

**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**

18 FEBRUARY 2026

DAY 28



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

PROCEEDINGS ON 18 FEBRUARY 2026

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

ADV MAEMA: Good morning, Chairperson.

CHAIRPERSON: Advocate Chauke, good morning. Advocate Maema, you will proceed with your evidence under oath.

ADV MAEMA: That is correct, Chairperson.

GLADSTONE SELLO MAEMA (s.u.o.)

CHAIRPERSON: Thank you. Advocate Ngcukaitobi.

10 **ADV NGCUKAITOBI SC:** Thank you, Madam Chair. Madam Chair, the last five minutes there has been some progress, because what has been in dispute has now been accepted, that is no longer in dispute about the contents of the dockets that have been analysed. We analysed seven yesterday. We had to make a decision whether to analyse more. My learned friend tells me that they will not be placing that material in dispute anymore, but perhaps he should speak for himself.

CHAIRPERSON: Advocate Mtsweni on behalf of the evidence leaders.

20 **ADV MTSWENI:** Yes, Madam Chair, we have discussed it with Advocate Mohlamonyane, and, Madam Chair, we will not be disputing the contents of the dockets, those that have been analysed and those that have not been analysed. We accept that the contents of those documents are as they are and the panel can take notice of them.

CHAIRPERSON: Yes, thank you. I do not know whether the NPA team would like to say anything. Please come forward to, you can borrow us that moving mic.

NPA REPRESENTATIVE: Thank you, Madam Chair. We are saying that not at this stage.

CHAIRPERSON: What do you mean not at this stage?

NPA REPRESENTATIVE: That the dockets that are remaining would be contested.

CHAIRPERSON: Should you not make up your mind,
10 because it would make it difficult for them to make an assessment whether it is important to proceed with the remaining part of the dockets, particularly because they may plan to deal with a different matter and this witness may be excused sooner than we had anticipated.

NPA REPRESENTATIVE: As of yesterday afternoon, the discussion with the evidence leaders was that perhaps they should request a list of issues that the, Advocate Chauke's team intended to lead evidence on so that the team can decide whether they would need to have that proceeded with,
20 or that they accept the contents as they are and they will not dispute anything in relation thereto. So when the discussions were made, there was no indication whether there will be an agreement on that aspect, so matters were left at that.

CHAIRPERSON: Were you part of the discussion five minutes ago?

NPA REPRESENTATIVE: No, no, no, I was not part of the discussion five minutes ago.

CHAIRPERSON: Yes, I appreciate that your senior, Advocate Hulley, is not here.

NPA REPRESENTATIVE: Yes.

CHAIRPERSON: I am just affording you this opportunity because you are representing the NPA and it does not appear to me that there can really be any dispute because the dockets are what they are as they stand, unless of course
10 you are going to call evidence to the contrary.

NPA REPRESENTATIVE: Thank you Madam Chair. Unless perhaps I get just quick instructions from my senior end client, but as I say, the indication was that at least if we get pointers of issues that they still needed to lead evidence on and the team would decide whether they want to accept and admit the evidence as it is.

ADV BALOYI-MERE SC: Can I just check. You do have copies of the dockets?

NPA REPRESENTATIVE: Yes.

20 **ADV BALOYI-MERE SC:** And you, actually we got the dockets from NPA.

NPA REPRESENTATIVE: Yes, yes.

ADV BALOYI-MERE SC: Obviously you would have gone through them.

NPA REPRESENTATIVE: Yes.

ADV BALOYI-MERE SC: And you would have identified issues that you dispute from the dockets.

NPA REPRESENTATIVE: Yes.

ADV BALOYI-MERE SC: So maybe instead of having the Chauke team that is now in the process of leading evidence having to make time to write down all the issues that they intend to lead, because obviously if they have 28 dockets they would intend to lead evidence on 28 dockets. But it would be better if the NPA were to say in docket, in count, 10 docket number CAS whatever, we dispute 1, 2, 3. And ja, because the documents are yours. They come from you. So you should know them better than us.

I take it maybe it would be better if you were to still persist that you are going to oppose some of the issues. Maybe you should just alert the Chauke team so that they deal with it and we obviate the need to have to recall a witness or to have to revisit any evidence. Thank you, Chair.

CHAIRPERSON: Thank you, my sister. Yes, I agree and, but for now we will proceed on the basis of your for now.

20 **NPA REPRESENTATIVE:** Yes.

CHAIRPERSON: With a view that you will revert. You understand why we are here?

NPA REPRESENTATIVE: Yes, I do, Madam Chair, and I appreciate that if we can proceed on the basis that at this stage at least there is no indication on what we are going to

need further evidence to be led on and be allowed later on to indicate.

CHAIRPERSON: The affidavit of Mr Maema is in front of you.

NPA REPRESENTATIVE: Yes.

CHAIRPERSON: You know exactly what he is saying about those dockets?

NPA REPRESENTATIVE: Yes.

CHAIRPERSON: If there is any issue that arises from those
10 aspects that he is raising in his affidavit which we now have,
all of us have read, you should be in a better position to say
to Advocate Ngcukaitobi we will dispute this and that and that
so that then he can focus.

NPA REPRESENTATIVE: That is so, Madam Chair, we will do that.

CHAIRPERSON: Yes, thank you. Advocate Ngcukaitobi.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.
Advocate Maema, good morning. We will ...[intervenes].

CHAIRPERSON: Let me remind him that he is under oath. I
20 beg your pardon, Advocate Ngcukaitobi. Counsel, you are
still under oath.

ADV MAEMA: That is correct, Chairperson. Thank you.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. We will skip ...[intervenes].

ADV MAEMA: Good morning, Chairperson.

ADV NGCUKAITOBI SC: Yes, we will skip everything from the last case that we dealt with, which was the case of Bhekithemba, to paragraph 345.

ADV MAEMA: I am there, Chairperson.

ADV NGCUKAITOBI SC: The heading there is “legal framework for racketeering”.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, there are a number of concepts that one needs to dissect in dealing with the
10 concept of racketeering. The first one is the concept of an enterprise.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Can you explain why you believe the Cato Manor unit qualifies as an enterprise under the POCA legislation?

ADV MAEMA: Chairperson, the concept of an enterprise, I deal with it on page 1-A86, paragraph 350.3. An enterprise, in terms of the POCA legislation, is defined to:

20 “Include any individual, partnership, corporation, association, or other juristic person or legal entity, and any union or group of individuals associated in fact, although not a juristic person or a legal entity.”

So the enterprise is that common vehicle through

which all the offences are committed, but it is, the members of the enterprise might differ from incident to incident. But the fact is the enterprise advances the objectives of the enterprise.

ADV NGCUKAITOBI SC: Yes. Now, there is also an associated topic around the concept of an enterprise, which is whether or not it is necessary in law to qualify as an enterprise, that it must be performing illegal or unlawful acts. Remember that the finding made by the de Kock panel is that

10 **Cato Manor** is not an enterprise because it was established for lawful purposes.

ADV MAEMA: Well, Chairperson, you find an institution established for lawful purposes, which is just a cover, but when in real fact, there are other businesses that they engage in which attract criminality. So whether it is a lawful institution or an unlawful institution, it can be an enterprise.

ADV NGCUKAITOBI SC: Yes. Then there is also another element to it, which is who is inside the enterprise.

ADV MAEMA: Yes.

20 **ADV NGCUKAITOBI SC:** And how do you decide who is inside the enterprise. Can you explain to the panel how is that exercise to be undertaken?

ADV MAEMA: Well, you look at the day-to-day activities of the enterprise. Like you say, Counsel, the members of the enterprise on any given incidents might be different, but

whenever an individual participates in the activities of an enterprise and advances the objectives of the enterprise, then he associates in effect with the enterprise.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: So you can charge him as part of the enterprise.

ADV NGCUKAITOBI SC: Yes, thank you. Now, just to apply then these concepts of an enterprise to Cato Manor specifically ...[intervenes].

10 **ADV MAEMA:** Yes.

ADV NGCUKAITOBI SC: Can you help us with that?

ADV MAEMA: Chairperson, we, as a team, as a prosecution team, my team, together with the police, the DPCI and IPID, as well as Advocate Musing from the national office, we spent, I think, almost a week debating this issue of an enterprise.

When one looks at the provincial organized crime, we thought, particularly because of the involvement of General Johan Booyesen, at provincial level, we thought,
20 could the entire provincial organized crime be an enterprise. But when you looked at the role of Colonel Ayer, who was then removed, and then Booyesen comes down from province to assume the position of Ayer, and the serious violent crime section of Cato Manor is the one that conducts all these activities, then we concluded that the serious violent crime

section in Cato Manor is actually the enterprise. And because Johan Booyesen managed their activities, supported them, and made sure of their continuity, we then settled for serious violent crime based at Cato Manor as the enterprise.

ADV NGCUKAITOBI SC: Yes. So the one way of looking at it, so what happens, for instance, there are some scenes that I have noticed here where the members of the National Intervention Unit come and play a role.

ADV MAEMA: That is correct.

10 **ADV NGCUKAITOBI SC:** Yes. And then there are also some scenes where you will find a member from, we looked at one two days ago, from Kranskop ...[intervenes].

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Comes to the scene and then Cato Manor comes and they remove them.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: So although you have got in total 28 of these incidents ...[intervenes].

ADV MAEMA: Yes.

20 **ADV NGCUKAITOBI SC:** Well, 23 of the incidents, 28 deceased, it expands and contracts by the addition of people from outside of Cato Manor.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Just explain that, how was, how does one deal with that? You see, for one to be part of the

enterprise, you must participate in two or more incidents. So in some of the incidents, we find one or two who participates in one or two. But we, to be charged with 2(1)(e) or 2(1)(f), we needed a member of the enterprise to participate in more than one incident.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Yes, so those that we charged with 2(1)(e) and 2(1)(f), we are convinced that they had a role in more than one incident.

10 **ADV NGCUKAITOBI SC:** No, no, we will come to the participants, because that is a different topic. I am still trying to understand the enterprise itself, how you saw it. So you say that the inner core of this enterprise was the Serious and Violent Crime Unit of Cato Manor.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Yes. And we know the members of that unit.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Yes. But I am saying sometimes
20 if there is someone from outside of that unit ...[intervenes].

ADV MAEMA: Oh, now I get you, yes.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Who then comes.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Then you look at the role of that person.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: And how the role of that person, what do you say, advances the objectives of the enterprise.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Yes. And if whatever role that he participated in advances the role of the enterprise, then you can charge him.

ADV NGCUKAITOBI SC: Yes. So, but how would you know that, his participation, because if you said, listen, my
10 enterprise is this group of people ...[intervenes].

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Because they are pursuing the same object over a sustained period of time.

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: But now there is someone from outside who comes in on one or two occasions. So that does not change the character of the enterprise?

ADV MAEMA: That is true, yes. So what you do is you then charge him with the role that he played, not as a, not in terms
20 of 2(1)(e) or 2(1)(f), but as, you specifically include him in the incident where he was physically involved.

ADV NGCUKAITOBI SC: So that would not be a racketeering charge?

ADV MAEMA: That would not be a racketeering charge, yes. It would be a predicate offence.

ADV NGCUKAITOBI SC: Because the racketeering charge requires that enterprise to be part.

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: So if you charge someone who came from NIU or NIT, it will be because they have committed murder?

ADV MAEMA: Yes, they were present at the particular scene where one of the deceased was killed.

ADV NGCUKAITOBI SC: But not because they were in the
10 racket?

ADV MAEMA: Not that they were in the racket, that is correct, Chairperson.

CHAIRPERSON: In that event, he could be charged under the common purpose principle?

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, thank you very much. Now all right, that is, is there anything you want to add on the definition of an enterprise and why you believed it applied to the Serious and Violent Crime Unit of Cato Manor?

20 **ADV MAEMA:** Chairperson, I think we have dealt with it, yes, sufficiently.

ADV NGCUKAITOBI SC: All right, thank you.

ADV MAEMA: Thank you.

ADV NGCUKAITOBI SC: There are further concepts that must also be dissected. The first one you deal with in 350.1,

pattern of racketeering. Just explain the concept. We will deal later with how it applied to Cato Manor.

ADV MAEMA: Chairperson, in terms of section 1, a pattern of racketeering activity is defined as:

“The planned, ongoing, continuous or repeated participation or involvement in any offence referred to in schedule 1, and it includes at least two offences referred to in schedule 1, of which one offence occurred after the commencement of this Act and the last offence occurred within 10 years, excluding any period of imprisonment after the commission of such a prior offence referred to in schedule 1.”

10

So the pattern of racketeering activity would look at those, the commonality in all the incidents. When you, say for instance in Cato Manor, one thing that is common in most of the incidents is raiding early morning when people are asleep, but predominantly one similar character in the manner of their conduct is planting of a firearm, placing a firearm at the place where the deceased is killed to create that threat impression.

20

You will remember at one of the incidents when they were in the kombi, Mostert ran back to the kombi during the

raid to go and get his Mbombayi, because the Mbombayi is an essential element of the pattern of racketeering activity after the shooting ...[intervenes].

ADV NGCUKAITOBI SC: You know, I thought of this word Mbombayi yesterday. In the townships it is used to indicate something fake.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: But in the villages it is actually not Mbombayi, it is Mbayimbayi, which is a machine gun.

10 **ADV MAEMA:** Yes, yes, yes.

ADV NGCUKAITOBI SC: Anyway, I thought, so it is actually Mbayimbayi.

ADV MAEMA: Yes, but you see the Cato Manor guys refer to it as Mbombayi.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Because what it signifies is a spook.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Something that was not there, but that is there.

20 **ADV NGCUKAITOBI SC:** Oh, I see.

ADV MAEMA: You know, so it was not there during the commission of the offence, but it just suddenly appears. So they make it appear.

ADV NGCUKAITOBI SC: So ...[indistinct] properly as fake.

ADV MAEMA: As fake. They make it as fake. That is how

we understood their concept of Mbombayi.

ADV NGCUKAITOBI SC: Okay, so it is the Mbombayi gun.

ADV MAEMA: It is the Mbombayi gun.

ADV NGCUKAITOBI SC: It is a pretend gun.

ADV MAEMA: Pretend, yes. It was not there, but it is there.

ADV NGCUKAITOBI SC: Okay, no, I understand. All right, but let us just come back then to this concept of a pattern. So you say there has to be a similarity in the activities of the group that is participating in the enterprise.

10 **ADV MAEMA**: Yes, yes.

ADV NGCUKAITOBI SC: And you have identified two similarities, but we will come back to those. But I just want to come back to the words of a statute. So the first one is the planned.

ADV MAEMA: Planned, yes.

ADV NGCUKAITOBI SC: Yes, let us just talk about that. What does that entail?

20 **ADV MAEMA**: Well, planning is a concept that we have in conspiracy, the coming together of individuals planning to achieve a particular objective. So there must be some coming together of minds. We come together and we plan and we say this is what we are hoping to achieve.

ADV NGCUKAITOBI SC: And why do you say that there was planning in respect of the SVC of Cato Manor?

ADV MAEMA: Chairperson, there was planning. They have

to ensure that they have vehicles, they have equipment, they are able to execute and ja, there was a higher degree of planning in the activities of Cato Manor.

ADV NGCUKAITOBI SC: Yes. And that is exhibited by the degree of organization in the way in which the institutions took place.

ADV MAEMA: That is correct. If you look at consistently most of the scenes, Eva, Eva would consistently be used to work on the scenes and to clean the scenes up. And there
10 would be, there is a penetration team.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Penetration team is those that get to the door, they knock and they, we call them the “skop and boboza”. They break down the doors. Those are the experts and we have one or two who are good in shooting, shootest, who are, who excel in target shooting. If they want to shoot your ear, they will shoot your ear. If they want to shoot your fingers that are holding the gun on the holster, they will do that. So we, there is a particular plan and there is particular
20 individuals that are given specific roles that they must execute.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And I suppose if in the concept of planting a firearm, that is not a random thing. That is always

...[intervenes].

ADV MAEMA: It is not random, yes.

ADV NGCUKAITOBI SC: It is part of the ...[intervenes].

ADV MAEMA: It is part of the plan, because they, you see Mostert running back to the kombi, underneath the driver seat of the kombi there is a bag containing firearms and he picks one there and he goes to the scene and he throws it on the scene.

ADV NGCUKAITOBI SC: Yes. What about the identification
10 of the targets to be executed, is that part of the plan?

ADV MAEMA: It is part of the plan, Chairperson. It started when they came back from Kranskop.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Yes, because after, was it, or after Reddy was killed, after, there were two that were killed prior to Choncho.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: And after Choncho they said no, it is enough. We are not going to let criminals in KZN take over the
20 province. We will deal with them and we will deal with them decisively.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: So the plan started just after the killing of Sup Choncho. They said, criminals are not going to take over in KZN. But it is right for the police to say criminals can take

over. Yes, but what do you do? You make sure that you collect evidence lawfully in terms of the Constitution. You present the evidence before court and you convict the criminals.

ADV NGCUKAITOBI SC: Now you have said twice that this began after the murder of Superintendent Choncho.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: There is the evidence of Mr Danikas, who traces the events from 2001.

10 **ADV MAEMA:** Far earlier, yes.

ADV NGCUKAITOBI SC: Yes, which was one of the pieces of evidence in front of you. What do you make of that?

ADV MAEMA: Chairperson, we looked at that evidence and in terms of POCA it is similar fact evidence that you can lead that is admissible. So even incidents that happened before, although we have a span, a period that we focus on, but you can refer to a previous incident. You can refer to a previous conviction. This is one of the instances where even a previous conviction is allowed to be disclosed before
20 conviction.

ADV NGCUKAITOBI SC: No, but I am saying in terms of when this conduct of Cato Manor began. When you say it began after the murder of Superintendent Choncho. There is a witness who actually traces it earlier than the murder of Superintendent Choncho. I understand the issue of similar

facts. We can deal with that later.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: But for now I just want to deal with your point that the planning to execute, which we are still dealing with the concept of planning, the planning to execute took place after the murder of Superintendent Choncho. How do you place that in the context of what Mr Danikas is saying that actually we had been torturing and killing suspects since 2001?

10 **ADV MAEMA**: That is correct. Chairperson, I am saying it started early, but the tip of the iceberg was the killing of Superintendent Choncho, because what happens, when it was happening prior to 2008 at a snail pace after the death of Sup Choncho, you see it picking momentum and you know, not only picking up momentum, also the vigour and the enthusiasm, the rigorousness increases.

ADV NGCUKAITOBI SC: Yes. Thank you very much. Then you have the second word. It is planned. It is also ongoing. What does that refer to, ongoing?

20 **ADV MAEMA**: Ongoing says it must be, it must happen over. It must not start and then stop, start. That characteristic denotes that it is something that takes place over a period of time.

ADV NGCUKAITOBI SC: Yes, yes. So in other words, it is not one incident of policemen killing a suspect, but it is

several incidents.

ADV MAEMA: Several and serial unending incidents, yes.

ADV NGCUKAITOBI SC: Yes. And then those words appear to be similar to continuous or repeated, which is also in the statute.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Can you just explain what, I mean, because ongoing, continuous appear to be meaning the same thing and repeated also seems to be meaning the same thing.

10 **ADV MAEMA**: Yes. Well, all that they denote is that it is like an object falling from the mountain. It just keeps on rolling, rolling, rolling. So it is incident after incident after incident. So they are continuous, repeated, ongoing, yes.

ADV NGCUKAITOBI SC: Now I want to ask you here, because there are some findings made in the de Kock report, which are in conflict with your approach. Finding one is that continuous means it must be unending into the future. So in other words, you cannot say it was continuous between 2008 and 2011, which was the scope of your indictment. It must
20 also be continuous beyond 2011, way into the future. Now, what do you say to that?

ADV MAEMA: No, it is an incorrect analysis of the principles, because what would happen, although it is ongoing, continuous and repeated, something will happen that will apply brakes to this object that is rolling down. If it

hits a rock and get stuck, or if the car that is going, the petrol finishes, then at some stage it comes to an end. But the near coming to an end of an operation does not mean it disqualifies it from the characteristics.

ADV NGCUKAITOBI SC: Yes, serious implications of their finding, which is if a person or a group of persons who constitute an enterprise commit acts of racketeering between 2005 and 2010 and they stop, maybe the leader of the enterprise is killed.

10 **ADV MAEMA:** Yes.

ADV NGCUKAITOBI SC: The NPA then comes in 2011. On this concept that it must be continuous into the future, what would happen?

ADV MAEMA: Then it would mean you disqualify yourself from dealing with that as an enterprise.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: So it does not make sense.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Yes.

20 **ADV NGCUKAITOBI SC:** Yes. Now, is there anything to be added on the word repeated? We have dealt with continuous.

ADV MAEMA: Repeated also it is the same you know, over and over again, things happening over and over again.

ADV NGCUKAITOBI SC: Yes. Now is there anything you want to add on continuous, ongoing and repeated in relation

specifically to Cato Manor that you have not said?

ADV MAEMA: No, Chairperson. We saw their conduct fitting the definition of a pattern of racketeering activity as defined in POCA. And this was a debate that we had amongst you know, deputies, amongst senior state advocates, amongst General Mabula, Mr Angus, although the concepts themselves are not very, the police do not speak this concept, prosecutors also do not speak this concept. I can assure you that if you go to the management of NPA where Mr Chauke
10 was part and say define some of these things, they will not be able to. because they are not people that are working day-to-day with these kinds of things. The people that are working day-to-day are organized crime prosecutors within DPP offices.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: If I may on that, it means finally when all is done and the matter is in the court, it is a matter for interpretation by the court.

ADV MAEMA: Chairperson ...[intervenes].

20 **CHAIRPERSON**: Applying the law to the facts.

ADV MAEMA: Yes. Chairperson, what happens if we say, well, at the law school they talk about the art of persuasion. So I take my understanding of racketeering and the principles and then I must convince my judge to see it the way I see it. I must persuade my presiding officer to see the facts the way

I see them and to apply the law in the manner that I want, that I see should be applied.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: And in relation to these matters, that will be more of the case in the criminal prosecution.

ADV MAEMA: That is correct, Chairperson, yes.

ADV BALOYI-MERE SC: One of the conclusions by the de Kock team is that the, if indeed there was racketeering towards 20, is it 2012 or 2011, the number of people killed
10 went down, so that indicated that the enterprise is dying and therefore there is no need to continue with racketeering charges. I may not be quoting it verbatim, but I know that that is one of the conclusions that they came to.

ADV MAEMA: I remember so, Chairperson, yes.

ADV BALOYI-MERE SC: Is that the correct conclusion?

ADV MAEMA: That is not a correct analysis of the principle. I differ from it with the greatest of respects.

ADV NGCUKAITOBI SC: I think my junior will find that portion, but it is exactly as you remember, Madam Baloyi-
20 Mere.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Yes. Well, explain why you differ. That is the point of the question.

ADV MAEMA: Chairperson, the fact that crime goes down or the regularity of the occurrences just go down a bit is not

an indication of the conclusion or the non-existence anymore of the enterprise, because all that the law requires is let us have one or more incidents that are continuing, that are ongoing. If I have one or two incidents that are, no, not one, two or more, that are continuous, that have a pattern, that are repeated, then I am squarely within the definition in POCA and I am fully entitled to proceed on a racketeering charge.

ADV NGCUKAITOBI SC: Yes. The passage that is relevant, I am not sure if the de Kock report is in your binder. It is not.

10 **CHAIRPERSON:** Okay. I just want it to be brought to your attention so that I can reference specifically paragraph 190.6, which is page 69 of the de Kock report.

ADV MAEMA: Chairperson, in which file do we find the de Kock report?

ADV NGCUKAITOBI SC: I think just use mine. I have got two.

ADV MAEMA: Thank you.

ADV NGCUKAITOBI SC: Yes, Madam Chair, I am not sure whether the panel has it.

20 **CHAIRPERSON:** We have those loose ones, but they are lying somewhere. We will find that. You can go straight to those, to the paragraphs.

ADV NGCUKAITOBI SC: Yes, thank you, Madam Chair. So if you go to page 69 of the report, the pages are at the bottom left.

ADV MAEMA: I see them, Chairperson.

ADV NGCUKAITOBI SC: Paragraph 190.6. Can you just read that for the record?

ADV MAEMA: Paragraph 190.6.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: -:

10 “If one has reference to the evidence as contained in the dockets, the alleged enterprise was on the verge of extinction. In 2011, the accused are only charged with two racketeering acts as compared with nine racketeering acts in 2008. To show a continuity, the racketeering acts must include a specific thread of repetition extending indefinitely into the future.”

ADV NGCUKAITOBI SC: Yes, that is the question you have to answer. Why are they wrong, then?

20 **ADV MAEMA:** Chairperson, when you look at the, at, and that is, in my view, just basic interpretation of the statutes by Cockram. When you look at the entire tenure of the legislation, the entire legislation, it is intended to prevent organized crime, the perpetuation of organized crime. Now, when, for one reason or another, the crime stats goes down, you cannot say, well, because the fancy boys are no longer

committing offences as regular as they used to do, now I am not charging them with racketeering.

So, the regularity or the extent of commission of this offences does not necessarily mean, you know, you have reached your goals. So, even if the specific thread of repetition does not extend indefinitely, the fact remains the offences are being continued. So, my view would be that even though the continuity of the racketeering acts are subsiding and not continuing indefinitely, it still fits the
10 definition of, the definition that we find in the legislation.

