERE SC: Maybe he can give a description.

ADV NGCUKAITOBI SC: Yes. So, the gentleman that is

wearing, I think it is a green shirt and that appears to be denim jeans is one of the men from Cato Manor. Then there is another gentleman with a light coloured shirt who is standing behind the suspect. Also is from Cato Manor. Then there are two men with black shirts that you will see on the left-hand side of the suspect. Those are also from Cato Manor. Now, sitting on the chair is a suspect who has been undressed and they have put a plastic bag in his head. The plastic bag is blue in colour and the man is naked.

10 **CHAIRPERSON**: Yes, counsel, I see then, but do we know whether they are from Cato Manor or are you going to deal with that?

ADV NGCUKAITOBI SC: Yes. The witness who took the video is Inspector Danikas.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI SC: He will testify that those are Cato Manor torture videos that he took himself.

CHAIRPERSON: May we please go back to that part of the statement that refers us to this video?

20 **ADV NGCUKAITOBI SC**: Page 516.

CHAIRPERSON: Page 516. Yes, thank you.

ADV NGCUKAITOBI SC: And then he says:

“There are repeated criminal patterns established, such as the ones I have witnessed and reported within my

statement previously. I have witnessed torture within the Cato Manor office of a suspect. Such reports of torturing suspects by Cato Manor officers have been reported previously by the media as well. I have submitted a video of such incident and such similarities are mentioned below on another case.”

And that is the video that is referenced there that he gave us
10 in consultation. And he will confirm that he took that video himself. Let us continue, play it to the end. Yes, thank you. Advocate Batohi, have you ever seen this video before?

ADV BATOHI: No, I have not.

ADV NGCUKAITOBI SC: The difficulty with that is that yesterday we looked at the interactions between you and Advocate Epstein SC, where, if you go back to file 3, so if you go back to page to file 3, page 257, you will see that that is part of that memorandum that Advocate Epstein did for you and gave it to you in preparation for the meeting of the 6th of
20 March. And if you go to page 256 of file 3. Sorry, 257.

CHAIRPERSON: Yes, the memorandum, is that 257?

ADV NGCUKAITOBI SC: The memo starts at 254, Madam Chair. The memo starts at 254.

CHAIRPERSON: And the page?

ADV NGCUKAITOBI SC: 257.

CHAIRPERSON: 257. Yes.

ADV NGCUKAITOBI SC: And at paragraph 3, your advocates already told you about the existence of these torture videos. It says:

“Danikas supplemented his statement and handed Maema additional photographs and video clips on flash discs.”

Do you see that?

ADV BATOHI: I do see that.

10 **ADV NGCUKAITOBI SC:** And then when you had the meeting with... It is file 3, 257, Madam Chair.

CHAIRPERSON: Yes, thank you.

ADV NGCUKAITOBI SC: Paragraph 4.

CHAIRPERSON: Yes, thank you.

ADV NGCUKAITOBI SC: Now, if you are at 257, paragraph 4 says:

“Danikas supplemented his statement and handed Maema additional photographs and video clips on flash discs.”

20 So what I am putting to the witness is that she knew as early as the 6th of March 2019 that there were video clips which were submitted as evidence in this case. And when you go to the actual meeting of the 6th of March, which starts in the same file at page 335, and specifically at page 338, Mr Epstein stated there on line 5...

ADV BATOHI: Sorry just a moment. Is that in a different file, 338?

ADV NGCUKAITOBI SC: No 338 of file 3.

ADV BATOHI: Oh, just a second. Ja.

ADV NGCUKAITOBI SC: And the fifth line where it says:

“Shaun is given presentation, Johan Booyesen, item 27, gets Danikas’ supplemented statement and looks at what is on the flash drive and then issues.”

10 So not only were you told in the memorandum, you were also told verbally in the meeting about the existence of these videos. And then the witness himself tried to bring them to your attention in this letter at page 515. Do you have any explanation?

ADV BATOHI: I will certainly comment on that. Firstly, with regard to what is said in Advocate Epstein's memo with regard to the existence of certain types of evidence, after this meeting I had made a decision to get a panel to look into all of the evidence and give me an opinion, so there is nothing
20 untoward about me not seeing those videos, because a panel was looking into all of the evidence. That is the first part of it and the second part of it, as I indicated, I cannot recall receiving that email with the video links to it, so there is nothing untoward about the fact that I would not have seen this video or that I see today for the first time.