ADV NGCUKAITOBI SC: Ja, but, I mean, assume, for the benefit of the de Kock panel, the best argument they can put up, right, is that the racketeering has ended. Assume the evidence is that it is ended, the enterprise came to an end, so, if the enterprise was a gang called the Fancy Boys ...[intervenes].

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: The Fancy Boys were all killed, right.

20 **ADV MAEMA:** Yes.

ADV NGCUKAITOBI SC: And, or the leaders were killed, the question is, can the NPA say, we are charging you because for ten years you were engaged in racketeering for those who survived, those members of the Fancy Boys who survived, even though it is ended.

ADV MAEMA: Perfectly, the NPA can still, because it is elimination of crime that you are focusing on.

ADV NGCUKAITOBI SC: Yes. This is the point about the de Kock panel saying it must extend indefinitely into the future.

ADV MAEMA: It cannot be.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Because ...[intervenes].

CHAIRPERSON: After you, you may proceed to elaborate.

10 **ADV MAEMA:** Chairperson, what I was going to say is, for the members of the deceased families of those incidents that have occurred, you say in 2012 there is no other incident, what do you tell them, because you should be able to give them an answer. So, accountability in terms of the legislation, insofar as my view, the analysis that is in the de Kock report, with respect, is incorrect.

CHAIRPERSON: I suppose, as you correctly put it, it is also a matter of interpretation. You have to look at the intended purpose of POCA, first thing, not so? And I do not know
20 whether you have the same thing in Xhosa or Zulu, Advocate Ngcukaitobi, in Setswana we will say “molato ga o bole”.

ADV NGCUKAITOBI SC: Yes, of course we do.

CHAIRPERSON: You would have committed these crimes ten years ago and stopped committing them, but that crime remains.

ADV MAEMA: It remains.

CHAIRPERSON: It does not get rotten into saying I am no longer going to prosecute. That is why we say “molato ga o bole”.

ADV MAEMA: That is correct, Chairperson. Even that rape victim some 15 years ago in their adulthood still remembers that I had gone through this experience, that no one is supposed to be exposed to. So “molato ga o bole” definitely we, as an NPA, constitutionally we should pursue all
10 “molato’s”, all offences we should pursue.

ADV NGCUKAITOBI SC: Yes. It is called ...[vernacular].

ADV MAEMA: Without fear, favour or prejudice, yes, Chairperson, ...[vernacular].

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: What are you saying, Advocate Ngcukaitobi?

ADV NGCUKAITOBI SC: It is called ...[vernacular]

CHAIRPERSON: [Vernacular]...

ADV NGCUKAITOBI SC: Yes.

20 **CHAIRPERSON:** It is the same.

ADV MAEMA: The same as “molato ga o bole”.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI SC: The person who should be told that is the current NDPP. I gladly think that he does not have to deal with this.

CHAIRPERSON: I suppose he is a Motswana, he knows that.

ADV NGCUKAITOBI SC: Oh, okay.

CHAIRPERSON: I do not know, but I am sure he understands that.

ADV NGCUKAITOBI SC: Thank you. Maybe you should just keep the panel report because at some point we will come back to it. Now, just back to the definition. So, it is planned, ongoing, continuous or repeated. And then there is another term, participation or involvement. So, the legislation
10 requires that you participate actually or you are involved.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: What does that mean?

ADV MAEMA: You see, Chairperson, POCA was directly aimed at those people who do not participate, who are seen nowhere, but who fund these terrorist activities. So, you fund and you, but you are never on the scene, but you make it possible for this kind of offences to be committed. So, you do not necessarily have to participate. You can participate physically and be there, but even those that get involved
20 indirectly, in a way of funding, in a way of supporting, in a way of encouraging, they are included in the definition.

ADV NGCUKAITOBI SC: So, it is the participants and the enablers.

ADV MAEMA: That is correct, Chairperson, yes.

ADV NGCUKAITOBI SC: Yes. In fact, that term is defined

very crisply and powerfully by the Supreme Court of Appeal at paragraph 348 of your statement. If you just go up one page.

ADV MAEMA: In S v Eyssen.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: -:

10 “The Supreme Court of Appeal explained the difference between the two offences. The essence of the offence in subsection (e) is that the accused must conduct or participate in the conduct of an enterprise. Actual participation is required, although it may be direct or indirect.”

ADV NGCUKAITOBI SC: Yes. Then continue that.

ADV MAEMA: -:

20 “In that respect, the subsection differs from subsection (f), the essence of which is that the accused must know or ought reasonably to have known that another person did so.”

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: -:

“Knowledge, not participation, is required.”

ADV NGCUKAITOBI SC: Yes. So, just to come back to the point we are making that we are targeting actual participants ...[intervenes].

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Direct or indirect.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: But also enablers.

ADV MAEMA: Enablers and those that are, that do not participate physically, but who make it possible for those
10 conducts to happen.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: So, if you are looking at the Fancy Boys that are committing robberies, but there are traffic officers who are making sure that they travel safely, even when they have their loot, they make sure that they get safer and faster passage through the traffic, those enablers you can still charge with racketeering.

ADV NGCUKAITOBI SC: Yes. So, just go back then to Cato Manor. This concept of being a participant or an enabler
20 ...[intervenes].

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: That is what you call involvement.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: How do you apply it to those facts? I mean the big name that we have been talking about, I am

not sure if it is a big name, but it is a common name, it is that of Major General Booysen.

ADV MAEMA: Major General Booysen, in our view, managed the activities of the Cato Manor and, well, we have instances where he also participated.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Yes. So, for those incidents where he participated, there are those that he participated directly and those where he participated indirectly, but ...[intervenes].

10 **ADV NGCUKAITOBI SC**: How would you have participated indirectly on the facts we have seen?

ADV MAEMA: Let us say, let us look at the minimal, those incidents where he was not there.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Because what he does is he make sure that Ayer is redundant. We remove Ayer from there. We make sure that they have vehicles. We make sure that they have, we make sure that they have all the resources and we make sure that they have, the legal system or the police system works on the basis of informers.

20 **ADV NGCUKAITOBI SC**: Yes.

ADV MAEMA: That are some of the people that live within the communities that know that crime is being committed. So, they make sure, Cato Manor was structured in such a way that they have an informer network that finds information.

You know, even when Ndimande ran to the North West, to Rustenburg, they were able to sniff and know that he is hiding somewhere in Rustenburg. Even though Magojela was hiding out in the Free State, when he came to Pietermaritzburg to collect money from his taxi operations, they had a strong informer network to know his movements and to be able to track him, to track and trace him wherever he goes.

ADV NGCUKAITOBI SC: But there is also the other element which we looked at last week, which is impunity.

10 **ADV MAEMA:** Oh, yes.

ADV NGCUKAITOBI SC: These were untouchables.

ADV MAEMA: Untouchables. You know that when you do anything, nothing will come your way. You have protection.

ADV NGCUKAITOBI SC: Yes. And at a senior level, could he provide that protection?

ADV MAEMA: General Booyesen at the senior level was a cushion that they required to ensure the continuity of the activities.

ADV NGCUKAITOBI SC: Yes. Now it says participation or
20 involvement, and then in any offence referred to in schedule
1.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: And includes at least two offences referred to in schedule 1.

ADV MAEMA: Yes.

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

ADV MAEMA: So that is why I said you need two or more offences.

ADV NGCUKAITOBI SC: Yes. Now, this is schedule 1 of POCA.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Or schedule 1 of the Criminal Procedure Act?

ADV MAEMA: No, it is schedule 1, when it refers to a
10 schedule, it is of the same legislation.

ADV NGCUKAITOBI SC: Yes. Now, I do not know if we have the Act here, but I think it is necessary to go through the offences in the schedule.

CHAIRPERSON: Whilst you are looking for that, Advocate Maema, just for clarity, the section 2(1)(e) and read with 2(1)(f) are not mutually exclusive?

ADV MAEMA: No, they are not, Chairperson, ja.

CHAIRPERSON: They are not?

ADV MAEMA: Because they are not mutually exclusive,
20 because the one is managing and the one is participation in the activities of an enterprise. So, we see, we charged General Johan Booysen with both 2(1)(e) and 2(1)(f).

ADV NGCUKAITOBI SC: Yes. Do you have, you do not have the schedule. Okay, I will organise a computer to be put in front of you to go to schedule 1.

CHAIRPERSON: Before you do that, Counsel, now, as regards the Cato Manor predicate offences ...[intervenes].

ADV MAEMA: Yes, Chairperson.

CHAIRPERSON: In relation to this exclusivity that you are talking about.

ADV MAEMA: Yes.

CHAIRPERSON: Given that the racketeering charges were withdrawn.

ADV MAEMA: Yes, Chairperson.

10 **CHAIRPERSON:** By the, by Advocate Batohi.

ADV MAEMA: Batohi, yes.

CHAIRPERSON: And instructions was given that the DPP KZN should proceed with the predicate offences.

ADV MAEMA: That is correct, Chair.

CHAIRPERSON: I suppose only in relation to the accused people, persons, who would have been listed in those specific dockets.

ADV MAEMA: That is correct, Chairperson, who would have actively participated in those, unless if on the basis of
20 common purpose they can link somebody other than the one who was physically on the scene.

CHAIRPERSON: Yes, that is where I was going to.

ADV MAEMA: Yes.

CHAIRPERSON: Yes. So if the prosecution team in the DPP KZNA would then have found that the principle of common

purpose kicks in ...[intervenes].

ADV MAEMA: Yes.

CHAIRPERSON: Implicating also Major General Booyens.

ADV MAEMA: Yes.

CHAIRPERSON: Given in one of the dockets where he was directly involved.

ADV MAEMA: That is correct, yes.

CHAIRPERSON: At the scene.

ADV MAEMA: Yes.

10 **CHAIRPERSON**: Then he could be then charged under those predicate offences.

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: Under the principle of common purpose.

ADV MAEMA: That is correct, yes, yes.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. Do you now have schedule 1 of POCA?

ADV MAEMA: I do, Chairperson.

ADV NGCUKAITOBI SC: Yes, I mean there are 34 offences there.

20 **ADV MAEMA**: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Now, so are those the schedules that are referred to in the definition of a pattern of racketeering offences?

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Should I read the offences?

ADV NGCUKAITOBI SC: Well, my learned friend just says to me that it is not necessary, because we can take it to be common cause that that is the schedule.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And what you need for POCA is participation in two or more of those offences.

ADV MAEMA: That is correct, Chairperson.

10 **ADV NGCUKAITOBI SC:** Thank you. So you may return the computer.

ADV MAEMA: Thank you.

ADV NGCUKAITOBI SC: Thank you.

ADV MAEMA: Thank you, Chairperson.

ADV NGCUKAITOBI SC: Now, so is the evidence that what you need to establish a pattern is a participation of an individual in two or more of those 34 offences?

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: Yes. And then it says:

20 “Of which one of the offences occurred after the commencement of this Act and the last offence occurred within 10 years, excluding any period of imprisonment after the commission of such prior offence referred to in schedule 1.”

So what does this mean that you have got a 10-year window to charge a person for racketeering.

ADV MAEMA: That is correct, yes, 2(1)(e) and 2(1)(f). Remember, it only deals with the racketeering offences ...[intervenes].

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: And not any predicated offences if that would be murder or – yes.

ADV NGCUKAITOBI SC: Yes. All right, so how would that
10 apply to the current scenario? I suppose they were charged even if the charges were withdrawn. So they were charged within a 10-year window.

ADV MAEMA: That is correct, Chairperson, yes.

ADV NGCUKAITOBI SC: Yes. Now, that takes us to paragraph 351, a distinction between section 2(1)(e) and 2(1)(f). Can you just take us through those and the subparagraphs, 351.1 to 351.3.

ADV MAEMA: Chairperson, at 351.1:

“The offence of racketeering under POCA is distinct
20 from and can be charged in addition to any underlying predicated offences that comprise a pattern of racketeering.”

I usually end with the pattern of racketeering activity because that is where it ends. But here:

“Pattern of racketeering. It is for this reason that the indictment in Cato

Manor included charges of racketeering and distinct and self-standing charges of predicated offences. According ...”
[intervenes]

ADV NGCUKAITOBI SC: Can you just explain what that means when you say, because we debated this with Advocate Batohi, she did not really commit to a position either way, which is, what is the issue in this case that we are dealing with, is it only POCA or POCA plus predicated offences, and
10 then she kept on saying, well, the predicated offences are part and parcel of POCA.

ADV MAEMA: No, well, the racketeering offences are count one and two. They are self-standing. They are charges by themselves.

ADV NGCUKAITOBI SC: No, what I mean is this. In order to prove, in other words, to prove racketeering, you will have to prove the murder if you are saying the predicated offence is the murder.

ADV MAEMA: Yes, yes.

20 **ADV NGCUKAITOBI SC:** Yes. That is the point I am making.

ADV MAEMA: So you will have to prove all the predicated offences, because by proving the predicated offences, then you will be proving that over a period of time. You will be showing that it is ongoing, continuous, repeated over a period of time.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: In that way, then, you are now in the element of a pattern of racketeering activity.

ADV NGCUKAITOBI SC: Well, it is a bit misleading to say that this case is not about the predicated offences, because the case is about the predicated offences.

ADV MAEMA: It is about the predicated offences.

ADV NGCUKAITOBI SC: Yes. Now, you were still at, sorry, I stopped you at ...[intervenes].

10 **ADV MAEMA:** Before I started with the, accordingly.

ADV NGCUKAITOBI SC: Yes, yes.

ADV MAEMA: -:

“Accordingly, if an accused is not ultimately convicted of racketeering, it does not follow that he will not be convicted of the underlying predicated offences.”

20 So, if your evidence before court would fall short and the court would not be convinced that you, there is sufficient for racketeering, the court will still be at liberty to convict you of a predicated offence.

ADV NGCUKAITOBI SC: So in other words, if a court says you committed murder once, but I cannot find that it was continuous.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: You are still guilty of murder.

ADV MAEMA: You are still guilty of that count of murder.

ADV NGCUKAITOBI SC: Yes. I mean, this is where one of the things I do not understand in this case, because they just withdrew everything.

ADV MAEMA: Strange, very strange.

ADV NGCUKAITOBI SC: All right, 351.2.

ADV MAEMA: 351.2, Chairperson:

10 “Participation in the enterprise and management of enterprise are not mutually exclusive.”

That is the point that the Chairperson just asked me to elucidate on earlier. 351.2.1:

“Section 2(1)(e) caters for a situation where an accused manages the enterprise and participates in a pattern of racketeering through which its affairs are conducted.”

But the emphasis there is manages the enterprise.

20 **ADV NGCUKAITOBI SC:** Yes, now, just to come back to this particular case, you had identified five managers.

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: Now we can go through them, because I need you to explain to the panel why those five individuals were identified as managers. They are

...[incomplete].

ADV MAEMA: Chairperson, they are on GSM1-22.

ADV NGCUKAITOBI SC: What page?

ADV MAEMA: Page 1-22 of the statement.

ADV NGCUKAITOBI SC: Sorry, what paragraph?

ADV MAEMA: Paragraph 71.

ADV NGCUKAITOBI SC: Yes, that sounds correct. Yes, that is where you have identified them. Just take us through each one of them and explain why they were the managers.

10 **ADV MAEMA**: Chairperson, all of them, except Van Tonder, were Section Commanders.

ADV NGCUKAITOBI SC: But it cannot be all of them, because Mr Booysen was not a Section Commander.

ADV MAEMA: I was, ja, no, it cannot be all of them.

ADV NGCUKAITOBI SC: That is why I am asking just take us one ...[intervenes].

ADV MAEMA: Individually, all right.

ADV NGCUKAITOBI SC: Yes.

20 **ADV MAEMA**: Let us start at 71.1. Johan Booysen was the Provisional Commander of Organized Crime. But now, instead of being in the provisional office, he then removes Ayer who is the Head of Durban Organized Crime, to whom Cato Manor Serious Violent Unit has to report. He then becomes the, he assumes the role of Ayer. So all of the Section Commanders then would then report to him, and he

facilitates their activity by making sure that they have equipment that enables them to do their work. Now ...[intervenes].

ADV NGCUKAITOBI SC: I mean, is there evidence that Ayer was actually removed? What do you mean when you say he was removed?

ADV MAEMA: He was rendered redundant.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: So although he was there as the Head of
10 Durban Organized Crime, they would jump him. They would jump him insofar as decisions and everything. When an incident would have happened, he would hear it on the radio, unlike Johan Booysen, who would hear it from the members, from Olivier, and then attend the scene. But Ayer would be the Commander in name, but not in real fact.

ADV NGCUKAITOBI SC: So would you describe him as having been the *de facto* Head?

ADV MAEMA: As the *de facto* Head, yes, yes.

ADV NGCUKAITOBI SC: So that covers Major General
20 Booysen.

ADV MAEMA: Neville Eva was known for his attention to detail.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: So he would make sure that all the scenes are doctored in accordance with the wishes of the enterprise.

He will make sure that there is a firearm that is placed there. He will make sure that on every operation, there are members that would do the guiding of the scene, protect the outside, and there would be sufficient of the members of the penetrating team. The penetrating team, Chairperson, remember, are those that I said they are at the door, and they identify themselves, and if you do not open as soon as possible, they will make sure that the door comes down and they enter.

10 **ADV NGCUKAITOBI SC:** Yes. So in that sense, he is playing a management role.

ADV MAEMA: He is playing a management role to ensure that that happens. Now, Olivier was the one who was the Head of Serious Violent Crime.

ADV NGCUKAITOBI SC: They all reported to ...[intervenues].

ADV MAEMA: He is the one that was supposed to be reporting to Ayer.

ADV NGCUKAITOBI SC: To Mr Ayer, yes.

ADV MAEMA: Yes. Now, instead of reporting to Ayer, he
20 reports to Johan Booysen. Lockem was also one of the Commanders who also made sure that all the team members are available whenever they are required. Whenever there is information that comes from the informer of any of them, then he would make sure that whoever has to be on duty gets on duty, and he would ensure that they have a sufficient number

of officials at that activity to deal with whatever challenges that comes out there.

ADV NGCUKAITOBI SC: The last one is Mr Van Tonder.

ADV MAEMA: Mr Van Tonder was the one who was, he is predominant in all the activities. He is the one who was mostly present in all of them, but he was a trusted soldier of Johan Booyesen. Johan Booyesen will trust him with all the information, and he will make sure that whatever activities that they have planned are executed to the satisfaction of the
10 wishes of Johan Booyesen.

ADV NGCUKAITOBI SC: Yes, all right. Thank you. So, in that sense, these were playing a management role.

ADV MAEMA: They were playing a very crucial management role of the activities of the ...[indistinct] [intervenes].

ADV NGCUKAITOBI SC: It sounds like there were different facets, but nevertheless, it is management facets, because ...[intervenes].

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: One is managing informers, one is
20 managing the actual scenes, one is making sure that the logistics for operations are undertaken ...[intervenes].

ADV MAEMA: Yes, yes.

ADV NGCUKAITOBI SC: And then there is the overall supervisor.

ADV MAEMA: Yes, yes. And the overall supervisor also

ensures that you manage the, what do you call it, the reputation of this team so that also insofar as the media is concerned, there is no negative reporting about Cato Manor activities.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: You have your Carima Browns who will report negatively about Mr Chauke and I in the media. You have all of that, you know, that make sure that, ja.

ADV NGCUKAITOBI SC: So who was responsible for making
10 sure that you receive positive media coverage, the unit receives positive media coverage? I did not get that.

ADV MAEMA: No, I am saying Johan Booysen would also make sure that the reputation of the Cato Manor remains intact.

ADV NGCUKAITOBI SC: I see.

ADV MAEMA: To ensure that there are those in the media
houses that would report in accordance with the narrative that they were pushing, your Carima Browns. There are a number of them, ja. I got the de Kock report as a result of one of the
20 media people asking me what my comments are. I have never received a copy from the NPA. And when I received it, then I made sure that I share it with the Advocate Chauke and most of the other teams that are referred to in the report. So very strange that a report that deals with the work that you have done within the NPA is not only, you know, the compilation

thereof is not only shared with you, but up until finalization, I hear about it from the media.

ADV NGCUKAITOBI SC: Yes, thank you.

CHAIRPERSON: But then why would you think that that information would have been given to the media by Major General Booysen?

ADV MAEMA: Chairperson, I am not saying it was given by Major General Booysen. All I am saying was it is a report that was generated within the NPA about work that I have
10 done myself. So I expect at some stage to say, man, are you seeing this evidence? Where is this evidence? Show me. The dockets are here, come show me where is this. Where is this? Particularly with Rodney de Kock, who was very close to me, I had expected him to pick up the phone and confront me about anything. I would not go to Cape Town and leave Cape Town without visiting Rodney de Kock in Cape Town, you know. So I would have expected if there is anything that is within the institution that you know, affects the moving of his eyebrow, he can pick up the phone and say, Maema, what
20 is happening here, can we sit down here and talk about it? We could sit down and talk about anything and everything. But he compiles a report about this. There are things that I have done that he does not understand, that he finds it strange. But he does not confront me with that. So I found it very strange.

CHAIRPERSON: So the disclosure could have been made by anyone within the NPA.

ADV MAEMA: That is correct, Chairperson. But all I am saying is *audi alterem partem* says you hear the other side. Now you compile a report like this where you rubbish the work that I have done, yet you do not give me an opportunity to explain the rubbish that I have done you know. So I would have expected at least to say, what is this thing? It does not make sense because as lawyers we differ. Judges differ. But
10 at least engage, hear the other side.

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

MS RAMAGAGA: Maybe let us just talk about process and not about expectations because of the relationship ...[intervenes].

ADV MAEMA: Oh, yes, yes.

MS RAMAGAGA: That you have, or you had.

ADV MAEMA: With him.

MS RAMAGA: With him.

ADV MAEMA: Yes.

20 **MS RAMAGA:** When one reads this report, it appears like it is a product of a review of the work that was done by your team.

ADV MAEMA: By my team, yes, that is right, Chairperson.

MS RAMAGA: Now, what is the process in the case where someone is in the NDPP, in particular the NDPP herself or

himself, whoever will be occupying the position.

ADV MAEMA: Yes, Chair.

MS RAMAGA: What is the process if someone wants to review the work that you have done?

ADV MAEMA: Chairperson, if one looks at section 179 from subsection (2) to subsection (5), in fact the review powers of the NDPP are in section 179(5), the review would be instigated by a written complaint or either a complaint from an accused person or a complaint from a family of the
10 deceased. A participant would complain and then a team would be put together to review the decision that was taken.

MS RAMAGA: Ja, but now, I think we must talk about a review that is being done in the instance of the NDPP without even any complaint having been lodged.

ADV MAEMA: 179(5).

MS RAMAGA: Upon, ja, upon perusal, the NDPP, like it is the case in this particular case, that it was done in the instance of the NDPP.

ADV MAEMA: Yes.

20 **MS RAMAGA**: Let us just talk process. What is the process? What are they supposed to do, especially in relation to the prosecution team? Thank you.

ADV MAEMA: Chairperson, what I would have done if the National Director had asked me to do this, I would ...[intervenes].

ADV NGCUKAITOBI SC: No, no, no. I think the question is not what you would have done.

ADV MAEMA: Oh.

ADV NGCUKAITOBI SC: It is what is the process.

ADV MAEMA: What the process is.

ADV NGCUKAITOBI SC: Yes.

MS RAMAGA: Yes, thank you.

ADV MAEMA: Well, I would have followed the process, but the process is a team is put together and the team then will
10 consider and evaluate what is the evidence that is available.
Now ...[intervenes].

ADV NGCUKAITOBI SC: Mr Maema, I think we are going sideways again.

ADV MAEMA: Are we?

ADV NGCUKAITOBI SC: You have told us that the process is outlined in section 179(5) of the Constitution.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: What does that section say? You can find the provision and read it for us.

20 **ADV MAEMA:** Thank you. Section 179(5)(d):

“The National Director may review a decision to prosecute or not to prosecute after consulting the relevant Director of Public Prosecutions and after taking representations within a

period specified by the National Director from the following persons, from an accused person, from a complainant, from any other person or party whom the National Director considers to be relevant.”

Now, in fulfilling the responsibilities in Section 179(5)(d), the National Director would then put up a committee, a team.

10 **ADV NGCUKAITOBI SC**: But, I mean, was this process here followed? I mean ...[intervenes].

ADV MAEMA: No, it was not followed.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: It was not followed. There is no representations within a period of time from an accused person, from a complainant, or from any other person that the National Director considers relevant.

MS RAMAGA: Yes, thank you, Advocate Maema. It will help if you were to just try to answer the questions.

20 **ADV MAEMA**: It is difficult, Chairperson, when you sometimes have more information and ...[intervenes].

MS RAMAGA: Your witness will tell you that one day.

ADV NGCUKAITOBI SC: Thank you.

ADV MAEMA: Thank you, Chairperson.

ADV BALOYI-MERE SC: Thank you. I am sorry, I am going

to take you a page back, because I was slow in raising my question. Advocate Maema, you listed the five managers, or the five people that you regard as the managers of the Cato Manor enterprise.

ADV MAEMA: That is correct.

ADV BALOYI-MERE SC: And you also indicated why you regard them as the managers. But what I would like to know is where do we get this information, or did you deduce it from the dockets? For example, I will give an example with
10 Lockem. You say Lockem always made sure that whoever has to be on duty is on duty. Where and how did you get to this conclusion about Lockem and his participation? Thank you.

ADV MAEMA: Chairperson, what we did is we looked at the organogram of the Provincial Organised Crime Unit itself and then we looked at the composition of the SVC unit, Serious
20 Violent Crime Unit. And then we looked at the various incidents in which they participated and we analysed the roles that they engaged in from one, incident one until incident 23. And then we could see from the incidents that these are the particular roles that all of the managers were predominantly taking in the activities of the enterprise. So it is not only the organogram of the Provincial Organised Crime itself, but the organogram, the activities themselves, and how the activities were executed, that gave us an indication of the

roles that each of them undertook during the incidents.

ADV BALOYI-MERE SC: The organogram does not make it clear that these people play these roles. The organogram tells us that the Provincial Commander of Organised Crime, KZN, is Director Booyesen.

ADV MAEMA: That is correct.

ADV BALOYI-MERE SC: That is all it tells us.

ADV MAEMA: Yes.

ADV BALOYI-MERE SC: But you took it further to say, well,
10 with Booyesen, already you have led evidence to show that he was managing because he made sure that they have resources and he would always be there and make sure that the reputation is intact and give instructions.

ADV MAEMA: Yes.

ADV BALOYI-MERE SC: But it is a bit not clear. Let us take Neville Eva. You say he is known for attention to detail, made sure that on every operation there will be relevant members and, but there will be people who can break down doors and, but where do we find that information that Neville Eva played
20 this active role in order for us to put him as part of the management of the enterprise?

ADV MAEMA: Chairperson, in the, when you look at how the activities unfolded, at the incidents, at the various incidents where they did the raids, you will see that he is consistently the one that guards the scene that is being penetrated and

he is the one, after somebody has been killed, who makes sure that the scene will accord with the view that they were being attacked and it was a justified killing.

ADV BALOYI-MERE SC: So this is taken, this conclusion comes from looking at each and every scene ...[intervenes].

ADV MAEMA: That is correct.

ADV BALOYI-MERE SC: And the participation of these members from the scene?

ADV MAEMA: That is correct, Chairperson.

10 **ADV BALOYI-MERE SC:** Okay, thank you.

ADV NGCUKAITOBI SC: Perhaps one of the things we will do in due course is that there was a request for further particulars to the charges. Do you recall that?

ADV MAEMA: Yes, yes.

ADV NGCUKAITOBI SC: And one of the questions raised there was precisely why have you identified these five as managers.

ADV MAEMA: That is correct, yes.

20 **ADV NGCUKAITOBI SC:** And you provided an extensive response.

ADV MAEMA: Yes, yes, yes, Chairperson.

ADV NGCUKAITOBI SC: Which it is too bulky, we have not included it in the bundle, but we will just make it available. Thank you. We were still at paragraph 351.2 of your statement.

ADV MAEMA: That is correct, Chair.

CHAIRPERSON: Yes, and we have finished the part dealing with what is a manager and why did you conclude that the five you identified were managers. Can you deal with 351.2.2?

ADV MAEMA: That is correct, Chair.

10 “Further, an accused can be charged with and can conceivably be convicted under both section 2(1)(e) and 2(1)(f). In Prinsloo, the SCA rejected what it viewed as the absurdity of a manager of a multibillion rand racketeering enterprise who has had minimal personal active participation, would only be liable for the minimal participation role under section 2(1)(e) and not under section 2(1)(f) for the extensive managerial role played in a highly successful criminal enterprise. I note, however, that the SCA has cautioned that in that scenario, care must be taken to avoid an impressive splitting of charges.”

ADV NGCUKAITOBI SC: Yes, I just want to get the principle out of this passage. A person charged as a manager, can

they also be charged as a participant?

ADV MAEMA: If that person executed both roles, yes.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: You can charge him as both the manager and as a participant.

ADV NGCUKAITOBI SC: Because I suppose management is a funny concept because it also includes participation.

ADV MAEMA: Most of the managers, they dirty their hands too, so they participate as well.

10 **ADV NGCUKAITOBI SC**: No, I am saying if in the way you have described management, where someone makes sure that a gun is planted ...[intervenes].

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: That is an offence.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Which is in schedule 1.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And therefore it would mean you are a participant.

20 **ADV MAEMA**: You are also a participant.

ADV NGCUKAITOBI SC: Yes. Or even the organising of making sure that the vehicle is available, but it is a vehicle to commit a murder.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: So which would also be an offence

of being a conspiracy to murder.

ADV MAEMA: That is correct, Chair.

ADV NGCUKAITOBI SC: So that is the point I am making. I am trying to understand in 351.2.2 about being a manager and a participant is not ...[incomplete].

ADV MAEMA: It is not mutually exclusive.

ADV NGCUKAITOBI SC: Yes, you debated that earlier with the Chair.

ADV MAEMA: No, I did not debate, I ...[intervenes].

10 **ADV NGCUKAITOBI SC**: Well, you explained it.

ADV MAEMA: I explained it. I elucidated, Chairperson. I would not want to be in the position where I do that. I would be run over by a train.

ADV NGCUKAITOBI SC: Okay, that is fine. Thank you. All right, so that is the emphasis on that paragraph.

ADV MAEMA: Yes. Yes, yes, yes, Chair.

ADV NGCUKAITOBI SC: And then 351.3.

ADV MAEMA: -:

20 “The recruiting enterprise and the pattern of recruiting activity through which it conducts its affairs are distinct. A pattern of recruiting activity may be proven, but if that activity is not conducted by an enterprise, a charge of recruiting will fail. That said, the SCA

has explained that proof of pattern may establish proof of the enterprise.”

ADV NGCUKAITOBI SC: Yes, now, just stop there because it is one of the areas in the de Kock report. If you look at the summary at paragraph 190.

ADV MAEMA: 190 is on page 69.

ADV NGCUKAITOBI SC: Yes, 68.

ADV MAEMA: I should start at 68.

ADV NGCUKAITOBI SC: 190.1. It is one of the reasons
10 they say that you got the law wrong. It is because their view seems to be that an enterprise must always be separate from the racketeering activity. It says:

“There is no evidence to establish the existence of an unlawful enterprise.”

Let us forget about the unlawful part. You have explained that.

ADV MAEMA: Yes, yes.

ADV NGCUKAITOBI SC: They got the law wrong here.

ADV MAEMA: Yes.

20 **ADV NGCUKAITOBI SC:** But if you remove unlawful, you just say enterprise separately from the existence of a pattern of racketeering activity, what is your response to that?

ADV MAEMA: There is no evidence to establish the existence of an enterprise separately from the existence - there is ample evidence to show that, because, I mean, if you

agree that, if you hypothetically speaking agree with the prosecution team that the Cato Manor serious violent crime being a lawful institution can constitute an enterprise, if you look at their activities, I mean, the enterprise exists and the activities can continue. But the members of the enterprise can be different from any given day depending on who is available, depending on the resources that are available to the enterprise.

ADV NGCUKAITOBI SC: I understand, but I think the point
10 here that they were making in 190.1 is that your conception of the enterprises collapses an enterprise with a pattern of racketeering activity, whereas the two must always be separated. I understand you are saying what the facts, that is not what you did.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: You separated the enterprise from the racketeering activity.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: So they got that wrong.

20 **ADV MAEMA:** Yes.

ADV NGCUKAITOBI SC: Yes. But there is the question of law. According to what you say in 351.3, is it always necessary that the enterprise must be separate from the racketeering activity?

ADV MAEMA: No, it is not necessarily always so that the

enterprise will be separate from the pattern of racketeering activity.

ADV NGCUKAITOBI SC: Because, I mean, the SCA says proof of the pattern may establish proof of the enterprise.

ADV MAEMA: Exactly, yes.

ADV NGCUKAITOBI SC: In other words, you can look at the pattern in order to say that there is an enterprise.

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: Yes.

10 **CHAIRPERSON:** You can remind me, did Advocate Batohi not actually say that they are interlinked?

ADV NGCUKAITOBI SC: I cannot say for sure.

CHAIRPERSON: Did I miss that point?

ADV NGCUKAITOBI SC: I cannot say for sure.

CHAIRPERSON: I will look at my notes.

ADV NGCUKAITOBI SC: Yes, we will have to look at that, yes. I mean, it is odd because it would always be strange that in order for people to be convicted of POCA, you must, in every case, try and find that the enterprise pre-existed, the
20 pattern, you know.

ADV MAEMA: Well, Chairperson, in the cases that I had dealt with, particularly the one that I dealt with, with Judge Hendricks, JP Hendricks, as he now is, we debated this extensively because I had an individual as an enterprise. So to have an individual as an enterprise, his view was that then

that individual must be present at all the scenes or must have had a role in one way or another. But that individual was conducting his affairs in such a way that, you know, he engages different people at different mines to make sure that, you know, all the activities that he wanted executed are dealt with and to make sure that when he deals with individual C, sometimes individual D, who knows individual C, is not aware that the manager is dealing with the other one. So the enterprise and the pattern of racketeering activity can co-

10 exist.

ADV NGCUKAITOBI SC: Ja, but do they not necessarily co-exist because as a prosecutor, what you see is the commission of crime.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: What you do not see is whether behind the commission there is an enterprise.

ADV MAEMA: Yes, yes, but what you do is when you then consult with your witnesses and when you look at the complete picture, then you will see it because what you do is

20 then we argued in reverse. Having consulted with the witnesses, having had what was prepared and having looked at what happened at the scene, then you can be able to say this is how it unfolded.

ADV NGCUKAITOBI SC: I understand that, but I am saying this idea that this panel has, that the two are to be segmented

in every instance ...[intervenes].

CHAIRPERSON: Not this panel.

ADV NGCUKAITOBI SC: Sorry, not ...[intervenes].

ADV MAEMA: [Indistinct]... [cross-talking].

ADV NGCUKAITOBI SC: The advocate panel has this idea that the two must be split at all times, strikes one also as being nonsensical because what a prosecutor comes across is crime in the first instance.

ADV MAEMA: Yes, yes.

10 **ADV NGCUKAITOBI SC**: It is only when you try and unpick the elements of the crime that you see that there is an enterprise.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: So the two will always be interlinked.

ADV MAEMA: Interlinked all the time.

ADV NGCUKAITOBI SC: Ja.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Then you deal with paragraph 352
20 where you set out who was charged with what. Maybe you can deal with that very briefly because we have covered that quite extensively.

ADV MAEMA: Chairperson:

“As noted in the indictment in the Cato
Manor prosecution, comprised

racketeering charges and underlying predicate offences. In summary, of the 29 accused persons charged with racketeering under POCA, five accused persons were charged as managers of the enterprise.”

The five I have referred to earlier.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: -:

10 “The five were charged as managers in terms of 2(1)(f) and as participants in the racketeering enterprise in terms of 2(1)(e). Nineteen accused persons were charged as participants in the regulatory enterprise in terms of 2(1)(e) of POCA. Five accused persons were charged under both section 2(1)(f) and 2(1)(e). Each one of the 30 accused were charged with a predicate offence. In total, the accused were indicted for 114 predicate offences comprising 19 counts of murder.”

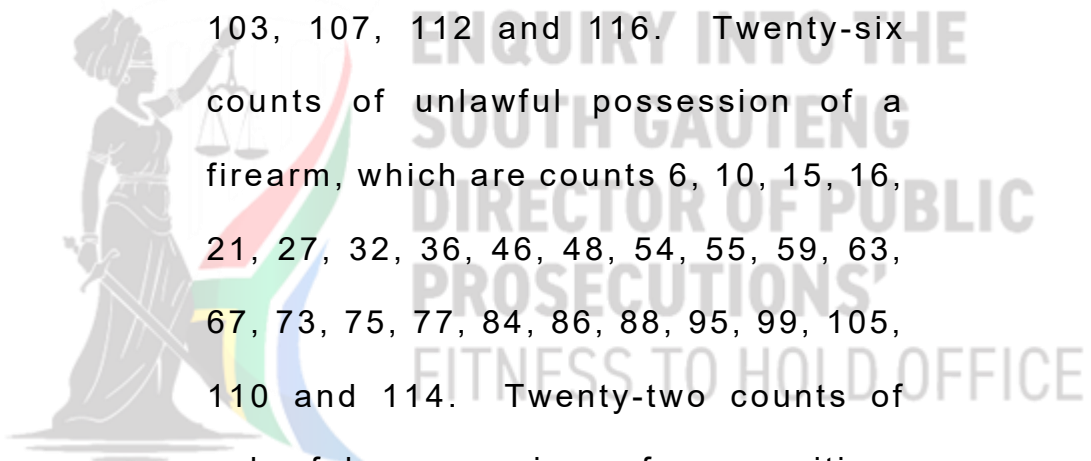
We refer to those kinds of murders in the brackets.

20 “Eight counts of housebreaking with intent to commit murder.”

And those are referred to.

“One count of attempted murder, count 83. Three counts of assault with intent to do grievous bodily harm, counts 4,

41 and 43. One count of malicious damage to property, count 45. Six counts of theft, counts 24, 30, 50, 57, 93 and 108. Three counts of pointing of a firearm, which are counts 26, 42 and 44. Twenty-three counts of defeating or obstructing the ...[indistinct] of justice, which are counts 5, 12, 18, 23, 29, 34, 38, 51, 52, 56, 61, 66, 69, 79, 90 to 92, 97, 101, 103, 107, 112 and 116. Twenty-six counts of unlawful possession of a firearm, which are counts 6, 10, 15, 16, 21, 27, 32, 36, 46, 48, 54, 55, 59, 63, 67, 73, 75, 77, 84, 86, 88, 95, 99, 105, 110 and 114. Twenty-two counts of unlawful possession of ammunition, counts 7, 11, 17, 22, 28, 33, 37, 47, 49, 60, 64, 68, 74, 76, 78, 85, 87, 89, 100, 106, 111 and 115. In terms of the indictment, the accused included accused number one, Booysen, the Commander of Cato Manor SVC and organized crime, later the DPCI unit. We refer to them as the Cato Manor



unit. Accused nine, the Section Commander of the Cato Manor unit. Accused six, Neville Eva. Accused 15, Lockem. Accused 16, Van Tonder, as Group Commanders of Cato Manor. 353.4. The majority of the remainder of the accused were members of the SVC section based at Cato Manor. Whilst other accused were based at

10 other units of the SAPS within the KZN

including Port Shepstone Organized Crime Unit.”

Chairperson, in the indictment, the predicate offences were grouped by incident type, namely, we had taxi violence related killings. We had ordinary civilians or suspects and then we had ATM bombing suspects.

ADV NGCUKAITOBI SC: Yes, just explain that, what is that about. It is categorized like that in the indictment, but what was the significance of that?

20 **ADV MAEMA**: Well, when we analysed the incidents, what we did was we saw that some of them were taxi violence related. It means they come from KwaMaphumulo Taxi Association and Stanger Taxi Association, that field. But we saw some of them ordinary civilians, people like ...[indistinct] you know, who were just ordinary civilians who were

considered by Cato Manor as ordinary criminals. And then we had those suspects that were involved in ATM bombings. So those are the different categories of offences that we ultimately included in the indictment.

ADV NGCUKAITOBI SC: So it is people being killed because they are suspected of being in an ATM bombing.

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: And someone else being killed because they are suspected of being, well, it is alleged that
10 they are suspected because we know there is evidence showing that from Mr Zungu that these people were not even suspects.

ADV MAEMA: That were not even, yes, yes. But then the, but there would be ATM bombing related offences, taxi violence related offences, and just others that we saw just as ordinary criminals.

ADV NGCUKAITOBI SC: Yes, thank you.

ADV MAEMA: -:

20 “Across the indictment, each indictment were made up of the following recurring elements. A lethal operation treated as murder or housebreaking with intent to murder, plus murder, and occasionally attempted murder.

335.2 Possession of offences, charging

the same accused person with unlawful possession of firearms and ammunition used in that incident. Post-incident misconduct, almost invariably pleaded as defeating or obstructing the cause of justice by staging the scene, typically by planting a firearm on the deceased. Collateral offences where applicable included assault with intent to do grievous bodily harm on surviving suspects. Theft of some of the items that they will see there, money or jewellery, malicious damage to property, which would happen when the penetration team enters the house during the course of the raid.”

ADV NGCUKAITOBI SC: Yes, now these features, there are four features of the offences you have identified.

ADV MAEMA: Yes.

20 **ADV NGCUKAITOBI SC:** Being a lethal operation or a deadly operation.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Possession offences, and then doctoring of a crime scene.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And then the collateral. And we have many wives of the deceased saying they were beaten up or assaulted during the incident.

ADV MAEMA: That is correct, Chair.

ADV NGCUKAITOBI SC: Now, is this relevant at all to the point you made earlier, that what we saw here is that it was the same offences being committed across time and space, by the same group of people, in the same method.

ADV MAEMA: By the same group, in the same method, 10 continuously, with the knowledge that you know, we have cover, we have protection from General Booysen.

ADV NGCUKAITOBI SC: Yes. I mean, would this fit the frame, the four features that are identified, the frame of a pattern?

ADV MAEMA: Yes, it would fit a pattern of racketeering activity, perfectly.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Then 356 and 357, if you can deal 20 with those paragraphs.

ADV MAEMA: 356:

“Each incident generated a cluster of counts, and it is the repetition of these clusters that the prosecution relied on to demonstrate a pattern of regulatory

activity.”

ADV NGCUKAITOBI SC: This is the point I was trying to get you to, yes. But when you look at these activities, and with the features, the four features that are there, that are present, in all of the 23 instances ...[intervenes].

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: The most extraordinary thing, all of the 23 that you charge, have those four features.

ADV MAEMA: All of them have, yes.

10 **ADV NGCUKAITOBI SC:** Yes. Did you find out how this happened? I mean, I could not understand it myself, how in every scene, there is a coordinated lethal attack.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: There is a weapon found.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: There is an assault committed on all of those people who witnessed it.

ADV MAEMA: I do not follow your ...[intervenes].

ADV NGCUKAITOBI SC: I am saying, did you find out how
20 it happened, like was it centrally planned?

ADV MAEMA: It appeared ...[intervenes].

ADV NGCUKAITOBI SC: Or how did it happen that it had exactly all of the four features across 23 separate instances?

ADV MAEMA: Ja, it had to have been planned to, you know, to perfection, to come out in the manner that it came out,

because in all of the incidents, and when I made the presentation to Exco, I said, if you go through four incidents, then you know what happened in respect of all of them, because it happens in the same way. It happens in, all of them happens, and it ends up in the killing either of one or two or three of the suspects, or all of the suspects that they were dealing with, you know. Ja, so it is, ja.

ADV NGCUKAITOBI SC: The other oddity is that in none of these 23 instances is anyone actually arrested.

10 **ADV MAEMA:** None is arrested, not a single of the police vehicles are damaged, not a single of them are injured.

ADV NGCUKAITOBI SC: Yes, and Advocate Batohi then says this is not a pattern.

ADV MAEMA: No, it is. If nothing fits the definition of, this is the perfect definition of a pattern of racketeering activity. I would have marvelled the opportunity of presenting this case before a judge.

ADV NGCUKAITOBI SC: Well, you can still apply. I heard that there is a section, I think, I do not know, section 35 or
20 something, where the NPA can appoint a prosecutor from outside. Is it 38? Section 38. All right, and then anything you want to add on, you have not dealt with 357.

ADV MAEMA: 357 is:

“The enterprise alleged in the indictment being, was the formal SAPS

unit, the Cato Manor SVC Organized Crime, later DPCI unit, with the accused 1, Booysen, as a Commander, accused 9, Olivier, the Section Commander, and the Group Commanders as accused 9, Eva, accused 15, Lockem, and accused 16, Van Tonder.”

ADV NGCUKAITOBI SC: Yes, we have dealt with 358, which is the, I started with this when I asked you to explain why
10 they were an enterprise.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: So, unless there is something there that you feel you have not said that is contained in your statement.

ADV MAEMA: No, no, Chairperson, I think all that I have said is in the statement.

ADV NGCUKAITOBI SC: Yes, and we have dealt with 359, because you have mentioned that it was not your case that the enterprise was unlawful *per se*.

20 **ADV MAEMA:** Yes.

ADV NGCUKAITOBI SC: You accepted that it was a lawful enterprise, but it carried out criminal acts.

ADV MAEMA: Yes, yes.

ADV NGCUKAITOBI SC: And then we have also dealt with the next section about General Booysen as a manager.

ADV MAEMA: Manager, yes.

ADV NGCUKAITOBI SC: We have dealt with the statement of Colonel Ayer. We do not need to repeat that. We have dealt with the statement of Commissioner Brown.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: We also do not need to repeat that. We have dealt extensively with the answering affidavit of General Booyesen, so we do not need to repeat that either. What we have not really covered are the draft statements of
10 Mr Danikas. We covered one statement, but only for one purpose, which was to establish that there is no need for a statement by a witness like Mr Danikas to be signed.

ADV MAEMA: There is no legal requirement for that evidence to be under oath and the, or that, because all that it requires is information.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Not a statement under oath.

ADV NGCUKAITOBI SC: Yes, but this time what I would like you to do is just to set out for the panel your involvement in
20 securing Mr Danikas as a witness, and leading up to the point when he signed the statement. And you would know why this question is relevant, it is because there was an allegation that you lied because you claimed that Mr Danikas is a witness when you knew that he was not a witness. So this is your opportunity to set that out.

ADV MAEMA: Chairperson, when dealing with Mr Danikas, I just, I made sure that I report to, I informed Mr Mathenjwa that I will deal with Mr Danikas myself, because having spoken to him twice, the third time I knew that, that you know, when you deal with him, you ought to be careful. So, I, General Mabula was in Greece with him and informed me that he has a witness in Greece who has fears to come to the country, but who wants to, who is prepared to give us a statement.

10 And then knowing the Mutual Legal Assistance Act and knowing that if a witness is outside the country and if I want to use his statement in a subsequent trial, I will have to obtain the witness statement in terms of section 2 of the Mutual Legal Assistance Act. I advised General Mabula to obtain a draft statement and he then came back to the country with that draft statement of Danikas, unsigned, because what we wanted to do was to look at the statement and then see what is lacking in the statement, see what is unclear, and ask him to clarify some of the things which I dealt with myself.

20 And then during the reign of Advocate Shaun Abrahams, I will deal with the inside part, because the outside part, the media, to me were not as important as the inside part, because Danikas, from the beginning all the time, it had been our intention to call him as a witness. Yes, his name is not mentioned in the indictment as a witness. We

did not want to mention his name. The indictment specifically says in terms of section 144(3), which allows us not to include names of certain of the witnesses, or to redact some of the addresses that will put witnesses' lives in danger.

So, Shaun then said, Advocate ...[intervenes].

ADV NGCUKAITOBI SC: That is Advocate Abrahams.

ADV MAEMA: Advocate Abrahams, Chairperson, my apologies, then indicated the importance to consult with Mr Danikas and then ...[intervenes].

10 **ADV NGCUKAITOBI SC:** So this is just in sequence, this is now after the judgment by Judge Governor ...[intervenes].

ADV MAEMA: After it.

ADV NGCUKAITOBI SC: Who set aside the racketeering activity, the racketeering certificate.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And Mr Abrahams comes onto the scene ...[intervenes].

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And what do you recommend to
20 him as the prosecution team?

ADV MAEMA: Then we, because of the concerns that were raised by Mr Danikas, Mr Abrahams and I had a discussion with witness protection, Dawood Adams of witness protection, and the crucial aspect was to go and ensure, was for Mr Adams to ensure the safety and security of Mr Danikas, to

hear from him what his concerns are and how we are going to be able to get his evidence before court. But then we then decided that perhaps we just, witness protection and myself should just use one trip to go and see Mr Danikas, which we did in that January of 2018.

We then flew to Greece to go and meet Mr Danikas. We met him for two days, and we discussed, we did, he raised all the concerns, and he had a separate meeting with witness protection, Dawood Adams, and he had a separate meeting
10 with me, and on the third day we had a joint meeting, and we took down his draft statement, came down with the draft statement, the videos, and all the information that he gave us in a memory stick.

ADV NGCUKAITOBI SC: And did you yourselves watch the videos?

ADV MAEMA: I watched the, most of the videos, yes.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: And then I came and I reported to senior management, and then that is when we commenced the
20 process of obtaining his statement in terms of the Mutual Legal Assistance Act.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: I travelled to Durban, I met the Chief Magistrate there, I presented my application, my application was signed, it was compiled in a proper formal application

with diplomatic notes, and then it was taken through diplomatic channels. Diplomatic channels are Department of Justice, goes to Foreign Affairs, and then Foreign Affairs then goes to the Embassy, the Embassy then channels the application to the Embassy of Greece, and the document ends up in Greece.

The relevant authorities in Greece then deal with the application, meet Mr Danikas, they obtain his statement, and the statement is channelled through diplomatic channels back
10 to the country. So I was surprised when I saw Mr ...[intervenes].

ADV NGCUKAITOBI SC: Just before you go to the point of being surprised.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: I just want to make sure the statement you are talking about is whether or not it is the same statement at 1A-906, at GSM-90.

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

ADV NGCUKAITOBI SC: Nine zero, Madam Chair. Sorry, I
20 think I have now missed the page numbers. 1A-906, yes, thank you. There is the original Greek version at 1A-923, and then at 1A-906 is an English translation.

CHAIRPERSON: Perhaps, Counsel, we can adjourn here.

ADV NGCUKAITOBI SC: Oh, yes.

CHAIRPERSON: And Advocate Maema will quickly look at

GSM-90, and when you reconvene you can proceed.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

CHAIRPERSON: We will adjourn for 30 minutes until quarter to 12. Remember, you are still under oath, Advocate Maema.

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: We will adjourn now.