ADV NGCUKAITOBI SC: Yes. What I do not understand is that there have been at least, well this is probably the fourth attempt because even if you look at the original unsigned statement of Mr Danikas, it references these videos. If you go to page 474 of file 2.

ADV BATOHI: 470?

ADV NGCUKAITOBI SC: It starts at 474.

ADV BATOHI: Yes.

ADV NGCUKAITOBI SC: But the reference to the video
10 clippings is at 473, in the first paragraph towards the end
there, so if you look at the last line:

“In 2008, after I left South Africa, I placed
clippings of the recordings on YouTube,
CAS number 297/02/04.”

Right at the end of the first paragraph, so that was the
original, the first time this was referred to. I have already
gone through the two occasions where Mr Epstein refers to it
but if ever there was doubt, your affidavit at page 63...

ADV NGCUKAITOBI SC: I do not know where I lost you,
20 Madam Chair.

CHAIRPERSON: The relevant page and the paragraph that
you referred to.

ADV NGCUKAITOBI SC: It was volume 2, sorry, file 2, page
476.

CHAIRPERSON: 476.

ADV NGCUKAITOBI SC: Yes, the first paragraph, the second last line, which starts with in 2008.

CHAIRPERSON: Okay, thank you.

ADV NGCUKAITOBI SC: Yes, thank you. Then I had moved from that to say even the witness's own affidavit shows familiarity with the fact of this evidence existing. And I was bringing the witness's attention to page 63 of her affidavit where she quotes Advocate Jiba.

ADV BATOHI: Where exactly is that?

10 **ADV NGCUKAITOBI SC:** It is page 63 of your affidavit and you have quoted paragraph 17 of Advocate Jiba's affidavit. Where the sentence says:

“Additionally, Mr Danikas has revealed some of the information that he has provided to the respondents and to the press and even posted video footage thereof on YouTube.”

ADV BATOHI: If I may comment on that.

20 **ADV NGCUKAITOBI SC:** So what I am putting to you is that it cannot be the case that it is only today that you are aware of the existence of the video footage that supports Mr Danikas' version.

ADV BATOHI: [Pause] My understanding is that what I said is that I had not viewed this video. If I am not mistaken, and I do, and the De Kock report also refers to this video and

them having looked at it at the time. I need to look at it to confirm that, but that seems to be my recollection. But what I said is, I had not seen this video before today. Chairperson, I can quickly go through this report and try to find it. Otherwise, it will be another matter that I can just point out on Monday, in the interest of time.

ADV NGCUKAITOBI SC: The problem, Advocate Batohi, is that my question is simple. The fact of the existence of the video footage was known to you for a long, long time. It cannot be correct that it is only known to you today. That is the only point I am putting to you.

ADV BATOHI: No, that is correct. Today I view it for the first time.

ADV NGCUKAITOBI SC: Yes, but the fact of its existence has been to your knowledge for a long time.

ADV BATOHI: That is correct.

ADV NGCUKAITOBI SC: Yes. Now, Inspector Danikas continues at 516, and he says:

“I have witnessed human rights violations,
inhumane and cruel treatment
...[intervenes]”

ADV BATOHI: Sorry, where are we now?

ADV NGCUKAITOBI SC: Page 516 of file 2. Now, at page 516 of file 2, Mr Danikas continues with another video. He says:

“I have witnessed human rights violations, inhumane and cruel treatment of dying suspects, as well as crime scene tampering in the presence and under the direct command of General Booyesen. A video was submitted as evidence in support of my claim. I have witnessed body tampering on a crime scene, as well as the removal of police spent cartridges on a crime scene under the direct instructions of General Booyesen.”

10

Now, we asked Mr Danikas for the video that is referenced here, and he gave it to us, and I would like the attorney to play it. So, Madam Chair, before, to know what we are watching, according to Mr Danikas, this was a scene where an alleged suspect had just been shot, and it was before he died. And the two people you will see is Mr Booyesen himself, and another person called Ms Sonikus, who was a police officer. [Video footage viewed]

20

The person whose feet are kicking in the air is the alleged suspect who had just been shot. It continues, go to the next one. No, it continues, Madam Chair. [Video footage viewed] What the witness will testify and say is that before that alleged suspect could die, he repeatedly asked General Booyesen to call for medical assistance. General Booyesen

refused. [Video footage viewed]

That gentleman, Madam Chair, with the black shirt and white pants is General Booyesen. [Video footage viewed] So after the death of the suspect, only then did General Booyesen call for the ambulance. Now, this narrative, Madam Chair, is all contained ...[intervenes]

ADV BALOYI-MERE SC: Before you move on, there was a female voice, who is that female?