ENQUIRY ADJOURNS

ENQUIRY RESUMES

CHAIRPERSON: Good day, everyone. Good day, Advocate
10 Maema.

ADV MAEMA: Good day, Chairperson.

CHAIRPERSON: Good day, *Nthati* Chauke. You are still
under oath, sir?

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: You may proceed, Advocate Ngcukaitobi.
We were at GSM90.

ADV NGCUKAITOBI SC: Yes, at page 1A/923. Do you have
that page, Advocate Maema?

ADV MAEMA: Is it 1A/906 or...?

20 **ADV NGCUKAITOBI SC:** No, 1A/923.

ADV MAEMA: I am there, Chairperson.

ADV NGCUKAITOBI SC: What is that document?

ADV MAEMA: It is the Greek statement of Mr Danikas.

ADV NGCUKAITOBI SC: Yes, yes. Is it in Julius Caesar?
Somebody has a line that says, they are asking, I think

Caesar had made a statement at a meeting. They say, what did he say? No, I did not know it was all in Greek.

ADV MAEMA: Oh, yes, it is. [Laughter]

ADV NGCUKAITOBI SC: They say Julius Caesar.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Do you feel like that at the moment?

ADV MAEMA: No, I had that feeling when I received this statement. I said, what is this? Because I did not, for all
10 intents and purposes, we are all speaking English. So when I saw the statement coming in Greek, I was surprised.

ADV NGCUKAITOBI SC: Can you explain what were the circumstances in which you ended up with a Greek statement?

ADV MAEMA: Yes, what happened was after consulting him and then, no, after the, remember we ended where the documents have gone through diplomatic channels?

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Yes, and then we then followed up with the
20 consultation. And then I returned, and we await his statement, his signed statement. So when it arrived, I was surprised to find this. I could not read it.

ADV NGCUKAITOBI SC: Well, it appears to be dated 24, I presume that is October 2016, in the actual statement itself.

ADV MAEMA: Yes. What we then did when I received it, I

then went to the extradition desk in the Office of the National Director and said, we will require to have it translated. So they then went through the process of having it translated. They sent it to the Department of Justice, who then go on tender, and somebody is appointed who then translates the statement.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: So the statement came in English. And Carl van der Merwe was always on my back saying, we require a statement of Mr Danikas, we require a statement of Mr Danikas. We have received it, but I can send it to you. And I actually send him the Greek statement while we are awaiting the English version. And then...

ADV NGCUKAITOBI SC: What I am saying is the Greek statement seems to be dated the 24th of October 2016. If you look at right at the beginning.

ADV MAEMA: Yes, it is the 24th of October 2016.

ADV NGCUKAITOBI SC: Yes, no, that is what I am asking.

ADV MAEMA: Yes.

20 **ADV NGCUKAITOBI SC:** Even at the end of that statement, if you look at 1A/939 at the bottom.

ADV MAEMA: That is correct. It looks like the 24th of October 2016.

ADV NGCUKAITOBI SC: Yes. And in fact, at 1A/940, the Roman figures, the 24, 10 2016.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Yes, now. So that does not seem to have happened in 2018, but in 2016.

ADV MAEMA: Yes, earlier in 2016.

ADV NGCUKAITOBI SC: Yes. Is that when you obtained the statement originally, before the translation?

ADV MAEMA: Yes, that is correct.

ADV NGCUKAITOBI SC: All right. And then, so you had been to Athens yourself personally?

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

ADV NGCUKAITOBI SC: And you were with someone else?

ADV MAEMA: I was with the Dawood Adams of Witness Protection, because our primary concern was the security concerns that were raised by Mr Danikas.

ADV NGCUKAITOBI SC: Just the two of you?

ADV MAEMA: Yes, just the two of us. General Mabula had travelled before us on a separate flight.

ADV NGCUKAITOBI SC: Yes, no, I understand. But I am saying in the meeting with Mr Danikas, it was yourself and Mr
20 Danikas alone.

ADV MAEMA: That is correct. We had a session where we were alone, and he had a session with Mr Dawood Adams of Witness Protection. And we also had a joint session where the three of us were all together.

ADV NGCUKAITOBI SC: So this is how that statement was

procured, the Greek statement was procured by you personally?

ADV MAEMA: The Greek was version, his statement was obtained with my participation, yes.

ADV NGCUKAITOBI SC: Yes, I mean you interviewed him in order to understand the areas the NPA was interested in.

ADV MAEMA: Yes, yes.

ADV NGCUKAITOBI SC: All right. Then we can move then to from the Greek version. We needed to just get the context
10 right about what happened there, how that statement ended up being weighed, and which year. So we can move then to the English version, which you wanted to take us to.

ADV MAEMA: Yes, then the statement arrived through diplomatic channels, and I was informed that we do have a statement. I was eager to have a look at it. And I found it. When I received it ultimately, it was this statement.

ADV NGCUKAITOBI SC: It was the Greek version?

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And then?

20 **ADV MAEMA:** And then I went back to the extradition desk and said, we will require to have it translated. Then it went through from the NPA to the Department of Justice. And the Department of Justice then went out on tender to procure a translator.

ADV NGCUKAITOBI SC: Is that the document at 1A/906?

ADV MAEMA: And then the document at 1A/906 was then produced.

ADV NGCUKAITOBI SC: Yes. Now, even that one says, under the words, witness sworn testimony report, in Athens today, Monday, October 24 2016, at 15.14.

ADV MAEMA: Remember, the translation was just a translation of.

ADV NGCUKAITOBI SC: No, I understand. But I am asking you a different question. Even the English version says, in
10 Athens today, Monday, October 24 2016, at 15.14.

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: Which shows that, actually, the statement was taken in 2016.

ADV MAEMA: Yes, that is correct.

ADV NGCUKAITOBI SC: Now, did you follow the process? Were you involved in the process that was followed by the authorities to obtain the English version?

ADV MAEMA: I requested that it be translated. It went to the extradition desk. And from the extradition desk, it went
20 to the Department of Justice to have it translated. I was involved in this.

ADV NGCUKAITOBI SC: Yes, because there is stamps and signatures here that appear. And it is called official translation.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: I mean, I do not know the procedure for this. If you obtain a statement in a foreign language, what procedure must be followed to make it into a local language, but presumably, the people that know how to do it followed the procedure. Or do you know?

ADV MAEMA: Yes. The procedure that I went through, through the rules, was, well, it is a witness that you intend to use in a trial. So you have to get it translated. So internally, then, it went to the extradition desk, extradition desk to the
10 Department of Justice, which is our home department. And they then had the task to have it translated. They then decided to go on tender. They picked the, they utilised their internal processes to pick the translator that they decided upon, who then did the translation.

When it came back to me, and then I thought, well, maybe before I avail it, before I disclose it in terms of Rule
35, let me send it to Danikas to affirm the correctness of the statement. He knows English. So then I sent to him. I was surprised when he came back, he said, there are mistakes in
20 the translation and he mentioned what the mistakes are. He sent me a message by WhatsApp. And then I then took it back, back the same way that it came, to bring the mistakes to their attention.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: And then I was then contacted to enquire

whether they should utilise the same translator or a different one. And I said, you know, all I want is a translated version. So whether you give it to the same person or another person, I would prefer the same person. If it is not available and there is another one, it is still fine. So when the English version ultimately came, I was removed from the team.

ADV NGCUKAITOBI SC: Yes, but it had now been corrected with all of the errors that had been picked by Mr Danikas.

ADV MAEMA: Chairperson, when it came, I simply had no
10 interest to have a look at it. I did not want to look at it.

ADV NGCUKAITOBI SC: Yes, no, but I am saying the second version that came had the corrections that Mr Danikas had picked up.

ADV MAEMA: That Mr Danikas had sought to be effected on this statement, yes.

ADV NGCUKAITOBI SC: Now, since you were there, you would know the statement. You would know the contents that you discussed with Mr Danikas. Now, that is what I need to take you through, which is the statement at page 1A/908,
20 where it starts with paragraph 1.

ADV MAEMA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Now, I would like you to start reading into the record what statement contained. I mean, you have read it before today. I mean it is not like you are seeing this for the first time.

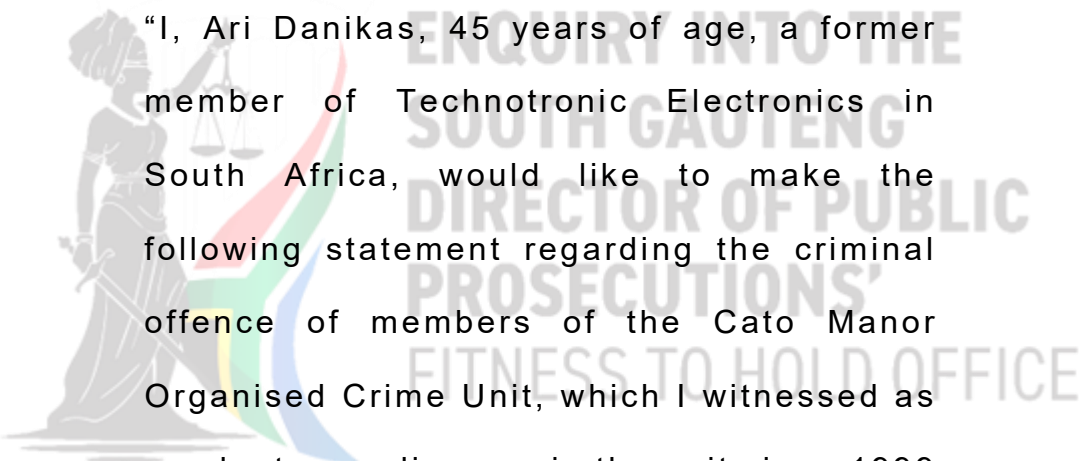
ADV MAEMA: No, I am not seeing for the first time, but I read it probably four or five years ago.

ADV NGCUKAITOBI SC: Yes, all right, but when you look at it, does it accord with your memory of the statement you took at the time?

ADV MAEMA: It does. It does accord with the statement that was furnished to me.

ADV NGCUKAITOBI SC: All right. Now, so perhaps just start with the first paragraph where he describes himself.

10 **ADV MAEMA:** The first paragraph reads:



“I, Ari Danikas, 45 years of age, a former member of Technotronic Electronics in South Africa, would like to make the following statement regarding the criminal offence of members of the Cato Manor Organised Crime Unit, which I witnessed as a volunteer policeman in the unit since 1999 up to 2008. I would like to stress my deepest concern that this statement, which described the criminal acts that I have witnessed, could put my own life and life of my immediate family, including my wife's relative in South Africa, in danger and I make this statement on the agreement that the South African authorities will do their

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part to ensure the safety and security of my immediate family and myself.

Furthermore, I am deeply concerned that the description of this act will make me a target of false accusation and will involve me in the crimes of the members of the Cato Manor Unit, of which I was a witness but not a member of them. It should be stressed that any misconduct in order to compromise my credibility and the blurring of my character

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will be compounded by the very people who committed the crimes, the crimes I have witnessed and who are also officers of the police and who possess the means to counter the evidence against me. Therefore, I make this statement on the agreement that it will be protected legally and be ensured against these attempts to falsely ...[intervenes]”

20 **CHAIRPERSON**: Advocate Ngcukaitobi, not that it will be protected, but I will be protected.

ADV MAEMA: Chairperson, can I read again?

“I therefore make this statement on the agreement that I will be protected legally.”

CHAIRPERSON: Yes, you said it will be protected.

ADV MAEMA: Oh, my apologies.

“I make this statement on the agreement that I will be protected legally and be ensured against this attempt to falsely involve me in any crime. I also accept to be examined as a witness, but not in South Africa, only by video communication and only after we have been offered witness protection.”

ADV NGCUKAITOBI SC: Does this accord with your
10 discussion that you had with Mr Danikas?

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Yes. And did you think that his concern about his personal safety was justified?

ADV MAEMA: I held that view, Chairperson, that his concerns were justified.

ADV NGCUKAITOBI SC: Yes. So you can, maybe you should also read paragraph 2.

ADV MAEMA: Paragraph 2 reads:

20 “In the 1990s, I helped the police to arrest a number of shop robbers, and I was asked by Major General Booysen to be a reservist after a meeting that followed between us. He then told me that he would take me to his own unit under his protection, and that I would never have to wear a uniform or serve

in a police station, and that he would use me only in his own very high standard unit as I was considered in my community a specialist in electronics due to my work and expertise in the field. All applications were...”

Paragraph 3:

“All applications were completed by the unit’s secretary. All approvals and certificate of criminal records, as well as my applications, were completed by Major General Booyesen himself. Major General Booyesen ...[intervenes]”

CHAIRPERSON: Just a minute.

ADV NGCUKAITOBI SC: Just continue reading, otherwise my attempt at skipping some paragraphs is not going to work. Carry on. Please carry on.

ADV MAEMA: Chairperson, I am in your hands.

ADV NGCUKAITOBI SC: I thought we could skip, but I think the paragraphs actually interconnect.

ADV MAEMA: They do.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA:

“Major General Booyesen personally transported me in his car to the various

government departments in order to submit the relevant applications. He also had a serious disagreement with the commander of the police department, where I had been booked as a reservist, because from the first day of my registration, Major General Booyesen ordered my transfer to the Cato Manor Unit.”

Paragraph 6:

10 “I have submitted all my detailed records of the case files from 2000 to 2008 to an electronic file I handed to Lieutenant General Mabula. These are the same records that I filed twice a month at Major General Booyesen's office at the provincial headquarters. The same records were also collected personally once a month in person by Police Officer B Michel, who was working at the central office of the reservist under command of the police chief, Officer Kennedy.”

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ADV NGCUKAITOBI SC: Just hold there. That timeline is crucial, that the evidence he was covering is between 2000 and 2008, because it is always been accepted in this case that Mr Danikas is testifying on matters that predate the

period covered in the indictment. But when you see the 2008, is not that a period covered within the indictment?

ADV MAEMA: That is a period that is squarely within the indictment dates.

ADV NGCUKAITOBI SC: All right. Thank you, carry on.

ADV MAEMA: Paragraph 6:

“I have never been paid for any term of office as a police officer ...[intervenes]”

ADV NGCUKAITOBI SC: For my term.

10 **ADV MAEMA**:

“I have never been paid for my term of office as a police reservist. In addition, I have been injured on duty many times and received medical care at the expense of the state. As a result, I have permanent injuries to my back, knee, and neck.”

Paragraph 7:

20 “I have been given police firearms such as a 9 millimetre Beretta Parabellum, which was given to me permanently with a special permission from Booyesen's office and I was also given a pepper spray, handcuffs, a police siren, a safety vest, a police light for my private car, a police radio transmitter, and a common crime scene investigation kit,

like the one that all members of the unit had in their vehicles. I have in my possession letters signed by Booyesen's himself, which authorise all the above concessions.

When I was called to join operations in my field of expertise, I was also assigned a R5 rifle for the duration of the mission.”

Paragraph 8:

10 “I have been trained in firearms handling, special units method, and in crime investigation procedures. The members of the Cato Manor Unit usually wore regular clothes.”

Paragraph 9:

20 “At the time, I was a very close friend of Major General Booyesen's family. I sold him electronics from my store at a discounted price. I gave for free electronics from my store to him and his family and I did a lot of repairs without any charge and spent a significant amount on other gifts and entertainment for him and his family. Major General Booyesen generally had the requirement of me to entertain him and his family at my own expense in return for my

protection from criminals.

To give him my apartment to use during his private moments with his mistresses, he would call it a favour for a favour. He had similar arrangements with other businessmen I knew. He always demanded some type of a favour from these businessmen and, in turn, arranged for his team from Cato Manor Unit to protect these businesses and to sort out any problems that

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the businessmen might had with the law or security.

For example, during most instances that I was travelling to Greece, Booyesen posted a Cato Manor police officer to guard the premises of my business for as long as I was away. Some of the police officers who

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guarded my store were Shane Naidoo and Pandey Viresh. When I had to send my wife to the bank with large sum of cash, Booyesen would send armed members of the Cato Manor Unit to escort her to the First National Bank at Musgrave.

When Interpol and FBI members arrived in Durban, Booyesen ordered me to meet them

for lunch and dinner at a Greek restaurant, and he expected me to cover all the costs so that he looked good. When Booyesen wanted to buy a Mercedes-Benz from a local dealer in Durban, he asked me to call the owner of the company, a wealthy Muslim and a member of the family who owned the NMI dealership, and pass him the message that he wanted to buy a good car at a good price in exchange for help from members of the Cato Manor Unit in the event of theft or hijacking of the cars of the dealership.”

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Paragraph 10:

“Major General Booyesen was responsible for some of the incidents that occurred at a Cato Manor Organised Crime unit. He was always called on high-profile incidents and any serious shooting incidents involving murder of suspects by his members.”

20 Paragraph 11:

“Other times he would arrive at a shootout when many suspected criminals were killed. If the shooting episode was near driving by car, he would always drive there, and on many occasions he would call me to meet

him there as well. He often asked me to make use of my siren in order to get to the crime scene faster. Following orders by Major General Booyesen, in several occasions I also received photographs from the scene of the crime before the arrival of the official photographer of the forensic laboratory. These photographs are available for examination.”

10 Paragraph 12:

“I was useful to him, Major General Booyesen, since I had shown to the unit that I was observant with detail and could use my own latest technology equipment exclusively for the unit in the crime scene.”

Paragraph 13:

“I sometimes escorted Major General Booyesen just for companionship. Sometimes he was too drunk to drive, so I was driving him with a car to a certain crime scene. I have recorded a particular case where Major General Booyesen was in my house when he was called to a triple murder crime scene and followed him with my own car behind Major General Booyesen's car,

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who led to the scene of the crime. At the time, he was drunk and caused an accident going through a red robot in Musgrave area. From there on, he proceeded to attack the driver of the other vehicle involved in the accident, and I was obliged to physically hold Major General Booyesen from attacking the other man. Then I drove to the crime scene with him in my car.

10 Previously, he had managed to drive his damaged car back to my house. The photograph of the damaged car parked outside my house is at our disposal. After the incident, an insurance investigator who was a former police official, called me and questioned me regarding the car accident, but I had already received orders from Major General Booyesen to lie to him and cover up the fact that Major General Booyesen was
20 drunk at the time of the accident.”

Paragraph 14:

“Major General Booyesen was very proud and passionate about the work of Cato Manor Unit and the fact that they were shooting “criminals”. His favourite phrase was, I can

people disappear, but ...[intervenes]”

ADV BALOYI-MERE SC: [Indistinct]

ADV MAEMA: I can make people disappear. Did I read it wrongly?

ADV BALOYI-MERE SC: You skipped make.

ADV MAEMA: Oh, my apologies.

10 “I can make people disappear. By the way, the African suspect who was wanted for his connection to the above triple murder was shot and killed by his members and the second officer, Mossie Mostert, proudly gave me digital photos while being in my business. These photos are stored on my computer and are at your disposal.”

ADV NGCUKAITOBI SC: What does this mean? Twice he has referred to pictures and photographs being at your disposal. What does that mean?

ADV MAEMA: It means we can access them and we can utilise them in whatever investigation that we are busy with.

20 **ADV NGCUKAITOBI SC:** But does it mean he had shown them to you?

ADV MAEMA: Yes, he had shown me quite a number of pictures. Most of them I loaded on a blue memory stick that I bought in Greece. I stumble, Chairperson, when I have to pronounce any word, any G that is followed by an R. So I

take time when I am going to say a word that has a G and an R, because I know I will struggle with it.

ADV NGCUKAITOBI SC: Yes. So what happened to that blue memory stick?

ADV MAEMA: That memory stick, on my return, during the report that we gave to Advocate Sean Abrams, I connected it on my computer and I showed it to him. And it was part of the dockets. It was part of the Cato Manor dockets. It was in a – the dockets were later reduced to a, what do you call
10 it? A disc. So in that plastic container that contains the four discs, the memory stick was also there.

ADV NGCUKAITOBI SC: Yes. And then he is also referred to video footage. Did he show you that?

ADV MAEMA: He showed me the video footages. Some of them would have been the video footages that we already had. Some of them were those that we did not have, those relating to the dockets where we are of the view that the evidence was insufficient.

ADV NGCUKAITOBI SC: I see. And then what happened to
20 those, the ones that he gave you?

ADV MAEMA: Everything that he gave me, I loaded it onto that memory stick.

ADV NGCUKAITOBI SC: So it made its way to the docket in the end?

ADV MAEMA: It made its way to the docket, ultimately. And

it was part of my report back to the management of the NPA, to Advocate Abrams and the team.

ADV NGCUKAITOBI SC: The reason I ask you about this is that there has been lots and lots of talk about ambush in this case, that Advocate Batohi was ambushed with video evidence. But the video evidence has actually been in this docket since 2016.

ADV MAEMA: That is correct, Chairperson. The video evidence was there. And most of the time, when you present
10 to the NPA, the veracity of the dead bodies and the blood there just makes people feel like we have had enough. We have seen enough, it is enough.

ADV NGCUKAITOBI SC: Yes, I understand that. But the point is really this. Somebody does not read the dockets, and then they complain later that they have been ambushed. Whose problem is that?

ADV MAEMA: That is their own. That is your own ignorance by not reading sufficiently that you cannot blame others for it.

20 **ADV NGCUKAITOBI SC:** And who is Mossie Mostert that is referred to in this paragraph?

ADV MAEMA: It is one of the police. It is one of the accused persons who is referred to in the indictment.

ADV NGCUKAITOBI SC: Is he the person referred to as Inspector Mostert?

ADV MAEMA: Inspector Mostert.

ADV NGCUKAITOBI SC: He is the big, bulky.

ADV MAEMA: The big, bulky accused number 9.

ADV NGCUKAITOBI SC: Yes. Thank you. Carry on with paragraph 15.

ADV MAEMA: Paragraph 15.

10 “In October 2001, I was having dinner with Major General Booyesen at News Cafe in Musgrave Shopping Centre in Durban. Major General Booyesen showed me a photograph of a suspect who had escaped, who he claimed to have faxed threatening material to senior justice official who had previously in the past convicted him of various crimes. Major General Booyesen identified the suspect as Jabulani and told me that if I saw the man in the photograph, I would have to plant a bullet in his head. I asked him why. He told me that an order had come from very high, from the judiciary circles, that he should not be captured alive as he would escape from prison again. He said that the man was a member of a house burglary that was out of control and raped women during burglaries. After his arrest

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and escape, the members of his gang themselves began to turn against him and gave information to the police about his activities and his whereabouts.”

Paragraph 16:

10 “On October 18 2001, at 12.30pm, Major General Booyesen invited me to participate in a mission. This happened either the same afternoon when I and Major General Booyesen were dining at News Cafe or one or two days later. I recall this date in my memory by consulting my records, as I will never forget what happened that day, since it was my first field operation where a death had taken place. I do not remember if I drove to some collection point with the rest of the police or if I was picked up from my house. Major General Booyesen invited me to drive with him in his car to a small town.

20 I think it was called Umlazi. We were followed by quite a few members of Cato Manor Unit in discrete vehicles. Major General Booyesen remained in the car, and I participated with the other members in conducting raids in homes to search for

suspect Jabulani. Major General Booysen took me there as a member of the unit. That night, I was armed with a gun as well as my own weapon.”

Paragraph 17:

“More than 10 years arrived ...[intervenes]”

ADV NGCUKAITOBI SC: 10 members.

ADV MAEMA: What did I say?

ADV NGCUKAITOBI SC: Just trust us. [Laughter]

10 **ADV MAEMA:** I do, Chairperson.

“More than 10 members arrived at the suspect's home. I cannot remember who used what kind of weapon. What I remember is that Jeremy Martin had an automatic police rifle. I saw Jeremy Martin kicking the door. At that moment, I was near the entrance of the house and could see a woman and children lying on a bed. Martin dragged the suspect out of the house in the rain, wearing only a dark underwear. And we stood around him in a circle while Martin was trying to put on him his handcuffs. I remember that this person was Jabulani. He was lying down on his stomach.

20

Suddenly, Martin ordered the suspect to

stop moving after he got him handcuffed and moved towards him and grabbed him. The suspect and Jeremy then slipped along two or three metres downhill outside the circle. At that moment, another policeman, I think he was called Eddie van Rensburg, told me in abusive language to leave from there. Then I heard shots, and the suspect was dead. I personally believe that up to the moment of his death, the suspect was not armed.

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Major General Booyesen was the general commander of the operation. I remember that after the shots, I phoned Major General Booyesen, who, the last time I saw him, was standing at a distance on the hill in his car next to the rest of the parked cars of the unit.

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Then in the morning, he came to the place where we were and congratulated the members of the unit. The members that were present at the point where the incident happened, as well as Jeremy Martin, they later claimed that the suspect had a weapon hidden somewhere nearby, a claim I seriously questioned, as he, the suspect,

was surrounded by more or less 10 police officers armed with rifles.

The next day, I was having dinner with Major General Booyesen, and I remember expressing my concern about this. But he replied that I just imagined the effects and that this was a clear case of resistance and that the suspect was trying to shoot police officers.”

10 Paragraph 18:

“I remember an incident where I used Major General Booyesen's gun to shoot a suspect. The incident happened in my store in Durban in 2001.”

Paragraph 19:

“My act was fully justified because I stopped an armed robber who had attempted to kill a security guard and myself after he had robbed my shop and threatened with a gun.

20 Me, a member of my staff, Major General Booyesen and his 16-year-old daughter. Major General Booyesen pulled his gun out of his case, which he had on his ankle, but froze. So I grabbed the gun out of his hands and ran after the armed robber. Then I saw

that the armed robber tried to shoot the guard named Charles with my own pistol, which he had removed earlier. He also turned against me. I shot two low shots and injured the robber. I shot low as I did not want to injure the passer-by.

10 The importance of referring to this incident is because Major General Booysen had altered the scene of the crime by ordering me to change my testimony to cover his
cowardice and the fact that he, a senior police officer, had allowed me to use his weapon at the scene of a crime. He also threatened the investigator, police officer Jack Miller, who did not want to change my original testimony. When I handed a copy of
the armed robbery from my company's security recording system over to a newspaper journalist, and after the
20 journalist published a negative commentary with the title, Top Police Officer, A Hero or a Coward, I was threatened by Major General Booysen and the journalist who wrote the article was fired and for fear changed city.”

Paragraph 20:

“On February 26 2004, I called Cato Manor police officers to come to my Technotronic store on Smith Street to arrest the guy who came to get a stolen laptop. The suspect was taken to Cato Manor police station. I accompanied them as I was a policeman who arrested him and I wanted to take part in the investigation. It was also a way to

10 accumulate more duty hours as every search that I was conducting, it had to be done officially during duty hours. At the offices of Cato Manor Serious Violent Crime Unit, they undressed the suspect, tied him to a chair and went to the torture of drowning and hitting him.

I remember that among the members that were present were RC Maharaj and Viraj Pandey. I recorded the incident secretly

20 using one of the first generation smart camera phones. At that moment, the unit members did not know that the phone had a camera. I pretended to have made a call and recorded the torture because I realised that this was wrong and I had to do

something about it. This recording had been copied from my phone to my files. I handed it to Lieutenant General Mabula.”

ADV NGCUKAITOBI SC: Sorry, just before you move on, did you yourself see a recording of a suspect being tied to a chair and tortured?

ADV MAEMA: I did, I did see that recording.

ADV NGCUKAITOBI SC: I put it here to this Panel to Advocate Batohi, who claimed not to have been aware of it
10 and had subsequently heard in the media that Major General Booyesen said the video could have been taken from Guantanamo Bay. So he was still making fun of it.

ADV MAEMA: Chairperson, these are some of the videos that were handed to me that I loaded on the memory stick that was part of the dockets that were kept at head office. So if anyone had cared to view that memory stick, he would have found all those recordings in the memory stick.

ADV NGCUKAITOBI SC: Yes, so you were Lieutenant General Mabula, and then, carry on.

20 **ADV MAEMA:** That is correct, Chair.

“When I later showed the recording to Major General Booyesen, he just laughed and said to me, that is how things are done to get results. He also wanted me not to show it to anyone as I would find myself in trouble. He

asked me for a copy and a colour photo of a specific snapshot that showed Viraj Pandey, and told me that he wanted it in order to incriminate Pandey, with whom he had personal differences. As far as I know, he had never pursued any disciplinary action against the member of his team, but I believe he warned them of the responsibility that I would record the tortures ...[intervenes]”

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ADV NGCUKAITOBI SC: Possibility.

ADV MAEMA: Of the possibility, not responsibility.

“I believe that he warned them of the possibility that I would record the tortures in the future, because since then, they would avoid taking me with them in the interrogations. In 2008, I left South Africa due to the threats that I was getting for my life, and the sudden pressure I received from Booyesen, when members of his unit appeared in my house to suspend me and take my gun away. Placing in this way my life at risk, because after hundreds of arrests of suspects at my business premises, I had been targeted by various

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criminals.

When I arrived in Greece at the end of 2008, I felt secure. I tried to get in touch with various government bodies and with various journalists to inform them of the tortures and mistreatment that was taking place, as though it was wrong ...[intervenes]”

CHAIRPERSON: As I thought it was wrong.

ADV MAEMA: As I thought it was wrong.

10 “But no one seemed to be interested in publishing anything against Booysen, so I uploaded the experts from recordings on YouTube regarding case number 297/2/2004, archive torture in the office. On March 30 2004, a drunken man harassed the...”

Chairperson, I am now at paragraph 21:

20 “On March 30 2004, a drunken man harassed the owner of the pie shop next to my own shop on Smith Street. Major General Booysen happened to be in my store, grabbed the suspect and dragged him into my store with my help, archive workshop blood video one. Major General Booysen took the suspect at the back of my store,

where I saw him attacking the suspect with his fists and threw him down unconscious, leaving a lot of blood on the floor.

Later on, members of the police arrived and under the orders of Major General Booyesen took away the suspect. Immediately after, it must have been the next day, Major General Booyesen either dictated to me or gave me an affidavit. I do not remember what it was of the two. In this affidavit, it was falsely

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reported that the suspect had attacked one of us and tried to murder one of us with a screwdriver in my store.

I do not remember if the affidavit was referring to myself or to him. That never happened, but I was obliged to sign it as Major General Booyesen ordered me to do so

to justify the use of excessive and unnecessary force. It refers to 30 March, 30.03.04, 15.45, 30.03.04, 19.00, suspect arrested at the police station on B-K-O-A-D Street.”

20

Maybe Broad Street.

ADV NGCUKAITOBI SC: Broad, yes, I think you are right.

ADV MAEMA: Paragraph 22:

“On 21 January 2006, Major General Booyesen came to my shop and I told him a story about his officers. When I was in a car with Willie Olivier and Eugene van Tonder, senior members of the Cato Manor Unit, they were driving ...[intervenes]”

ADV NGCUKAITOBI SC: Just hold it there. Those two names, Willie Olivier and Eugene van Tonder. We have come across them before. Can you explain the context?

10 **ADV MAEMA:** That is correct. Olivier is a section commander at Cato Manor and Eugene van Tonder is also a member of Cato Manor. They are accused persons in the indictment.

ADV NGCUKAITOBI SC: Yes, thank you. Carry on.

ADV MAEMA:

“They were drinking around Smith ...[intervenes]”

ADV NGCUKAITOBI SC: Driving, driving, not drinking, not yet. [Laughter]

20 **ADV MAEMA:** My apologies, Chairperson.

CHAIRPERSON: Are you feeling exhausted? If you do, you can alert counsel, then you can stretch your legs.

ADV MAEMA: Chairperson, I think it is my eyes and my spectacles are tired of looking at black and white for a long time. But I can continue.

ADV NGCUKAITOBI SC: That is exhaustion.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: I mean, do you want to either break or do you want to carry on?

ADV MAEMA: I think, Chairperson, for the sake of continuity, let us continue. If I cannot manage, I will indicate. Chairperson, I have managed court sessions the entire day.

CHAIRPERSON: You can proceed, *Nthati* Maema.

ADV MAEMA: Thank you, Chairperson.

10 “On 21 January 2006, Major General
Booyesen came to my shop and I told him a
story about his officers. When I was in a car
with Olivier and Eugene van Tonder, senior
members of the Cato Manor Unit, they were
driving around Smith Street in one of the
discreet government cars that had been
assigned to Cato Manor Unit with tinted
windows. It could have been a black Lumina
or a silver BMW. Van Tonder lowered the
20 window slightly and started shooting with an
air gun against the passers-by, aiming in
particular at black passers-by for fun,
laughing as he fired at them.”

ADV BALOYI-MERE SC: For fun.

ADV NGCUKAITOBI SC: For fun.

ADV MAEMA: For fun, not for gun. My apologies.

10 “I remember throwing a guy down from a bike and injuring some others, including women. When I told this story to Major General Booyesen, he described to me in detail how he and his colleagues often did this and that he himself had participated in this. He laughed as he told me the story. He also told me that an injured citizen had opened a case and gave the vehicle registration number from which the shots were fired, in which vehicle I was also in and that this number belonged to the Cato Manor Unit. Major General Booyesen said the complaint had been sent to his office and had open brackets “had been already sorted”. From this, I realised that he had covered it. See video two.”

Paragraph 23:

20 “On 27 October 2006, at around 9.00am, four suspects were arrested in Durban’s Airport arrival section by members of the Cato Manor Unit. Some of the members who were present during this arrest were Major General Booyesen, Mostert, Van Tonder, V

Pandey, Peter George, Shane Naidoo, Mukesh Pandey, Anton Lokum, Sergeant R Lee. This arrest was also attended by Adele Sonnekus, who was invited there by Major General Booyesen.”

ADV NGCUKAITOBI SC: And who is Adele Sonnekus?

ADV MAEMA: Adele Sonnekus was a female member of the Cato Manor Unit who was known to have very close personal relations with General Booyesen.

10 **ADV NGCUKAITOBI SC:** As a police officer stationed at Cato Manor.

ADV MAEMA: A police officer stationed at Cato Manor but who had close personal relations with General Booyesen.

“This arrest was also attended to by Adele Sonnekus, who was invited there by Major General Booyesen. Those arrested were

20 taken to the Cato Manor police station and were interrogated one by one. During this interrogation, I was present. I was witnessing the interrogation and the subsequent torture of one of the suspect which happened during my presence and the presence of Major General Booyesen. After a short while, Major General Booyesen said he should not be seen by anyone there and

left.

Major General Booysen later said to me that Mostert has shot and killed two suspects after the one of them attempted to hit him with the shovel. In addition, Major General Booysen said to me that he arrived at the scene immediately after the incident and that one of the suspect was still alive waiting for the ambulance to come. General

10 Booyesen further said that he had bent in the ear of the suspect who was dying and whispered, I told you I will kill you if you were trying to come back.”

Paragraph 24:

“In April 2007, Major General Booysen and Adele Sonnekus visited me in my house after he had received a phone call from one of the members of his unit who had reported a shooting incident in Malvern. Adele
20 Sonnekus was the police officer of the Provincial Organised Crime Unit and the secretary. During the day of that incident, she and Major General Booysen 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

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waited around the second suspect to succumb to his wounds. 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

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clear that this was how journalists were bribed, by giving them my own photos as exclusive publications in exchange for favourable stories. But I came to the conclusion that they wanted the films for their own private collections 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 the suspect to die. Later 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 to Mostert and Olivier as they requested me to do. File suspect Malvern dies.”

ADV NGCUKAITOBI SC: If we can just stop here, did you
10 see this video?

ADV MAEMA: Yes, I did see the video.

ADV NGCUKAITOBI SC: Because it is also the second video I played here under the title Suspect Malvern Dies and put it to Advocate Batohi who also claimed ignorance about it.

ADV MAEMA: I saw that the day when the video was played and it is one of the videos that Ari Danikas showed me.

ADV NGCUKAITOBI SC: Yes. Carry on.

ADV MAEMA:

20 “When I told Major General Booysen 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 criminals.”

Paragraph 25:

“The suspect died after a few minutes. I

requested Major General Booysen to call an ambulance three times before the suspect died. This can be heard in the video. Later, I was informed by Major General Booysen 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 suspect at the house that they intended to break in.

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The suspects then were shot and killed by the unit.”

Paragraph 26:

“When we left the scene of crime with Major General Booysen and returned to my house, I played the video in the presence of other acquaintances of mine and he gave me the specific order of getting rid of the video, otherwise, I would have a serious problem.

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I chose to keep it and uploaded it on video in 2009. On November 15 2007, the robbers were part of the gang that stole jewellery and watches, shot a police officer at the Pavilion Shopping Centre in Durban. I went to the scene along with Major General

Booyesen. Other members of the unit that I remember being present there were Mostert, Olivier, Van Tonder, Peter George, Rakesh Maharaj, Mukesh Pandey, and Shane Naidoo. was with Major General Booyesen when the incident happened. We may have also gone together with the car. I helped the forensic team to spot the scene of crime and to gather evidence. This is kept in my file and I also have the photos of the scene of the crime.”

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Paragraph 28:

“On November 23 2007, a Greek citizen, Kostas Tsourakis, was arrested at OR Tambo on a flight of Olympic Airways to Athens, who was in possession of many watches, later identified as those stolen from the Pavilion Shopping Centre one week earlier. The suspect was taken to the police station of Cato Manor Unit that night and was interrogated for about two hours. I was called by Major General Booyesen to attend the scene in order to act as interpreter. Other members of the unit I remember to be present were Mostert, Eugene van Tonder,

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Mukesh Pandey, and the reservist Vick Pandey.”

Paragraph 29:

10 “I saw the suspect being stripped of his clothes and being tied up on a chair naked. Immediately afterwards, he was tortured and beaten by Cato Manor members, who also put a bag over his head and pouring water over his head, tried to make him drown until he confessed about various crimes he was accused of. During the interrogation of Tsourakis, I slapped him when Major General Booyesen asked him his name and tried to fool us, claiming that his name was Malakas, which is a Greek swear word and means a masturbator. This happened at the beginning of the interrogation while they were around a table with Major General Booyesen. I have no involvement in the
20 torture of the suspects.”

Paragraph 30:

“On May 24 2008, I received a phone call from Mostert to help in a crime scene on 5th Avenue, Morningside, Durban, where a suspect was allegedly died while Mostert

and members of the Cato Manor Unit were trying to capture him. When I arrived at the place, they showed me a corpse on the ground and I was refused to enter into the scene of crime by Olivier. Later, Mostert told me that he had tried to shoot the suspect while the suspect tried to climb out of the window and fell out. Reference May 2008, 24 May, 1-100 to 0-1-100.”

10 **ADV NGCUKAITOBI SC**: Now this date, 24 May 2008, is this within or outside of the indictment?

ADV MAEMA: It is within. It is an incident in, one of the incidents in Malvern.

ADV NGCUKAITOBI SC: Yes, now this notion that has been peddled around that Mr Danikas has no relevant evidence because he is testifying about incidents that predate the indictment, is that true or false?

ADV MAEMA: That is false.

ADV NGCUKAITOBI SC: Carry on.

20 **ADV MAEMA**: 31, the method used, paragraph 31:

“The method used by members of the unit were to strip the suspect of his clothes and physically attack him until he confess or gives information. They would tie him naked on a chair and interrogate him, the relevant

video. They would put a piece of leather or a plastic or a wood over the head of the suspect, always sitting behind the suspect, causing, in this way, suffocation. The suspect could not really see who was attacking him. A standardised method was always used, that is, they shot to kill, head tortured, alter the sins of crime. Major General Booyesen was called by his members to the crime scene to confirm and manipulate the scene.

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I was present in some of the cases I mentioned earlier. When I was accompanying Major General Booyesen to the crime scene and ordered Major General Booyesen in front of me to his members to collect all the spent police rifle cartridges, casings, and hand them to the responsible officer investigating the case. This usually happens after Major General Booyesen had arrived at the scene of the crime. I would also like to testify that I have discussed my consent regarding Major General Booyesen's with Commissioner Brown, the head at the time of the provincial, the head at the time

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of the provincial headquarters investigators, and his wife, Tilly, who were close friends of mine. They warned me to be very careful with Booyesen, as he was a very dangerous man and could harm me.

I would further like to testify that I had many personal conversations with Letitia Booyesen, ex-wife of Booyesen, and a close friend of mine who had also warned me that

10 Booyesen was a very dangerous man and had destroyed the lives of many people and that he could hurt me seriously. The same message was given to me by Booyesen's children.

I understand and acknowledge the contents of this affidavit. I have no objections in taking the necessary oath. I consider the oath binding on my conscience.”

Signature of witness, there is a signature of Danikas at the
20 bottom of the page. There is also a certificate by the translator who certifies that:

“The statement was received by me and the witness read and understood the contents of the affidavit. The witness signed this affidavit in my presence in Athens on the

24th of October 2016.”

It is dated, 24 October 2016, the time 14.30, place the Office of the Special Investigator of International Judicial Assistance, Building 9, Office 127, Court of First Instance in Athens, street code 11362. There is also a signature of the investigator and the name and surname is also written, the business address, as well as the title of the investigators.

ADV NGCUKAITOBI SC: Now, the manner in which the statement has been obtained and made official, would this
10 have been admissible in court?

ADV MAEMA: Yes, it would be admissible and it would have been obtained in compliance with the section 2 of the Mutual Legal Assistance Act.

ADV NGCUKAITOBI SC: Advocate Batohi said that Mr Danikas, if I recall correctly, had never actually signed a statement.

ADV MAEMA: No, the statement has been signed, you can see it.

ADV NGCUKAITOBI SC: Yes. We can move from that
20 statement, thank you very much for that.

ADV MAEMA: Chairperson, can I just say something in respect of Danikas? I know the Chair says, I must just answer the questions that you answered.

ADV NGCUKAITOBI SC: Yes, but you cannot help yourself, ja. [Laughter] Carry on.

CHAIRPERSON: Before you elaborate, I am not sure on what, you remember there was a statement to one of the files that were brought to us and there was a statement there by Mr Danikas which was not signed. Early days?

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: That is correct, Chair.

CHAIRPERSON: At that time, we did not have the Greek version statement and the translated statement. If my recollection was correct, Advocate Batohi was referring to
10 that statement and saying it was not admissible because it was not commissioned and was not signed.

ADV MAEMA: Chairperson, the fact ...[intervenes]

CHAIRPERSON: May I finish?

ADV MAEMA: Oh, I am sorry.

CHAIRPERSON: It will probably be in the very first version of the Advocate Batohi's file, which is file, the very first file of her testimony, her affidavit, and annexures thereto. I think Mr Danikas' statement is there, the unsigned and unsworn statement. Be that as it may, Advocate Ngcukaitobi, we now
20 know what POCA says.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: About that, it will just be a matter for argument later if it is necessary. You may say what you wanted to say.

ADV MAEMA: Chairperson, all that I wanted to indicate was

the view that Danikas would not be used as a witness that I expressed to Mr Julian Knight. It is a view that we are also trying to protect Mr Danikas, to remove focus from him. If we say he is not going to be a witness, he covers areas that are prior to the indictment, and it removes focus from him and those that would do anything to discourage him to be part of the evidence that would be presented by the prosecutors, would then leave him out and say, well, we have managed to convince the prosecutors to consider him irrelevant. So we

10 let that narrative go on in the media. When we knew, actually, the evidence that Mr Danikas has provided to us is similar fact evidence, which is admissible in POCA prosecutions.

CHAIRPERSON: Yes, thank you. You may proceed, Advocate Ngcukaitobi.

ADV NGCUKAITOBI SC: Yes, thank you, Madam Chair. Yes, I wanted to just close the section on Mr Danikas and what you wanted to do with his statement.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Now that you have obtained it, and

20 it is now been translated officially.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Yes. At what value did you think he would be to the trial? You have already alluded to the fact that it would be similar fact evidence.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: But would it only be similar fact evidence, given that he also has direct knowledge of one of the incidents?

ADV MAEMA: Its most value would be on similar evidence, but there are incidents where he was present that are included in the indictment where it would amount to direct evidence.

ADV NGCUKAITOBI SC: Yes. Thank you. Now, we were analysing, which is when we ended up with Mr Danikas, we
10 were analysing the provisions of the Act, and we had looked at the elements of racketeering, the elements of pattern, the elements of participation. You remember that?

ADV MAEMA: I remember that, Chairperson.

ADV NGCUKAITOBI SC: Now, we need to close that off by looking at admissibility of evidence.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Yes. Which is all covered in the POCA legislation. The first is, why does the legislation say about hearsay evidence?

20 **ADV MAEMA:** Well, hearsay evidence is admissible in POCA prosecutions.

ADV NGCUKAITOBI SC: Now, what does that mean? What is the significance of POCA specifically saying hearsay evidence is admissible?

ADV MAEMA: Remember, if you want to go to the, well,

hearsay is admissible, well, the significance is you can lead hearsay without an objection being raised or without an objection being sustained in POCA prosecutions.

ADV NGCUKAITOBI SC: And does it shift the onus? Because you know, under the Law of Evidence Amendment Act of 1988, if you want to lead hearsay evidence, you lead it as an exception.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: But under POCA, it is actually not
10 the exception.

ADV MAEMA: Under POCA, it is a general principle that it is admissible.

ADV NGCUKAITOBI SC: And if you want to exclude it, you apply for its exclusion.

ADV MAEMA: Exactly, yes.

ADV NGCUKAITOBI SC: Now, what does POCA say about similar fact evidence?

ADV MAEMA: Similar fact is also admissible in POCA prosecutions.

20 **ADV NGCUKAITOBI SC:** Yes. And if you want to exclude it, what happens?

ADV MAEMA: Well, you will have to raise one of the objections that is sustainable in criminal law. But as a principle, similar fact evidence is admissible.

ADV NGCUKAITOBI SC: Yes, yes.

ADV MAEMA: So even if that incident is different from the incident that you are dealing with, you can admit that incident if it elucidates one of the incidents that are referred to in the indictment.

ADV NGCUKAITOBI SC: There is, in fact, a judgment of the Constitutional Court on these issues, which I must say, Mr Maema, we found it odd that the Court panel did not even make reference to it.

ADV MAEMA: Oh, yes.

10 **ADV NGCUKAITOBI SC:** It is a judgment of the Constitutional Court on these issues, which I must say, Mr Maema, we found it ordered that the De Kock panel did not even make reference to it.

ADV MAEMA: Oh, yes.

ADV NGCUKAITOBI SC: It is a judgment of *Savoy and others versus NDPP*. We will give you now a copy. Reported in 2014 (5) SA 317, where the POCA was subjected to a constitutional challenge. And it dealt with all of these things about what a pattern is, but specifically it had a section on
20 hearsay. It was suggested that it is unfair to the accused, in breach of section 35, that hearsay is the default position and the Constitutional Court addressed that. If you have the judgment in front of you, I would like you to go to paragraph 38.

ADV MAEMA: Oh, it moved now to the Act as it was handed

over. Paragraph 38.

ADV NGCUKAITOBI SC: Yes, so from paragraph 38. But the specific paragraphs, after they have done all of the analysis, starts at 46 to 49. If you could read those into the record, 46 to 49.

ADV MAEMA: Chairperson, should I indicate the judgment content?

ADV NGCUKAITOBI SC: Oh, sorry, I am told this judgment is in file C. Sorry, file. Is file 3.

10 **CHAIRPERSON:** Of your cross-examination bundle?

ADV NGCUKAITOBI SC: Of our cross-examination bundle. This one. Sorry, apparently C, but I am not sure if I know what C is. Sorry, Madam Chair, I think I have misled you.

ADV MAEMA: Was it file 3?

ADV BALOYI-MERE SC: The case law bundle.

ADV NGCUKAITOBI SC: I am also waiting for direction, Madam Baloyi-Mere.

CHAIRPERSON: Does the witness have the judgment?

ADV MAEMA: Yes. I have the judgment.

20 **CHAIRPERSON:** I think you can proceed to look at that judgment.

ADV NGCUKAITOBI SC: Thank you very much. So, if you could read from paragraph 46 to 49. The conclusions of the Constitutional Court on this topic.

ADV MAEMA: Is it paragraph 15?

ADV NGCUKAITOBI SC: No, 46 to 49.

ADV MAEMA: I am just scrolling down.

ADV NGCUKAITOBI SC: Oh, sorry.

ADV MAEMA: Chairperson, I am at paragraph 46.

ADV NGCUKAITOBI SC: Yes, just read those paragraphs to 49, there are four paragraphs.

ADV MAEMA:

10 “Adverting to the applicant's complaints, it cannot be correct to say without more that all hearsay not admissible under the exception is of necessity unreliable and that its admission would result in unfairness. This is not to say hearsay evidence is without dangers. Quite the contrary. Just as some hearsay evidence not falling within the recognised exception and may not be objectionable, some may be. Admitting objectionable hearsay in criminal proceedings may well result in unfairness to an accused, resulting in a violation of section 35(3), fair trial right. It must be as a result of this reality that a filter in the form of the proviso has been appended to section 2(2) of POCA.”

Paragraph 47:

“This section serves a twin purpose. First, it effectively does away with the hearsay rule on charges under section 2(a)(2)(i) of POCA, and indeed other exclusionary rules. In this respect, this section differs from section 3(1) of the Law of Evidence Amendment Act, which retains the exclusionary rule but permits the admission of hearsay evidence only under circumstances set out in paragraphs A to C of the section.”

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ADV NGCUKAITOBI SC: Yes, if you can just stop there, because this is the point you were discussing earlier.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: That the Constitutional Court expressly says, under POCA, hearsay is not the exception.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And that is why POCA is different from the Law of Evidence Amendment Act.

20 **ADV MAEMA:** That is correct, Chair.

ADV NGCUKAITOBI SC: Where hearsay is the exception.

ADV MAEMA: Yes.

ACCUSED: Now, this is one of the things I struggle to understand with the approach taken by Advocate Batohi and the De Kock panel that criticises the reliance on hearsay

when the law is that hearsay, in fact, as a rule, is admissible.

ADV MAEMA: That is correct. I also did not understand it, and if they had engaged me, I would have informed them what my views are.

ADV NGCUKAITOBI SC: Okay, then it continues, paragraph 48.

ADV MAEMA: Paragraph 48:

10 “Section 2(2) insists that hearsay should not be admitted. If doing so would render the trial unfair. In the light of the copious discussions above, I see nothing unconstitutional with this. Any unconstitutionality that there might be would be a function of improper admission of hearsay by the Court concerned. That is a failure to use the filter in a constitutionally compliant manner. As mentioned earlier, the applicants have not placed before the Court a specific set of facts, but have
20 brought an abstract challenge. Therefore, the question whether 2(2) proviso has been applied constitutionally does not arise.”

ADV NGCUKAITOBI SC: And paragraph 49.