ADV NGCUKAITOBI SC: I am going to tell you now, if you
10 go to page 491 of file 2, the whole narrative is here, in paragraph 24.

“In April 2007, Major General Booyesen and Adele Sonikus visited me in my house after he had received a phone call from one of the members of his unit who had a reported shooting incident in Malvern. Adele Sonikus was a police officer of the Provincial Organised Crime Unit and a secretary. During the day of that incident,
20 she and Major General Booyesen visited my home. They had a love affair. We went to the crime scene, where I saw several members of the Cato Manor Unit. I found two African men lying in the garage of the house. One was shot and killed in

the car and the other was injured and still alive, but was in great pain and bleeding heavily. Major General Booysen said to me that they would call the ambulance and the Independent Complaints Directorate only if the second suspect died. So everyone waited around for the second suspect to succumb to his wounds.

10 I was able to use a video camera to record the crime scene in the presence of Major General Booysen and the rest of the officers involved in the shootout. I was always allowed to record crime scenes for the unit and later it became clear that this is how journalists were bribed, by giving them my own photos as exclusive publications in exchange for favourable stories.

20 But I came to the conclusion that they wanted the films for their own private collection as well. That day, when I realised that the robber would die, I focused my camera on him, so I would later have a recording on how the unit left a suspect to die. Later in 2009, I posted this

video on YouTube. I was also instructed by Mostert and Olivier to collect from the floor a number of spent large calibre cartridge casings.

After I put them in my pocket, I handed them over to Mostert and Olivier as they requested me to do. File: Suspect – Malvern man dies.”

That is the file we have just watched.

10 “When I told Major General Booyesen that this was wrong, he became aggressive towards me and told me that it was not Cato Manor’s duty to provide medical care to the criminals.”

Paragraph 25.

20 “The suspect died after a few minutes. I requested Major General Booyesen to call an ambulance three times before the suspect died. This can be heard in the video. Later I was informed by Major General Booyesen that the driver of the police car with which the robbers escaped was a police informant and had given information at Cato Manor’s office for the planned burglary and that he had left after

he had dropped off the suspects at the house that they intended to break in. The suspects then were shot and killed by the unit.”

The point really is this, Advocate Batohi, we have not just unsigned statements, **we have the original video footage recording the activities live by one of the men who was involved in the execution of suspects.** And you never watch it, and yet you claim that there was no evidence.

10 **ADV BATOHI:** I said there was no evidence to support racketeering charges. I have to emphasise that. And as I said, if I am not mistaken, the De Kock team do refer to the videos that Danikas refers to in his statement, and I need to look at the statement or the report, as I said, to come back to that. So again, there was nothing at all untoward about a National Director not looking at all of the evidence when you appoint an experienced team to look at it. And I also want to make the point that, you know, I am not saying that General Booyesen is an angel. The fact remains that when we charge
20 people, we must make sure that we meet the standard of proof required for those particular charges.

ADV NGCUKAITOBI SC: I mean, I am finding that very difficult to understand. Suspects, if they are suspects, should not be killed by the police. Do you accept that? They should be arrested.

ADV BATOHI: I agree. Completely.

ADV NGCUKAITOBI SC: Now, the exceptional instances where shooting may be justified is where there is a direct threat to the life of the policeman, correct?

ADV BATOHI: That is correct.

ADV NGCUKAITOBI SC: We have just witnessed a suspect who poses no threat to anyone because he has been shot. And we have a witness who says, I told them to call an ambulance, they refused. And then they said we must wait
10 until the witness dies because it is not our job to provide medical care. Is that acceptable according to you?

ADV BATOHI: No, it is not. Not at all.

ADV NGCUKAITOBI SC: Yes. Madam Chair, I want to thank my attorney and release him and to notify the panel that the time is one o'clock.

CHAIRPERSON: Yes, indeed. Indeed, it is the lunch hour. We will take an adjournment until Monday, nine o'clock. And Advocate Batohi, remember, you are still under oath, no discussions with anybody about this matter.

20 **ADV BATOHI:** Understood, Chairperson.

CHAIRPERSON: We adjourn and please remember to identify those aspects in the respect of which Advocate Batohi needs to reflect, so that she can finalise her testimony, at least in regard to those aspects when we reconvene on Monday.

ADV BATOHI: Noted, Chairperson.

CHAIRPERSON: We will adjourn. Thank you

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