ADV MAEMA: Paragraph 49:

“Needless to say, it would be ill-advised to

attempt to anticipate instances where admission of hearsay would be so unfair as to infringe on the accused's fair trial right. That is something best left to a trial Court. The issue ...[intervenes]"

ADV NGCUKAITOBI SC: Let us just stop here again. Now, even if you say this admission is unfair, who must make that decision according to the judgment?

ADV MAEMA: Well, the Court will make the decision.

10 **ADV NGCUKAITOBI SC:** Which Court?

ADV MAEMA: The trial Court.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Carry on.

ADV MAEMA: Not the Court dealing with the preliminaries.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA:

20 "The issues like, to mention but a few, the nature of the evidence, its reliability or lack of it, its probative value and prejudice to the accused would have to be considered."

ADV NGCUKAITOBI SC: Yes, I mean, could the Constitutional Court be clearer? If there is a problem, the trial Court will decide the problem.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Yes. Okay, thank you. I see, Madam Chair, that when I look at the judges who decided the case, there is also one Govender J. [Laughter]

CHAIRPERSON: I am just looking at you. If you look at the top of the judgment, you will probably find the High Court reference case number. If it is reflected there, if it is not, it will be in the original judgment handed down. Does it show there?

ADV NGCUKAITOBI SC: It just, it says, yes, it says
10 KwaZulu-Natal High Court, Pietermaritzburg, Madondo, J.

CHAIRPERSON: Yes. What year was that? In the High Court KZN? You can check on the citation on top. If it does not show, we will get that. The reason why I am raising this, Advocate Ngcukaitobi, is to assess the year in which this constitutional challenge was raised. Remember the matter was had in the Constitutional Court that year, and the decision was made. If it originated, say, for argument's sake, in 2009 or 2008, I think we must make an assessment of that. Who was the DPP in KZN that time? We can check.

20 **ADV NGCUKAITOBI SC:** Yes, we can check.

CHAIRPERSON: Your junior knows what I am talking about, he can check.

ADV NGCUKAITOBI SC: Yes, indeed. Thank you. Thank you, Madam Chair. Then, so that concludes the section on Mr Danikas.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: The implication of, at some point, an unsigned statement, but at a later stage, a totally signed and commissioned statement.

ADV MAEMA: And translated, yes.

ADV NGCUKAITOBI SC: And translated statement.

ADV MAEMA: Yes, Chairperson.

ADV NGCUKAITOBI SC: You then come back, and you hand that over to, is it Mr Abrahams, Advocate Abrahams?

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

ADV NGCUKAITOBI SC: And then what happens, did you then get, you said at some point you lost interest in the matter.

ADV MAEMA: No, Chairperson, I did not lose interest. My disengagement with the matter is when I was removed from head office.

ADV NGCUKAITOBI SC: Yes. Now...

ADV MAEMA: When Advocate Batohi was appointed.

20 **ADV NGCUKAITOBI SC:** Yes, thank you. Now, the next section, from your statement, is an engagement with the De Kock panel report from paragraph 445.

CHAIRPERSON: Before you go there, Counsel, at that stage, before you left, Advocate Sean Abrahams had also signed a Racketeering Authorisation Certificate.

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: What was the role of Advocate Nxasana in relation to these racketeering certificates?

ADV MAEMA: We did a presentation to Mr Nxasana. He is an attorney, Chairperson, not an advocate.

CHAIRPERSON: I beg your pardon?

ADV MAEMA: He is an attorney, Mr Nxasana.

CHAIRPERSON: Was he not an advocate then?

ADV MAEMA: No.

CHAIRPERSON: Oh, he was an attorney?

10 **ADV MAEMA:** Yes.

CHAIRPERSON: In the DPP's office?

ADV MAEMA: He was the National Director of Prosecutions, but he is an admitted attorney, not an admitted advocate.

CHAIRPERSON: Attorney.

ADV MAEMA: Yes. So we did a presentation to Mr Nxasana, after which he asked us to procure more evidence. But Mr Nxasana never got to sign the racketeering authorisations. We did a presentation and he gave us the issues that he was not satisfied with. We dealt with them and we presented the
20 request to him the second time. And I think our last engagement with Mr Nxasana was when Mr Chauke was told not to be part, not to be involved in this matter at all. The 7th of April in 20, 7th of April 2015. But Mr Nxasana never got to sign the racketeering authorisations. He kept on saying he needs more information, more information, until Mr

Abrams was appointed, we also made a presentation to him. I think we made two presentations to Mr Abrams, to Advocate Abrams. I remember on a specific day, he asked for the dockets, to read them over a weekend. Yes, and on the Tuesday, he returned the dockets. And I think a week or two thereafter, he signed the racketeering authorisations. In respect of all the accused persons that we have asked for relating authorisations for, including Major General Booysen.

CHAIRPERSON: Do you, or rather let me put it this way, are
10 you aware of what the attitude of Advocate Mlotshwa was in relation to the issuance of this racketeering certificate? Because at one stage, she was a DPP KZN.

ADV MAEMA: That is correct, Chairperson. My understanding of Advocate Simphiwe Mlotshwa's role was at the beginning, before we even went to KZN, when consideration was given to appointing prosecutors outside
20 KZN, his view was that himself as well as members of his staff had worked with the Cato Manor police for a considerable time. And he felt that it would be better to bring outside prosecutors to bear on the matters to ensure independence and impartiality. So he was supportive of the idea that prosecutors from outside should come and assess the evidence in the dockets.

CHAIRPERSON: Were you aware of his attitudes towards the involvement of Advocate Chauke as a coordinator or his

role as he was authorised by Advocate Jiba?

ADV MAEMA: He did not have any concern with it. He did not raise any concern with me or with Advocate Mathenjwa who met him on the first day that the prosecution team went to KZN.

CHAIRPERSON: Are you aware of his testimony before the Zondo Commission?

ADV MAEMA: I saw his views for the first time at the Zondo Commission.

10 **CHAIRPERSON**: Seeking to suggest among other things that Advocate Chauke acted with ulterior motive?

ADV MAEMA: That is correct. I was surprised and shocked. Because I thought, all the time from my engagement in this matters, I thought we are one team and we are all at a dam as to what should happen. And, you know, I was of the view that even after we had assessed whatever that was the contents of the docket, he would be part of the senior management to whom we would be presenting and he would be part of the debates to sharpen our preparation and our
20 focus on the merits of the charges.

CHAIRPERSON: Advocate Ngcukaitobi, I am not cross-examining the witness, but I just in the event, I do not want this to slip my mind.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Advocate Moipone Noko, the former DPP

KZN...

ADV MAEMA: Yes, Chair.

CHAIRPERSON: ...was seemingly approached after the charges had been, the racketeering charges had been withdrawn, to provide a report by Advocate Batohi. Do you know that?

ADV MAEMA: No, I did not know that. I heard it in her testimony.

CHAIRPERSON: What do you make of the fact that a
10 decision was taken to withdraw the racketeering charge seemingly in 2019?

ADV MAEMA: In 2019, Chairperson, yes.

CHAIRPERSON: Subsequently in 2020, as I recall from her testimony, she was asked to provide a report regarding those matters. Should this not have happened the other way?

ADV MAEMA: It should have happened the other way around, Chairperson. Prior to the taking of a final decision to get inputs from the role players.

CHAIRPERSON: And have you seen Advocate Noko's
20 report?

ADV MAEMA: I have, I have seen it. It was sent to all prosecutors.

CHAIRPERSON: Yes, there were two reports, one directed to Advocate Batohi, and then she wrote a comprehensive one directed also to all the prosecutors. You saw the one directed

to the prosecutors?

ADV MAEMA: I saw the one directed to all the prosecutors. The one that was directed to Advocate Batohi, I have not seen even today.

CHAIRPERSON: My reading of that report, together with her testimony here, seemed to suggest that there was indeed evidence warranting prosecution.

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: In the Cato Manor matters.

10 **ADV MAEMA**: That is correct. Even in the presentations that the team had with her, there are issues that we raised, we dealt with them, but she was convinced that there was sufficient to justify a racketeering prosecution.

CHAIRPERSON: Now, from 2020, remember Advocate Batohi took office in 2019?

ADV MAEMA: That is correct.

CHAIRPERSON: Meaning that by 2020, when she received the response of Advocate Noko, she would probably have formed a view that there was some form of evidence.

20 Because in that report, there were summaries of the dockets.

ADV MAEMA: Yes.

CHAIRPERSON: She would probably have formed a view that there is something.

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: Warranting prosecution, or let me call it,

there is evidence.

ADV MAEMA: There is evidence upon which a *prima facie* case may be made out by the prosecutors.

CHAIRPERSON: Yes. And following that report, and advise me if I am wrong, it seems nothing happened until today.

ADV MAEMA: Yes, nothing has happened, Chair. You are very correct.

CHAIRPERSON: So you endorse the view held by Advocate Noko that the prosecution should not have been proceeded
10 with?

ADV MAEMA: Chairperson is saying I endorse the view that the prosecution should not have proceeded with.

CHAIRPERSON: Should have been proceeded with.

ADV MAEMA: Should have been proceeded with, yes. Thank you, Chairperson.

MS RAMAGAGA: Right, Advocate Maema, when Mr Nxasana became the NDPP, this Cato Manor matter, or matters, were still pending at the desk of the NDPP.

ADV MAEMA: That is correct.

20 **MS RAMAGAGA**: And when he came into office, he did not dismiss the recommendations of the prosecution team, that is your team, out of hand.

ADV MAEMA: That is correct, yes.

MS RAMAGAGA: He actually engaged you.

ADV MAEMA: Yes.

MS RAMAGAGA: And sought for more information.

ADV MAEMA: For more information, that is correct.

MS RAMAGAGA: Now, you say at some point he then gave a directive that Advocate Chauke should no longer participate in the matter, and Advocate Noko should participate in the matter.

ADV MAEMA: That is correct.

MS RAMAGAGA: By virtue of her being now the appointed officer.

10 **ADV MAEMA**: By virtue of Advocate Noko being the appointed DPP of KZN, and by virtue of the fact that the predecessor who felt they have worked closely with the Cato Manor team are no longer there now. She has not worked closely with the Cato Manor team. She would be able to bear an impartial mind upon the facts.

MS RAMAGAGA: Thank you. Now, after he had granted that directive, I am talking about Mr Nxasana.

ADV MAEMA: Yes, yes, Chairperson.

20 **MS RAMAGAGA**: Did he then continue to engage with the prosecution team? I have heard you said up to some time, and then there was, you know, the case seems to have gone through, but of importance to me now is whether even after he had then released Advocate Chauke of the position of coordination, did he continue to engage the team about the Cato Manor cases?

ADV MAEMA: Chairperson, from the National Director's point of view, the prosecution team would be engaged as and when there is a presentation made, but there was never follow-ups to check on us, how far you are doing. It was left upon us. They felt, NPA management felt, as responsible prosecutors, we would on our own advance the investigations and ensure that the investigations are ready, but we knew that this being a high-profile matter, we would not proceed without having given a proper briefing to the senior
10 management.

MS RAMAGAGA: Let us talk about the presentation before Mr Nxasana.

ADV MAEMA: Yes, Chairperson.

MS RAMAGAGA: After Advocate Chauke had been relieved of the coordination role.

ADV MAEMA: Role, yes.

MS RAMAGAGA: Did you, do you remember as to whether your team made further presentations or not before Mr Nxasana?

20 **ADV MAEMA:** To Mr Nxasana, we made one presentation and not any other.

MS RAMAGAGA: At this presentation that you made before Mr Nxasana, was it made when Advocate Chauke was still the coordinator of the team or what is the position?

ADV MAEMA: It was made when Advocate Chauke was still

the coordinator and it was, I think, at that presentation that Mr Nxasana then directed that Advocate Chauke should not be involved anymore.

MS RAMAGAGA: Just one more question. Now, you have advised us that you went to interview Mr Danikas.

ADV MAEMA: In Athens, in Greece.

MS RAMAGAGA: Yes, that is right. Now, the question is, who was the NDPP at the time when you went to Greece to go and interview Mr Danikas?

10 **ADV MAEMA**: Advocate Sean Abrams was the National Director at the time.

MS RAMAGAGA: And that was post the era of Mr Nxasana?

ADV MAEMA: That is correct, Chair.

MS RAMAGAGA: Thank you, thanks.

CHAIRPERSON: Advocate Ngcukaitobi, it is almost lunchtime. Yesterday you referred to, just before we adjourn, maybe you can help me there, you made mention of the correspondence that had been, that came from the Hlapani Attorneys in relation to the matter of Mr Mkhize.

20 **ADV NGCUKAITOBI SC**: Yes.

CHAIRPERSON: And you mentioned that there were about five letters or something to that effect.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: You need not check now, you need not check now. And I was just trying to check precisely where on

my nose, but I made a note so that you can refer us to the correspondence, those letters. I know it is from Mr Shozi?

ADV NGCUKAITOBI SC: Shozi.

CHAIRPERSON: Yes, if you can just maybe highlight those areas for me. The letters, I know some of the letters, but you mentioned about four or five.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Yes, if your juniors can just maybe check the relevant passages, and then you can let me know when
10 we reconvene.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

CHAIRPERSON: I think it is, *Nthathi* Maema, we are going to take a lunch break until, we will take a 45 minutes break.

ADV NGCUKAITOBI SC: Madam Chair, I wonder if we can, we have a witness that we had agreed to see at one.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI SC: It is actually Mr Mangena. He has been hanging around since one o'clock, and we would appreciate if we could just have an hour with him. That is
20 unfortunately the only time we could squeeze out.

CHAIRPERSON: Yes, yes. Let us do it this way. Let us have a lunch break for an hour, and if after the expiry of an hour, you still need more time to talk to Captain Mangena, send a message through our researchers.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

CHAIRPERSON: Yes. Advocate Maema, you are still under oath. We will adjourn for an hour, thereafter until further notice.

ADV MAEMA: That is correct, Madam Chair.

CHAIRPERSON: We adjourn.

ENQUIRY ADJOURNS

ENQUIRY RESUMES

CHAIRPERSON: Good afternoon, Advocate Maema.

ADV MAEMA: Good afternoon, Chairperson.

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

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

CHAIRPERSON: You are still under oath, Advocate Maema.

ADV MAEMA: That is correct, Chairperson.

GLADSTONE SELLO MAEMA: (still under oath)

EXAMINATION BY ADV NGCUKAITOBI SC (CONTINUES):

Yes, and apologies for the delay. As you can see, we are coming back as a team of two from a team of four. So the other colleagues have been left behind to work through the statement. Mr Maema, we were at Part D, paragraph 445 of your witness statement.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, you firstly addressed at 445 the report of Advocate De Kock, and you mentioned that 445, the issue of the signature to the report. Can you

just tell us what the concern is?

ADV MAEMA: The issue of the absence of a report, actually.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: The absence of signatures on the report. Chairperson, 445, the so-called De Kock report purported to provide the then NDPP, Advocate Batohi, with an analysis of the legal requirements for sustaining racketeering charges under POCA, and an assessment of whether those principles, a racketeering authorisation should have been issued in the
10 Cato Manor matter.

The report was purportedly compiled by Advocates Rodney De Kock, Ivy Thenga, S Rahili [?], and E Mamabolo, although it was only signed by only De Kock and Mamabolo, there was never any explanation as to why Advocate Thenga or Advocate Rahili did not sign the report.

ADV NGCUKAITOBI SC: Could I just ask you, I mean, in terms of this report, we do not know under any law that it is – I mean, do you know under which law a report like this was purported?

20 **ADV MAEMA**: No, I do not know.

ADV NGCUKAITOBI SC: Yes. I mean, the report itself does not say what powers were being exercised when it was...

ADV MAEMA: Compiled.

ADV NGCUKAITOBI SC: Compiled, yes.

ADV MAEMA: It does not say.

ADV NGCUKAITOBI SC: Yes. And hence, the issue of its validity then, if it has got four members and it is signed by two, they do not constitute the majority.

ADV MAEMA: They do not. And there is no explanation as to why Advocate Thenga and Advocate Rahili did not sign.

ADV NGCUKAITOBI SC: Yes. And you say, well, the report does not explain, but I understood that when the decision was taken by Advocate Batohi to withdraw the charges, she called up a couple of people that were involved in the case and
10 announced her decision, although she did not circulate the report. Were you among those people?

ADV MAEMA: Yes, I was among the people who were called.

ADV NGCUKAITOBI SC: Yes. What happened in that conversation? Firstly, how did you know that you were to be called?

ADV MAEMA: I received a call from the PA to Advocate Batohi who asked me to come. I received it on a Friday afternoon to come to a meeting on a Monday at 11 o'clock. I obliged. I was there. Most of the members of the prosecution
20 team were also present. Advocate Moipone Noko did not attend, but I think it was a teleconference with her. We were told that a decision has been made to withdraw the racketeering charges and that the balance of the charges would be referred to the DPP. Yes. It was just a report-back session. No reasons were advanced. We were not, you

know, taken in confidence with the De Kock panel report, yes.

ADV NGCUKAITOBI SC: And was there – did you engage with the statement that was announced? Did anyone respond back? What happened?

ADV MAEMA: Chairperson, in the NPA, we have a spokesperson who speaks on behalf of the NPA, so we do not speak. We do not express our views. We do not express any – how do you say – we do not express any dissension, if any. If you hold a dissenting view, Chairperson ...[vernacular] you

10 just die with your complaint.

ADV NGCUKAITOBI SC: Yes. So in that meeting, no one said, we disagree?

ADV MAEMA: No, we invited to say what our views are. We were called, two minutes, we were told this is what is going to happen, and we left.

ADV NGCUKAITOBI SC: I see. So the meeting lasted that short?

ADV MAEMA: Very short.

ADV NGCUKAITOBI SC: Now, you deal with this report
20 further extensively from paragraph 446, and you remember that we already dealt with section 179 earlier, but you covered it at paragraph 446, 447.

ADV MAEMA: That is correct, Chair.

ADV NGCUKAITOBI SC: And then in 448, can you just deal with that specifically, because it was an issue that came

earlier in your testimony?

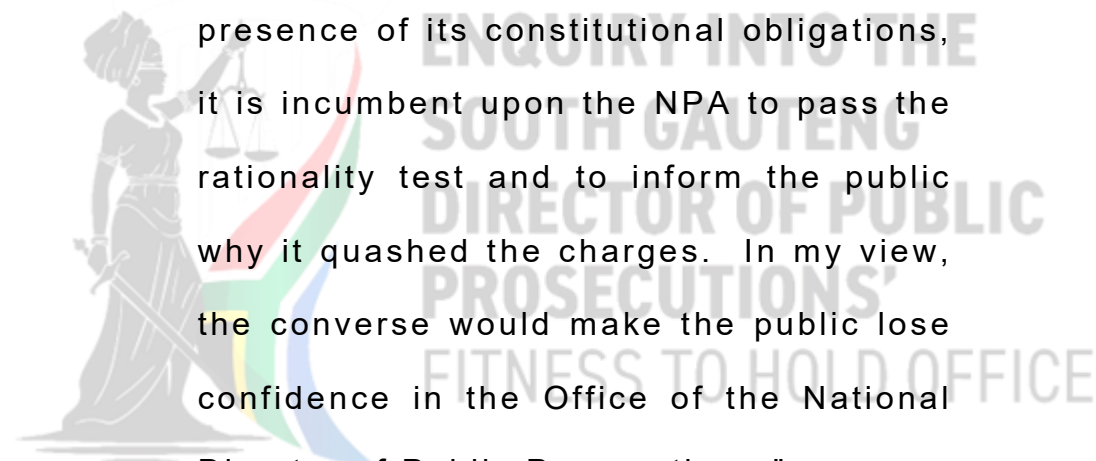
ADV MAEMA: Chairperson, if reconsideration was in terms of section 179(5) of the Constitution, the Panel should, in addition to receiving representation from an accused person and a complainant, have invited the prosecution team to make a presentation and clarify the process which were followed leading to the issuing of the racketeering certificates, should have familiarised themselves with the prosecution strategy and theory of the case, converse any identified shortcomings
10 in the prosecution memo, the indictment, or the docket, if any, appraise themselves of all the processes and documents in the matter, including the process that have served before the criminal courts, including the contents of all relevant dockets, request for further particulars, if any, the State's response to the request for further particulars, if any, accused application in terms of section 342(a) of the Criminal Procedure Act 51 of 1977.

ADV NGCUKAITOBI SC: Yes, thank you. And in 449 and 450, you cite two judgments. Could you deal with those
20 judgments? The one is *Zuma v the Democratic Alliance* in 2014 ZA (SCA) 101, delivered on the 28th of August 2014.

ADV MAEMA: That is correct, Chairperson. Where the Court endorsed the tried principle below, and I quote:

“The NPA as an organ of state has a duty to prosecute without fear, favour, or

prejudice by upholding the rule of law and the principle of legality. It is also a constitutional body with a public interest duty. It behoves its officials to operate with transparency and accountability. It has a duty to explain to the citizenry why and how it arrives at decisions to quash the criminal charges against the accused persons, particularly where the matter involves a very senior state official. In presence of its constitutional obligations, it is incumbent upon the NPA to pass the rationality test and to inform the public why it quashed the charges. In my view, the converse would make the public lose confidence in the Office of the National Director of Public Prosecutions.”



ADV NGCUKAITOBI SC: Yes. Yes, well, I mean, according to Advocate Batohi, the public statements that was issued, which she took us through, only told us that the De Kock panel had decided that there was no case without explaining why it decided that there was no case for a criterion.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Yes. How would that engender any public confidence in the NPA?

ADV MAEMA: Not at all. To the contrary, it will – why are we having prosecutors that are scared to prosecute when there is evidence eliciting the commission of offences? To the contrary, it will dampen the communities in the – dampen their belief in the criminal justice system.

ADV NGCUKAITOBI SC: Yes. And then in paragraph 450, you deal with a different dimension of rationality. Can you deal with that?

ADV MAEMA: That is correct. Chairperson, in 451, it is a
10 ...[intervenes].

ADV NGCUKAITOBI SC: 450.

ADV MAEMA: In 450, later in *Zuma v the Democratic Alliance and Others* 2018(1) SA 200 (SCA), the SCA also stated that the exclusion of the prosecution team from the process leading up to the decision to prosecute, especially the final deliberations that took place on 1 April 2019, was in itself irrational. The compelling conclusion is that this exclusion was deliberate. There were senior litigators steeped in the case, acquainted with the legal issues, and
20 had a critically important contribution to make regarding the ultimate decision to terminate the prosecution.

ADV NGCUKAITOBI SC: Now, was the prosecution team excluded in the determination of the withdrawal of the charges against the Cato Manor team?

ADV MAEMA: That is correct, Chairperson. We were

excluded. We were never consulted. Our views were not sought.

ADV NGCUKAITOBI SC: Were you senior litigators steeped in the case?

ADV MAEMA: I would submit so, Chairperson, that we were senior officials, senior litigators steeped in the case, having been involved with it from the beginning.

ADV NGCUKAITOBI SC: Were you acquainted with the legal issues?

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

ADV NGCUKAITOBI SC: Did you have a critical, important contribution to make?

ADV MAEMA: Precisely, Chairperson, we had a very critical contribution to make in the ultimate decision whether to terminate or to prosecute.

ADV NGCUKAITOBI SC: And your exclusion in those circumstances, would it pass constitutional muster?

ADV MAEMA: It will never pass constitutional muster. It falls far short.

20 **ADV NGCUKAITOBI SC:** Now paragraph 452, you then deal with this that we have just covered now. Correct?

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. And then the report cited its conclusion.

ADV MAEMA:

“The report ultimately concluded that the racketeering authorisations issued by Advocate Jiba and Advocate Abrahams were invalid because a proper case for racketeering was not made out on the papers presented.”

ADV NGCUKAITOBI SC: And then in 454, you connect the racketeering with the predicate offences. What do you say there?

10 **ADV MAEMA:**

“Although the NDPP said the De Kock report was consent with the reconsideration of the racketeering authorisations, it nevertheless prompted a withdrawal of the predicate offences underpinning the racketeering charges.

The prosecution team was not consulted on the withdrawal of the predicate offences.”

20 **ADV NGCUKAITOBI SC:** Yes. And then at 455 and 456, you make ...[intervenes].

CHAIRPERSON: Sorry. The withdrawal of the predicate offences was by the DPP KZN.

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: Advocate Harrison.

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: When was that precisely?

ADV MAEMA: That was when I was removed from the matter. So when the predicate offences were withdrawn, I was already back in the North West.

CHAIRPERSON: But it could not have been in 2019 because that is the year when Advocate Batohi referred the predicate offences to the DPP for reconsideration?

ADV MAEMA: I do not even know. I just heard in the media
10 that Advocate Harrison had withdrawn the charges, Chairperson. I was not party to the office of the NDPP.

CHAIRPERSON: Do you have an idea, Advocate Ngcukaitobi?

ADV NGCUKAITOBI SC: Yes. My colleague points me to SB229. 229, yes.

CHAIRPERSON: We will make a note and get it later.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. So at
20 455 and 456, you lay a foundation for your response to the Panel, which I presume is something you would have said had you been consulted.

ADV MAEMA: Indeed, Chairperson. The De Kock report's findings were based on a misapprehension of the legal requirements for a conviction of racketeering in terms of Section 2(1)(d) of POCA, a woefully incomplete analysis of the evidence contained in the relevant documents, and a

misapplication of the law to the facts.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: In what follows, I summarise the evidence in the dockets that the De Kock report should have analysed, and how the evidence established racketeering charges against the accused ...[intervenes].

ADV NGCUKAITOBI SC: Sorry, before you proceed, I mean, in the evidence, and again, if necessary, if the evidence leader has taken issue, we can go through each docket. In
10 the evidence of Advocate Noko, we took her through 12 dockets that are just not considered at all in the De Kock panel, just not – they are mentioned in one page, not a single statement about the contents of those dockets. Would that be consistent with your knowledge?

ADV MAEMA: No, no. That is not consistent with how a proper review should be done if you want to go to the merits of what you are dealing with.

ADV NGCUKAITOBI SC: Yes. No, thank you. As I say, if
20 necessary, I can give the names again of the dockets that are mentioned, but apparently not even opened.

Madam Chair, for Advocate Ngcukaitobi's sake, we do not take issue with that. Already there is evidence. So, there is no need.

CHAIRPERSON: Please speak up, sir.

ADV MTSWENI: I am saying for Advocate Ngcukaitobi's

sake and comfort ...[intervenes].

CHAIRPERSON: Speak to the mic and speak up.

ADV MTSWENI: Yes, I am saying for Advocate Ngcukaitobi's comfort, we do not take issue with what he says that based on what Advocate Noko had said, there were 12 dockets which were not mentioned in the De Kock report. They were just merely listed there and they were not summarised. So, there is no need for him to take the witness there.

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

ADV NGCUKAITOBI SC: Thank you.

CHAIRPERSON: Thank you, Advocate Mtsweni. Thank you, Advocate Ngcukaitobi.

ADV NGCUKAITOBI SC: Thank you.

CHAIRPERSON: Advocate Hulley is here. I do not know whether...

ADV HULLEY SC: I am not sure why this particular aspect – thank you, Madam Chair.

20 **CHAIRPERSON:** I must just say a lot happened this morning when you were not here in relation to certain aspects of the docket not being pursued in details if the parties are agreeable. I am just giving you that precursor.

ADV HULLEY SC: Thank you, Madam Chair. I did have a discussion with my learned friend for the Chauke team, Adv Ngcukaitobi, and I indicated to him that I would have a further

discussion with him by the end of today after we adjourned so that I can understand precisely what it is that we have been asked to agree to. Once I understand that, I will consider it overnight and then place our position on record tomorrow.

CHAIRPERSON: Yes. I invited your junior this morning because these matters were discussed in chambers and I thought it appropriate that we should let you have a say because you represent the NPA.

10 **ADV HULLEY SC:** I appreciate that, Madam Chair.

CHAIRPERSON: Not necessarily that we anticipate the pending interlocutory application by you?

ADV HULLEY SC: I made no assumptions.

CHAIRPERSON: Thank you, Counsel. Counsel, we have now found, as before 229, in paragraph 3 mention is made of a unanimous decision by Advocate Batohi. Do you see that? The second line, the second sentence of paragraph 3 at 229?

And my understanding was that the decision was not unanimous because the report is not signed by all those who
20 are purported to have agreed to the conclusions in that report.

ADV MAEMA: That is correct, Chair. In fact, it is two out of two that have not signed. Two out of four. Did I say two out of two? Two out of four.

CHAIRPERSON: Now, this SB4224 does not tell us when

Advocate Zungu, Advocate Harrison made the decision, Counsel. It was a letter by Advocate Batohi dated 16 July 2019 asking her to make a decision with regard to the predicate offences. So I am still interested to know when did she then respond to this request by Advocate Batohi. If you know, we will try to find that and then if you get the answer, let us know.

ADV NGCUKAITOBI SC: Do you know, Mr Maema?

ADV MAEMA: Chairperson, I have no idea. At that stage, I
10 was already removed and I was just focussing on my work in the North West Division.

ADV NGCUKAITOBI SC: Thank you. That information has been asked for before, so hopefully at some point it will be furnished by the NPA. Then in paragraph 457, you explain why you believe that the De Kock panel misapplied the law, misconceived the law and then misapplied it.

ADV MAEMA: That is so, Chairperson.

ADV NGCUKAITOBI SC: Paragraph 458.

ADV MAEMA:

20 “First, the report incorrectly assumes that an enterprise for purposes of POCA must be an unlawful enterprise. This view was expressly rejected by the SCA in the *S v Asen*. The quotation from *S v Asen*:

“There is no requirement that the enterprise be legal or that it be illegal. It

is a pattern of racketeering activity through which the accused must participate in the affairs of the enterprise that brings in the illegal element. And the concept of enterprise and pattern of racketeering activity are discreet. Proof of the pattern may establish proof of the enterprise, but this will not inevitably be the case.”

10 **ADV NGCUKAITOBI SC**: Thank you. Carry on.

ADV MAEMA: Paragraph 459:

“As a consequence, the report mistakenly treats the formal legitimacy of the SAPS unit and the police hierarchy as negating the existence of an enterprise for the purposes of POCA.”

ADV NGCUKAITOBI SC: Yes, you have dealt with that misconception earlier. Then there is a second misconception you deal with at paragraph 460.

20 **ADV MAEMA**: That is correct, Chairperson:

“The report wrongly requires proof of predicate offences that give rise to a specific threat of repetition indefinitely into the future.”

ADV NGCUKAITOBI SC: Yes, what is wrong with that?

ADV MAEMA: Under POCA, Chairperson, there is no requirement of a threat of repetition of the predicate offences or that the offences must be part of an ongoing entity's regular way of doing business. It would also be absurd to require that the enterprise be currently active at the time of prosecution and the existence of a threat of repetition. If that were so, it would be impossible to prosecute the past racketeering activities of an enterprise.

ADV NGCUKAITOBI SC: Yes, and that is why you make the
10 mention of the, what did you call it, the sexy boys.

ADV MAEMA: The fancy boys.

ADV NGCUKAITOBI SC: Fancy boys.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: That have begun and ended.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And then the NPA comes in on year
six, but the racket ended on year five.

ADV MAEMA: That is so, Chairperson, yes.

ADV NGCUKAITOBI SC: Yes, then you deal with the US
20 case law. I mean, one of the things, you can comment on this if you want, but I just want to mention it, that one of the things that I found about this report is that it does not refer to South African case law. It refers to American case law.

ADV MAEMA: Chairperson, when South African prosecutors were trained on racketeering, as it is a concept that

originated in the USA, we had Michael Johnson from the USA who came to sort of lecture us on the development of the law in the USA relating to racketeering.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Most of us would refer to US case law with respect to racketeering, which most of us think is much more in line with the legal framework that we have here. Them having a Bill of Rights, us with a Bill of Rights. The framework is more or less the same.

10 **ADV NGCUKAITOBI SC:** Yes. Well, this South African case law, Constitutional Court case law that says actually the wedding is different, so one needs to look at South African cases.

ADV MAEMA: You start at home first.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Before you go to the USA.

ADV NGCUKAITOBI SC: But the point is the total absence of South African case law from this report, like zero. No South African case is referred to at all in relation to the
20 requirements of POCA.

ADV MAEMA: That is quite surprising that no reference would be made to the Constitutional Court and the SCA's decisions which we have in this country.

ADV NGCUKAITOBI SC: Now, it seems also from what you are saying in your statement that even the US case law is

misconceived.

ADV MAEMA: That is so, Chairperson.

ADV NGCUKAITOBI SC: Can you just deal with that?

ADV MAEMA: Yes. I also emphasise the report's reliance on US case law is misconceived. If one looks at *HJ Incorporated v North West Bell Telephone CO*, the US Supreme Court held that:

10 “Continuity is both a close and open-ended concept, referring to either a close period of repeated conduct or to past conduct that, by virtue of its nature, projects into the future with a threat of repetition. Continuity can thus be established by proving racketeering acts that themselves include specific threat of extending indefinitely into the future, or predicate acts or offences that are part of an ongoing entity's regular way of doing business. The Court further noted that the

20 continuity requirement is likewise satisfied when it is shown that the predicates are a regular way of conducting the defendant's ongoing legitimate business.”

ADV NGCUKAITOBI SC: Yes, although in this case that

would not be applicable. It is never legitimate to torture suspects and to kill suspects.

ADV MAEMA: That is so, Chairperson. It can never be lawful to conduct business in that way.

ADV NGCUKAITOBI SC: Then 462.3.

ADV MAEMA: 462.3:

“This misunderstanding of the law leads the authors of the report to attribute undue significance to the fact that there were only two charges against the accused for predicate offences occurring in 2011, as opposed to nine charges in 2008.

ADV NGCUKAITOBI SC: Yes. So that is the second misconception of the law.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: And then there is a third one at 463.

ADV MAEMA: 463:

“Third, the report assumes that a conviction of a manager under section 2(1)(f) of POCA requires the manager to have himself committed an underlying predicate offence or participated in a pattern of racketeering activity. But that is not what section 2(1)(f) requires. Again, as the SCA has emphasised, the

offence lies in the accused's knowledge that the enterprise is being conducted through a pattern of racketeering activity. The manager himself does not need to be charged with the underlying predicate offence that comprises the enterprise pattern of racketeering activity.”

ADV NGCUKAITOBI SC: Yes, thank you. And then why is that misdirection important?

10 **ADV MAEMA:** Chairperson, it is important because a person in the position of General Booysen should be in a position when something comes to his attention to investigate and to make sure that an illegality which has commenced is not committed. He should take steps. The members of the SVC Cato Manor unit should have accounted. He should have called them to order and said, gentlemen, what is happening here? The first person has passed on. If we need to bring this person to book, we should do it constitutionally in terms of the book. But you find them involved in killing one, two,
20 three. It continues unabated because they know that he will protect them.

ADV NGCUKAITOBI SC: Yes. I mean, the knowledge of five killings in the context of 28 killings, personal knowledge where a man says I am personally aware of these five killings, would that not be sufficient?

ADV MAEMA: That is very sufficient. But the worst, Chairperson, is that a person that approaches court and says I am applying for an interdict not to be killed. I mean, it is unlawful to kill. So it should be obvious no one should be killed. Now, when you approach court for an interdict, for an order compelling the police not to kill him, it is extraordinary.

ADV NGCUKAITOBI SC: Yes. Then at paragraph 462, I think there you set out precisely in words what you have just said, but maybe we can read it. Maybe it is written more
10 elegantly than you have said it.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Or maybe you said it more elegantly than it is written.

ADV MAEMA: I think it will be written more elegantly, considering that English is not my forte.

ADV NGCUKAITOBI SC: Put a dictionary next to you when you write.

CHAIRPERSON: Which paragraph was that?

ADV NGCUKAITOBI SC: 462, Madam Chair.

20 **CHAIRPERSON:** 462. Is 462 not the one that he read?

ADV MAEMA: Yes, we just dealt with 462.

CHAIRPERSON: In its entirety.

ADV NGCUKAITOBI SC: 464.

ADV MAEMA: 464?

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Chairperson, the next is 464.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA:

10 “This misdirection leads the authors to conclude that Major General Booyesen could not be charged under section 2(1)(f) of POCA because he did not personally participate in a pattern of racketeering activity. Apart from the incorrectness of the latter conclusion, which I addressed below, it does not matter for purposes of a prosecution under section 2(1)(f) whether Booyesen committed a predicate offence or was involved in a pattern of racketeering activity. The offence is thus established by evidence that Booyesen knew or ought to have known that the Cato Manor Unit was conducting its affairs through a pattern of racketeering activity.”

20 **ADV NGCUKAITOBI SC:** Yes, that is really the point about ...[intervenes].

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: General Booyesen tells us himself that he was aware of five killings.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And, of course, he was aware of the sixth one because Mr Mkhize was the deponent in that case.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: And then under 2(1)(f) he is then charged for management of it, which is knowledge or ought to have known.

ADV MAEMA: It is sufficient compliance with the POCA legislation.

10 **ADV NGCUKAITOBI SC:** Then 4.6.5, which is now the fourth misconception of the law.

ADV MAEMA: That is correct, Chairperson:

“Fourth, the authors wrongly requires proof of predicate offences that give rise to a specific threat of repetition indefinitely into the future.”

ADV NGCUKAITOBI SC: Sorry, I think that is incorrectly duplicated because it is the same 466 and 467. So the fourth should be 468 because you have covered that in item two of
20 your analysis. Do you agree with that?

ADV MAEMA: Yes, yes, yes.

ADV NGCUKAITOBI SC: So, which means the fourth should really be 468.

ADV MAEMA: Yes. Because 460 and 465 are the same.

ADV NGCUKAITOBI SC: Yes, exactly. That is what I am

saying.

ADV MAEMA: Paragraph 468:

“Fourth, the report incorrectly assumes that the predicate act comprising the patent of the racketeering must arise from more than one incident.”

ADV NGCUKAITOBI SC: Yes. Now, on that score, the evidence leaders put it to Advocate Noko that because General Booyen was involved in one incident, I do not
10 understand how they say he was involved in one incident when the evidence establishes more.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: But assuming that it was that incident of the killing of Mr Ndimande where he was then charged with seven predicate offences arising from that incident, this is really what this is addressing, is it not?

ADV MAEMA: That is so, Chairperson.

ADV NGCUKAITOBI SC: And what is wrong with that?

ADV MAEMA: Chairperson, if one looks at, strictly speaking,
20 at the definition, whether – in fact, at one stage, we asked whether if one incident makes out four offences, would you consider the four offences as four separate incidents? But what we did was we focused, irrespective of whether one incident makes four offences or not, we considered the incident as a separate incident.

ADV NGCUKAITOBI SC: Well, the offences arising from one incident as separate offences.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Now, that is what you deal with at paragraph 470. The actual error of the De Kock panel comes from a Florida case.

ADV MAEMA: That is so, Chairperson.

ADV NGCUKAITOBI SC: Can you read that?

ADV MAEMA: *S v Ward*.

10 **ADV NGCUKAITOBI SC:** Yes.

ADV MAEMA:

“In *Ward*, it was decided in terms of the Florida RICO statute, which defines a pattern of racketeering as engaging in at least two incidents of racketeering conduct that have similar intent, results, accomplices, or methods of commission, or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents.”

20

ADV NGCUKAITOBI SC: Yes. So that was what the Florida statute provided.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: It requires two incidents.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And then you deal with the paragraph 470.2 about the federal RICO statute in America.

ADV MAEMA: That is so, Chairperson:

“There is no requirement under the federal RICO statute that to establish a pattern of racketeering activity, there must be at least two predicate acts arising from one incident.”

ADV NGCUKAITOBI SC: Or more than.

10 **ADV MAEMA:**

“There must be at least two predicate acts arising from more than one incident. In the *United States v Anthony Indelicato*, the Federal Court of Appeals held that racketeering acts that are not widely separated in time, space, may nonetheless, given other evidence of a threat of continuity, constitute a RICO pattern and that where the virtual simultaneity of two acts suggests that they were related, the timing does not negate the existence of a pattern. Rather, evidence of continuity or threat of continuity will simply have to come from facts external to those two acts.”

20

ADV NGCUKAITOBI SC: Now, here what is most interesting, which you do not deal with in your statement, is actually the definition in our law. That it does not confine itself, or does it confine itself to an incident, or does it simply refer to an offence in schedule 1?

ADV MAEMA: It refers to an offence in schedule 1.

ADV NGCUKAITOBI SC: So would it matter then that there were seven offences committed in one incident?

ADV MAEMA: It would not necessarily matter that one
10 incident yields out a number of offences referred to in
schedule 1.

ADV NGCUKAITOBI SC: Yes. I mean, the fact that this report goes to take a provincial law from the US, from Florida, ignores even the federal law, ignores even the South African law. I mean, what does that tell you about the quality of this report?

ADV MAEMA: Well, to say the least leaves a lot to be desired.

ADV NGCUKAITOBI SC: Then you deal with, we can call
20 this now the fifth misdirection at 472.

ADV MAEMA:

“Sixth, the report incorrectly criticises the prosecution for relying on hearsay evidence that would, in its view, be deemed...”

Do I say inadmissible:

“...inadmissible due to *inter alia* its alleged lack of probative value. It completely overlooks section 2(2) of POCA, which provides as follows” “The Court may hear evidence, including evidence with regard to hearsay, similar facts, or previous convictions relating to offences contemplated in subsection (1), notwithstanding that such evidence might otherwise be inadmissible, provided that such evidence would not render the trial unfaithful.””

ADV NGCUKAITOBI SC: Yes, and we dealt extensively with the failure of the report to engage with the case of Savoy, which places hearsay in context.

ADV MAEMA: Yes, yes.

ADV NGCUKAITOBI SC: And then 473?

ADV MAEMA: The report 473:

“The report also fails to distinguish between admissibility of hearsay evidence on racketeering charges and the admissibility of hearsay evidence on the underlying predicate offences. Contrary to what the panel assumes, Section

3(1)(c) of the Law of Evidence Amendment Act is only applicable to predicate offences.”

ADV NGCUKAITOBI SC: Yes. So in other words, for the predicate offences, hearsay is an exception. For the racketeering offences, hearsay is the rule.

ADV MAEMA: It is the other way around.

ADV NGCUKAITOBI SC: It is the reverse.

ADV MAEMA: It is the reverse.

10 **ADV NGCUKAITOBI SC:** They do not seem to understand.

ADV MAEMA: They do not seem to understand.

ADV NGCUKAITOBI SC: Ja.

ADV MAEMA: But that is ordinarily what happens when you have been out of court for a long time.

ADV NGCUKAITOBI SC: Who has been out of court for a long time?

ADV MAEMA: Most of the people in the De Kock report. You get out of touch with the principles when you do not get to court in a long time.

20 **ADV NGCUKAITOBI SC:** Yes.

CHAIRPERSON: Can there be such a justification? I beg your pardon? Can such a justification really be sound for the advocates who litigate in the court in the Republic of South Africa And there are decisions in these courts that address the very, very pieces of legislation they are working under?

ADV MAEMA: Chairperson, it is inconceivable. It cannot be justified. All I am saying is that the more you are in court, the sharper you become. When you engage with sharper counsels, you become more sharp. But when you sit in the office and read the reports, you become more rusty.

CHAIRPERSON: Of course. I mean, you go and write a report. You have to do research. You have to apply your mind.

ADV MAEMA: You have to look at the latest decisions and
10 how the latest interpretations of case law to make sure that your recommendation will be relevant.

CHAIRPERSON: Yes. So the fact that you do not go to court often is not excusable, is it?

ADV MAEMA: I follow, Chairperson. Thank you.

ADV NGCUKAITOBI SC: Yes. Thank you. So we have given all of the legal critique of the report and we have also dealt with the facts that if they just excluded 12 of the reports from their assessment, of the dockets from their assessment for unexplained reasons.

20 **ADV MAEMA**: Yes.

ADV NGCUKAITOBI SC: Yes. I mean, you obviously would not have insight into how exactly they went about doing their work because you are not part of them.

ADV MAEMA: That is correct, Chairperson. But even towards the completion of their report, they would have, what

do you call it? They would have invited our views. Because all that you do is just *audi*. If you *audi*, you are perfect. But if you do not *audi*, then it shows that you are one-sided. You do not want to entertain any opposing views.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Is the challenge with the De Kock panel itself, is the challenge not on the person who finally makes a decision based on the contents of this very report with all these misconceptions?

10 **ADV MAEMA:** Chairperson, you are very correct. Ultimately, the NDPP should have seen that the prosecution team has not been invited for a view and invited their view in order to make an informed decision. But the fact is that she does not.

CHAIRPERSON: Because given section 179(5), you have a constitutional duty to act, to be constitutionally compliant as the head of the institution such as the NPA.

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: You may proceed, sir.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. I want
20 to move on then, Advocate Maema. We have dealt with what I have classified as the merits of this case, which is presenting the evidence and dealing with the critique. What we have not dealt with is the chronological sequence, which is in your statement Part C from paragraph 396. So might I ask you to go to that portion of your statement? There will

be parts you have already addressed, so we can skip those, but I just need to make sure that the Panel and yourself are aligned on the chronology of your involvement to the end. And that is called Prosecutorial History, Part C.

ADV MAEMA: On Part C, yes.

ADV NGCUKAITOBI SC: Yes. Now, you did the investigation. Well, you got involved on the 9th of March, according to what you have testified.

ADV MAEMA: Yes.

10 **ADV NGCUKAITOBI SC**: You went to Durban in June. Sorry, in May.

ADV MAEMA: Yes, in May.

ADV NGCUKAITOBI SC: And you formed a view in June that prosecution is warranted.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And then the first thing you did, according to the statement, is a prosecution memorandum on the 15th of August 2012, which is annexed as GSM75. Correct? Are you the person who actually typed up this
20 prosecution memorandum?

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: We have been talking a lot about this memorandum. You have never identified its author.

ADV MAEMA: No, I am the person who actually typed it up.

ADV NGCUKAITOBI SC: So how was this done? Was it

done in collaboration with the prosecution team?

ADV MAEMA: It was done in collaboration with the entire prosecution team.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: We sat in the boardroom in the DPP office in South Gauteng, and we exchanged views, and I was the one who was typing. Ultimately, when the document was in draft form, it was circulated among the team members, who then made contributions. We came together again to debate and
10 bounce our ideas until a prosecution memo was produced, until an indictment was produced.

ADV NGCUKAITOBI SC: Yes. Then in 398, you set out the briefings that you held, is that correct? Those are the meetings you held?

ADV MAEMA: That is correct, Chairperson. Those are the meetings that we had with the Acting NDPP on the 15th of May 2012, 23rd of May 2012, 12th of June 2012, 9th of July 2012, as well as the 6th of August 2012.

ADV NGCUKAITOBI SC: And that is Advocate Nomgcobo
20 Jiba?

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Now, in 399 you already testified about the extensive meetings you had around the definition of the word enterprise.

ADV MAEMA: That is correct, as the prosecution team.

ADV NGCUKAITOBI SC: Is that what is referred to at 399?

ADV MAEMA: Yes, Chairperson:

10 “During June 2012, senior prosecutors within the NPA engaged in internal deliberations regarding the proper formulation of the enterprise for purposes of contemplated racketeering charges arising from the activities of the Cato Manor Unit. It was recognised that the earlier drafts of the indictment may have

15 inaccurately treated Cato Manor as a stand-alone organised crime unit or legal entity, whereas the prevailing understanding was that Cato Manor functioned at most as a section within the broader Durban or Provincial Organised

20 Crime structures. There was ongoing uncertainty as to whether the Provincial Organised Crime constituted a discrete unit on its own or merely a coordinating function at provincial level. The prosecutors accordingly debated whether the enterprise should be framed as a legally established entity such as the SAPS or a component thereof, or as a

group of individuals associated in fact. Particularly in light of evidence that members outside Cato Manor and other organised crime units were involved in the relevant taxi violence matters, it was agreed that further factual clarification of the command and reporting structures within the SAPS organised crime, including the role of senior management was required before finalising the enterprise description, as this formulation was regarded as a critical foundation for the racketeering prosecution. The email correspondence is attached hereto marked Annexure GSM 76.”

10
And that is the email at 1A-781.

ADV MAEMA: I am there, Chairperson.

ADV NGCUKAITOBI SC: Would that be the exchange, the kind of exchange of emails that you would have had trying to work out what the enterprise is, what is the scope of the enterprise?
20

ADV MAEMA: That is correct, Chairperson, because we would debate, compile, and then circulate. So those were some of the engagements that we had.

ADV NGCUKAITOBI SC: Forgive me for saying it, but it

appears that you have done sort of an extensive intellectual work to get to where you are on this case.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: If you just look at the size of your prosecution memorandum, at the size of your indictment, I just like shiver because it is mammoth what you have done. And then someone comes in years later and they say, no, you were all driven by ulterior motive. How do you respond to that?

10 **ADV MAEMA**: Chairperson, it is disheartening to say the least, but, you know, I said yesterday I did not have the powers that the National Director has. But, ja, it comes with the territory. You are the boss and your weight is the decision of the institution. But at least, all I am saying, Chairperson, I am not saying I am absolutely correct and it would have been my task to go before the Court and convince the Court. But all I am saying is when you take a decision, just hear the other side.

ADV NGCUKAITOBI SC: Yes. No, but what I mean is, you
20 know, Advocate Maema, I think many of us have been in practise for a while. If you are on an agenda, that is why there is a procedure of Rule 53.

ADV MAEMA: Review.

ADV NGCUKAITOBI SC: Yes, because it produces the record.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: The agenda will show where Mr Maema is talking to Mr Chauke and they are saying, let us just nail Booyesen, you know, whatever, even if there is no evidence. What I find unique in what you have been producing as evidence is that consistently over time, your focus is on whether the evidence exists or does not exist. And internally, you disagree about the scope of the enterprise, but you are applying your mind to the law and the
10 facts.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Not a shred of evidence is about anything external.

ADV MAEMA: That is correct. All that we focus on, contents of the dockets, you know, the facts, the hierarchy of command in KZN, we look, you know, we were focused on the board. We were never distracted.

ADV NGCUKAITOBI SC: Yes. And I waited to see in the documents the NPA would produce here where the evidence
20 would be found because this would have been in the background material. And up until now, thousands of pages have been produced. There is not a single word that shows that you strayed out of your mandate.

ADV MAEMA: Chairperson, we really focused. We did our work and all that we waited for. The matter was in court. We

just wanted to go to court and present the evidence, which we were prevented from doing.

ADV NGCUKAITOBI SC: Yes. Now, you then move, you have told us these are the internal, because we asked you to produce the internal conversations.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Precisely to deal with this idea that there was something untoward here.

ADV MAEMA: Yes.

10 **ADV NGCUKAITOBI SC:** You produced them, we have shown them to the Panel.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Are you aware of any of this source of this political innuendo that has been directed your way?

ADV MAEMA: I am not aware at all. I am also looking forward to see where it comes from because we said we looked at the dockets just as the policy and the law requires to do so.

ADV NGCUKAITOBI SC: Yes. Now, you have moved on now
20 from paragraph 399, 400 and 401 and that is still your internal debates at the time.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Yes. And then you have dealt with this, the statement of Aiyer, why even though Aiyer was formally in charge of the SVC of Cato Manor, in reality Mr

Booyesen was the person *de facto* in control.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: I do not want you to repeat that. And then 404 is something you have not testified about. Can you just deal with that because it is featured in this case? And maybe let me take you to the page specifically. This is GSM77. Page 1A-783.

ADV MAEMA: I am there, Chairperson.

ADV NGCUKAITOBI SC: Do you recognise that document?

10 **ADV MAEMA**: Yes, I do recognise the document.

ADV NGCUKAITOBI SC: What is it?

ADV MAEMA: It is a covering letter from the acting DPP in KwaZulu-Natal, Advocate Noko, as she was, Noko-Mashilo then, addressed to the Acting National Director, Advocate Jiba, requesting for the issuing of racketeering authorisations.

ADV NGCUKAITOBI SC: I understand, but you see, the thing that was being discussed is around the signature.

ADV MAEMA: Yes.

20 **ADV NGCUKAITOBI SC**: And the fact that that arrow there indicates PP or does not indicate PP, and whether Advocate Noko actually signed this letter or whether it was signed by Advocate Chauke, and what were the circumstances in this. So that is what I want you to explain to the Panel.

ADV MAEMA: Now, Chairperson, the document was drafted

by the prosecution team. This document was drafted by the prosecution team in the Joburg office of the DPP. I compiled it on my laptop on a letterhead of the DPP of KwaZulu-Natal. And as this was a high-profile matter, it had to go under the name of the DPP. Although myself as a deputy could sign on behalf of the DPP, but I felt here the National Director must see that it is done with the acquiescence of the DPP. So it was drafted in the name of Advocate Noko, who was at the time the Acting DPP of KZN.

10 And then what I did then was I would then have had a telephone arrangement with her to plan to travel to KZN to come and brief her on the document, on the covering sheet, as well as the prosecution memo. Then what happened then was as a result of the conversation that I had with her, and I assumed that there was a conversation as well between Advocate Noko as well as Advocate Chauke, I was directed to present the documents to Advocate Chauke, who then signed on behalf of Advocate Noko.

20 So it is a document that we drafted in the name of the DPP in KZN, but as a result of the discussion that we had, and the fact that we have a DPP in the South Gauteng office where we were, a discussion between Advocate Moipone Noko and Advocate Chauke led to Advocate Chauke then signing on behalf of Advocate Noko.

 And the documents having been signed, I then

proceeded to take them to Advocate Mosing at head office to be presented to Advocate Jiba.

ADV NGCUKAITOBI SC: So the reason I am asking you is that because this letter has been used now as evidence of Advocate Chauke making prosecutorial decisions outside of his jurisdiction. There is quite a lot of legal arguments. Do not focus on it, just get us the facts. Whose decision was it that an application for a racketeering authorisation must be issued, which is contained in this document?

10 **ADV MAEMA:** The decision of the prosecutors.

ADV NGCUKAITOBI SC: Of yourselves?

ADV MAEMA: It is my decision and the prosecution team's. Advocate Chauke was never involved. All that he was involved in was the communication of the decision that we made.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Because it had to be communicated. Protocol in terms of the NPA, only DPPs communicate with the NDPP. So myself as a deputy, it is proper that a DPP should sign that communication, not a deputy.

20 **ADV NGCUKAITOBI SC:** Yes. Now, it looks like in paragraph 3, the accused had already appeared in court. Now, that could give the impression that they appeared charged with racketeering, but before racketeering could be issued, so just explain that.

ADV MAEMA: Yes, what happened was when they appeared on the 24th of August and on earlier dates, they were just appearing on the predicate offences. But we made sure that when the matter is transferred to the Durban High Court, the racketeering authorisations are in place.

ADV NGCUKAITOBI SC: Now, you dealt with this particular judgment in an email which is at page 1A-784. It is actually a long exchange of emails. They start at 786 and they seem to go up. So if you can just take us through the sequence of
10 those emails with the date and the content of email and then take us through. I think there is probably about five email exchanges.

ADV MAEMA: Chairperson, it was exchanges between the members of the prosecution team. On the 14th of August 2012, at 14:21.

ADV NGCUKAITOBI SC: At 04:21.

ADV MAEMA: At 04:21.

ADV NGCUKAITOBI SC: Just tell us which page you draw that from so that we keep up with you.

20 **ADV MAEMA**: Yes. Chairperson, I am at page 1A-785. It is an email from Advocate Anthony Mosing on 14th of August 2012 at 04:21 in the afternoon. It is addressed to Mahlubi Ntlakaza, a member of the prosecution team, as well as myself. It is from Advocate Anthony Mosing, who was Head of Special Projects in the Office of the National Director.

The subject, Final Cato Manor Indictment as modified by Advocate KR Mathenjwa, who was also a member of the prosecution team:

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

We had sent drafts to Advocate Mosing, and he was then commenting on the proposed corrections that were intended to be considered in respect of both the summary of facts in
10 the indictment as well as the prosecution memorandum.

On the 15th of August, at half past eight, Advocate Mahlubi Ntlakaza, who is a member of the team, was writing to the team members, Advocate Mathenjwa, Advocate Mlotshwa, Jabulani Mlotshwa at this time, Advocate Patience Moleko, Advocate Pumeza Futshane, and Lizzie Maphutha, who was the PA to Advocate Mathenjwa. I was copied.
Subject, Final Cato Manor Indictment as modified by Advocate Mathenjwa. So what happens is Advocate Mathenjwa here makes his written input:

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

But what he did was he sent his inputs on the documents, either on the prosecution memo, but I see here he was focussing on the enterprise.

So what you do is a document has been drafted, it is circulated, and whoever makes inputs then would make their inputs in colour in the documents that he has received. And Advocate Mahlubi Ntlakaza made valuable contributions to the development of the prosecution memo.

Chairperson, on the 15th of August 2012 at 12:02 in
10 the afternoon, it is myself, Sello Maema, sending an email to Advocate Mosing, Advocate Mathenjwa, the deputies. I have them separated there, and the other team members, Advocate Ntlakaza, Advocate Mlotshwa, Advocate Moleko, and Advocate Futshane. Subject, re-final Cato Manor indictments as modified by Advocate Mathenjwa:

“Dear colleagues, Anthony.”

Referring to Advocate Mosing:

20 “Anthony, I took a look at the proposed changes. It is more to complete the participants in the enterprise to include the perception organised crime accused. I have worked it into the indictment at the summary of the substantial facts and into the prosecution memo. You ask whether we are not repeating the same paragraph

in the summary of the case in the prosecution memo. I think it completes the introduction well, and it is not necessarily a repetition, although it has been mentioned in the introductory part. We have also added Lokem [?] and Van Tonder as managers of the enterprise. I will make contact with you today or tomorrow to bring hard copies. I have also done the prosecution memo on the KZN letterhead, although our DPP will sign as arranged with the acting DPP, KZN.”

So when I say our DPP, I was referring to Advocate Chauke, who would sign as it was arranged with the acting DPP in KZN:

“Thank you for your valuable contribution. We await your facilitation for approval of the racketeering certificates. Remember we require them next week. We apologise for putting you under pressure. Kind regards.”

When I said we need them next week, we were going to court in the next week. So we would have appreciated to receive the racketeering certificates when we are in the court in the ensuing week.

ADV NGCUKAITOBI SC: It seems this email in particularly discloses at the time that you yourself have drafted the letter and made a decision to do it in the name of Advocate Noko.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: And that Advocate Chauke would sign as arranged.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: So does that explain then this document that a big issue has been made out of, which is the
10 fact that Advocate Chauke has PP'd it with the arrow. That is its source.

ADV MAEMA: Chairperson, he had PP'd it because we anticipated we were going to court the next week. Otherwise what would have happened is that I would then have to carry all these documents, travel to KZN, wait for the DPP and then engage with the DPP there. When we have a DPP in the South Gauteng office, it was more for convenience that Advocate Chauke signs and then it gets transmitted to the National Director.

20 **ADV NGCUKAITOBI SC:** So when I first examined Advocate Noko on this, she said, look, at the time I was not even fully familiar with the facts of this case because I had just started.

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: Was that a factor?

ADV MAEMA: That was a factor. The person who was more

fully conversant to whom most of the reports were done with was Advocate Chauke.

ADV NGCUKAITOBI SC: Yes. Thank you. So that is what you are covering in paragraph 404, is to explain that this was PP'd but it was my decision.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: These are the reasons I took the decision.

ADV MAEMA: That is so, Chairperson.

10 **ADV NGCUKAITOBI SC:** You have now produced the original evidence of this.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Then paragraph 405, you deal with this matter being raised with Advocate Mosing.

ADV MAEMA: Chairperson:

20 “When the matter was subsequently raised with Advocate Mosing, he advised that the request for a racketeering authorisation was required to emanate formally from the DPP KwaZulu-Natal. Advocate Mosing thereafter addressed a memorandum to the Acting NDPP explaining that the initial transmission had been made in error attaching a corrected cover letter signed by the then DPP of KwaZulu-Natal,

Advocate Noko. The corrected cover letter constituted the operative request. The underlying prosecution memo and the draft indictment which reflected the collective evidential assessment of the prosecution team were signed by me as the responsible prosecutor and remained unchanged. A copy of Advocate Mosing's memorandum is attached as GSM79.”

10 **ADV NGCUKAITOBI SC**: That you will find at 1A-787. Thank you.

ADV MAEMA: That is correct, Chair. It is marked GSM79 in red.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: That is where Advocate Mosing then ...[intervenes].

ADV NGCUKAITOBI SC: Just read what he says there because again a lot has been made of this, but it is actually all easily explainable.

20 **ADV MAEMA**: Yes. Chairperson, it bears a stamp of the 27th of August 2012 of the Office of the National Director. It is from Advocate Mosing to Advocate Njiba, the Acting NDPP. Subject is the State v Booysen and Others. It is dated the 27th of August 2012:

“Application for directive in terms of

section 111 of Act 51 of 1977 as amended in sections 44 and read with section 223 of Act 32 of 1998. Dear, Advocate Jiba. A directive in respect of the abovementioned provisions have already been approved and signed by you in the above matter in respect of offences committed within the area of jurisdiction of the DPP North West. However, the application was erroneously submitted under the cover of the letter from the DPP South Gauteng instead of the DPP KZN. A new request has now been submitted under cover of the attached letter from the DPP KZN dated the 20th of August 2012. It is requested that the Acting National Director issue a new centralisation directive as per attached draft. It is noted that the consent from Advocate Smith SC is directed to the DPP KZN. The facts are otherwise unchanged. The omission is regretted. Kind regards, Advocate Mosing, Head of Special Prosecutions in the Office of the National Director.”

ADV NGCUKAITOBI SC: Yes. Now, when the error was

admitted at the time, not even, it is like within a couple of days they said, look, we made a mistake, please change this. What is the problem with this? Why is the current NDP, well, she is now gone. Why was she worried about this?

ADV MAEMA: It should not even have been an issue. The error was realised and it was corrected.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: So I do not see why there is any issue.

ADV NGCUKAITOBI SC: And the error would have been
10 made by yourself.

ADV MAEMA: That is so. And then I realised that the request must be issued on the correct letterhead.

ADV NGCUKAITOBI SC: And then when that was issued, it was signed.

ADV MAEMA: Yes, when that was issued, then it was signed. It was signed on the, the racketeering authorisations were signed on the 16th of August.

ADV NGCUKAITOBI SC: Now, then we have got paragraph 406, but that is the contents of the memorandum.

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

ADV NGCUKAITOBI SC: We have been dealing with extensively, so we do not have to deal with that. And it goes on to identify the accused at 412. We do not have to deal with that. And 413 and 414, yes. So up to 417. That is a summary of the racketeering prosecution memorandum.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: You confirm that that is correct. It is consistent with the memorandum.

ADV MAEMA: I confirm it is consistent with the memorandum and it is correct.

ADV NGCUKAITOBI SC: Yes. Now, then we have a scenario on the chronology in which Advocate Jiba is no longer the NDPP, Acting NDPP.

ADV MAEMA: That is correct.

10 **ADV NGCUKAITOBI SC:** Can you just explain how that transpired?

ADV MAEMA: I am just checking whether I deal with it in the...

ADV NGCUKAITOBI SC: No, you do not deal with it. But as I understand, the acting period ended and then a new NDPP was appointed.

ADV MAEMA: I think Mr Nxasana was then appointed as NDPP. And he would then commence, I think in October. He was appointed, his appointment was announced, but he would
20 then commence a month or two thereafter.

ADV NGCUKAITOBI SC: Yes, you deal with that at 420 of your statement.

ADV MAEMA: That is so, Chairperson:

“It is apposite to mention that Advocate Nxasana was appointed as NDPP not long

before the Govern J judgment was delivered on 26 February 2014. His appointment was announced on 1 August 2013 and it was effective from 1 October 2013.”

ADV NGCUKAITOBI SC: Yes, and then 421?

ADV MAEMA: 421:

10 “Given that Mr Nxasana was newly appointed, the prosecution team prepared a memorandum dated 5 March 2014 in order to enable Advocate Chauke to brief the NDPP.”

ADV NGCUKAITOBI SC: So this is now after the judgment of Judge Govern was given?

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: We have also dealt in this enquiry a lot with the judgment of Judge Govern, so I am not going to waste your time to analyse it. So it comes on 26 February 2014 and then on 5 March that is where you step in?

20 **ADV MAEMA:** Yes.

ADV NGCUKAITOBI SC: All right, and then what happens after?

ADV MAEMA:

“Given that Mr Nxasana was newly appointed, the prosecution team prepared

a memorandum on 5 March 2014 in order to enable Advocate Chauke to brief the NDPP. We advised Advocate Chauke that based on the concessions made by Advocate Hodes SC, the team's view was that the judgment should not be appealed, given that the Court did not foreclose the door on the NPA to re-issue their POCA certificates.”

10 **ADV NGCUKAITOBI SC**: Let us just go to your memorandum that you wrote, which is GSM82.

ADV MAEMA: I am there, Chairperson, at 1A-799.

ADV NGCUKAITOBI SC: What is this document?

ADV MAEMA: Chairperson, it is a document from the prosecution team directed to the DPP South Gauteng, Mr Chauke, where we then deal with the way forward having received the Govern J judgment.

ADV NGCUKAITOBI SC: What is the purpose of that document under section A?

20 **ADV MAEMA**: Under section A:

“The purpose of this memorandum is to update the National Director of Public Prosecutions and the head of NPAs following the judgment delivered by Govern J of KwaZulu-Natal High Court on

26 February 2014. The judgment is attached as Annexure A and the indictment attached as Annexure B. The prosecution team also seeks to inform the National Director of our intended course of action in the light of this judgment.”

At paragraph B, we dealt with the judgment of Govern J as it then was:

10 “In terms of paragraph 37 of the judgment, the applicant, Mr Booysen, was granted Prayers A, B, C, and D. In paragraph 40, the applicant was unsuccessful in respect of Prayer E of the notice of motion. In effect, this meant that the authorisation issued by the Acting National Director of Public Prosecutions on 17 August for the prosecution of the applicant on the racketeering charges and the decision to prosecute the applicant on the predicate
20 offences, Count 8 to 12, was set aside. The applicant had also sought to interdict the National Director from issuing new authorisations in respect of Prayer E. The Court dealt within paragraph 40 of the judgment and the Court found that making

such an order would amount to fettering on the discretion of the NDPP to make the decision in question. The applicant thus failed in this respect. The prosecution team intends to reapply for the racketeering authorisations as soon as possible.”

ADV NGCUKAITOBI SC: Just pause it there. Here again you are explaining to the reader that it is your decision to reapply for fresh racketeering authorisations.

ADV MAEMA: That is so. Our decision as a prosecution team.

ADV NGCUKAITOBI SC: You know that Advocate Chauke is charged with that here in this enquiry.

ADV MAEMA: It is surprising because the NPA knows who did that decision. The decision was that of the prosecution team, which I led.

ADV NGCUKAITOBI SC: Yes, but you said so in writing as early as the 5th of March 2014 as well.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: The reasons that are given for the decision that you have made to reapply for the reissuance of the racketeering certificates are from paragraph 5. What do you say the prosecution team's view of the judgment?

ADV MAEMA: The prosecution team's view of the judgment

at paragraph 5:

“Outside counsel were briefed by the State Attorney, namely Advocate Hodes SC, and Advocate Manaka to represent the Acting NDPP. At this stage, the team has not yet met with outside counsel who argued the matter in order to incorporate their views on the matter.”

Paragraph 6:

10

“The prosecution team, however, is of the view that there were crucial concessions which were incorrectly made by counsel during his argument.”

And we refer to paragraph 29 of the judgment. Paragraph 7:

20

“The concession in paragraph 29 was that there are no statements in the docket which implicated the applicant in any of these offences with which he has been charged. This was an incorrect concession as there are statements that implicate the applicant in the dockets. For instance, the Howick case 106/9/2008. The applicant arrived at the scene in a helicopter and congratulated the members who fired shots for the job very well done.”

In this matter it appears that the applicant was informing the tracing unit of the whereabouts of the deceased, which resulted in the deceased being located on the N3. This is made clear by the motivation for the monetary award which was submitted by the applicant.”

ADV NGCUKAITOBI SC: This is what we considered on day two of your evidence.

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

ADV NGCUKAITOBI SC: The monetary awards document of the 15th of October 2008.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Now, just your comment on the concession. Now, Advocate Hodes, we consulted with him and as far as I know he is still a keen witness for this Panel. He says he never made this concession and he even produced the transcript of the exchange in court which does not show that there was any concession made. Were you in

20 court when the matter was argued?

ADV MAEMA: Advocate Chauke was in court when the matter was argued.

ADV NGCUKAITOBI SC: I am asking you.

ADV MAEMA: I was not in court.

ADV NGCUKAITOBI SC: So you would not have personal

knowledge of whether the concession was made or not.

ADV MAEMA: Yes, but I agree that Advocate Hodes went to the extent of having the transcript of the argument transcribed and furnished us with it.

ADV NGCUKAITOBI SC: He also gave it to you?

ADV MAEMA: He also gave me a copy. I have a copy.

ADV NGCUKAITOBI SC: And you read it?

ADV MAEMA: I read it and I was convinced that no such concession was made.

10 **ADV NGCUKAITOBI SC**: But when you wrote the memorandum, you were basing it on the recordal of the concession in the judgment.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Thank you. Yes, carry on with paragraph 8.

ADV MAEMA:

20 “The prosecution team ...[indistinct] empowered counsel with copies of the statements on which the Acting NDPP based her decision. The Court was, however, not favoured with the copies of this copies. Instead, concessions which had the effect of discrediting the rationality of the decision were made. The copies of the relevant statement in the

dockets and two memoranda dated 4 June 2013 and 15 August 2013 in response to the applicant's papers were provided. See Annexure C and Annexure D attached hereto.”

Paragraph 9:

10 “The prosecution team was also not favoured with the affidavits prepared by counsel on behalf of the Acting NDPP to enable the team to correct or add the facts, which could have been lacking. For example, the deafening silence referred to by the judge in respect of the allegations of mendacity made by the applicant dealt with in paragraph 34 of the judgment.”

10:

20 “We feel, therefore, that the concessions were incorrectly made. This is the aspect which informs us that it is undesirable to appeal this matter.”

11:

“In terms of process, since we do not intend to appeal the judgment, we have the view that we should call upon the applicant to appear before the High Court

to formally withdraw the charges in the meantime pending an intended application to ...[indistinct] for a new authorisation.”

ADV NGCUKAITOBI SC: Yes. So, as I understand, your view at the time was, let us not appeal, but let us proceed with charging all of the accused.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: As we were confident and sure that we have
10 sufficient evidence justifying all the charges.

ADV NGCUKAITOBI SC: Yes. And it does not appear here that you were of the view that any further investigations had to be conducted. The evidence you had, you believed, was sufficient.

ADV MAEMA: Chairperson, what happens with a criminal case is that you continue with it until, and even after conviction, you continue. So, even though you hold the view that there is sufficient evidence to amount to a *prima facie* case, but the investigation continues until the matter is
20 finalised.

ADV NGCUKAITOBI SC: Yes. But, I mean, this is not one of those cases where one says, because it does not appear from your memorandum, where one says, okay, well, I am missing a witness that is crucial to complete an aspect of an element of a crime. Here, you believed you had all of the

right witnesses, all of the right evidence to prove your entire crime.

ADV MAEMA: That is correct, Chairperson. We are convinced that we have ticked all the books.

ADV NGCUKAITOBI SC: Yes. And the Sir that is referred to here is Advocate Nxasana.

ADV MAEMA: Say again, Chairperson.

ADV NGCUKAITOBI SC: When you say we will ...[intervenes].

10 **ADV MAEMA**: The Sir, yes.

ADV NGCUKAITOBI SC: We intend applying to you, Sir. That is Advocate Nxasana.

ADV MAEMA: That is Mr Nxasana.

ADV NGCUKAITOBI SC: Mr Nxasana, yes.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Okay. Then you deal with that under C.

ADV MAEMA: C, re-application for authorisation certificate.

12:

20 “The prosecution team intends to apply to the NDPP for the re-issuing of the certificate. We shall prepare a new memorandum which outlines in detail the evidence against the applicant.”

13:

“We are still firmly of the strong view that there are sufficient facts which justify the re-issuing of the repatriating authorisation.”

ADV NGCUKAITOBI SC: Yes. And again, this is the whole point now that has been put on Mr Chauke when it is so clear that you said you are the ones who are of the strong view that new certificates must be issued.

ADV MAEMA: Sadly, Chair.

10 **ADV NGCUKAITOBI SC**: On the same facts.

ADV MAEMA: But what I am saying is sadly that it should be attributed to Advocate Chauke when the NPA knows who made those decisions. It is us, the prosecution team.

ADV NGCUKAITOBI SC: Yes. Now once you wrote that memorandum in which you said, instead of appealing, a better thing to do is to re-issue on the same facts.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: You then at 4.22 of your statement then meet with Advocate Hodes. Is that correct?

20 **ADV MAEMA**: That is ...[intervenes].

CHAIRPERSON: Counsel, before you go to the next paragraph, 4.22, we propose to take a short break until half past. We would have 30 minutes to complete the day when you come back.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

CHAIRPERSON: We will adjourn for 10 minutes until half past and remember you are under oath.

ADV MAEMA: That is correct, Chair.

ENQUIRY ADJOURNS

ENQUIRY RESUMES

CHAIRPERSON: Good afternoon. Good afternoon, Advocate Maema.

ADV MAEMA: Good afternoon, Chairperson.

CHAIRPERSON: Advocate Chauke. You may proceed,
10 Advocate Ngcukaitobi. You continue to be under oath, Advocate Maema.

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: We will proceed until 5 o'clock.

GLADSTONE SELLO MAEMA: (still under oath)

EXAMINATION BY ADV NGCUKAITOBI SC (CONTINUES):

Thank you, Madam Chair. I need to just complete the motivation for the issuance of new racketeering certificates 1A-801. Are you still there?

ADV MAEMA: I am still here, Chairperson.

20 **ADV NGCUKAITOBI SC:** Now, remember you have given evidence just before we broke that this is your decision. You cannot follow why Advocate Chauke is charged with it, correct?

ADV MAEMA: Indeed, Chairperson.

ADV NGCUKAITOBI SC: Now, there is, if you look at the

part that should be a signature, this is unsigned. It says Cato Manor prosecution team, Director of Public Prosecution, South Gauteng High Court, Johannesburg. What is going on there?

ADV MAEMA: Well, the memo is the letter. The memo comes from the Cato Manor prosecution team, which are based or which are working from the DPP offices in South Gauteng. That is all it means.

ADV NGCUKAITOBI SC: Okay, I see.

10 **ADV MAEMA:** But the document that was submitted was signed.

ADV NGCUKAITOBI SC: Yes, by yourself.

ADV MAEMA: It was signed by my – I was signing all the documents out of the prosecution team.

ADV NGCUKAITOBI SC: So the fact that it says Director of Public Prosecution, South Gauteng High Court as the author of it does not mean he wrote it.

ADV MAEMA: Not at all. No, he did not write it. It was written by the prosecution team.

20 **ADV NGCUKAITOBI SC:** Yes.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Thank you. Now, you then go back, you have done this motivation to the Advocate Nxasana.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: You say, look, we are worried

about this concession. If it has been made, we have no case on appeal.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Then at 422, you go back to consult with the Advocate Hodes SC.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Just take us through that.

ADV MAEMA:

10 “The prosecution team consulted with the Advocate Hodes SC with regard to the concession referred to in the judgment. On the 13th of March 2014, during such consultation, Hodes SC advised us that he did not make the confession referred to in the judgment. He also offered to have the recordings of the hearing transcribed.”

However, paragraph 23:

20 “However, whilst the NPA was properly considering its position to prevent the lapsing of the *dies induciae*, the prosecution team and Advocate Chauke instructed the state attorney and Hodes SC to prepare an application for leave to appeal and to have it delivered urgently. Advocate Chauke undertook to brief the

National Office of the decision to appeal their matter. The application for leave to appeal is dated the 16th of March 2014, and I attach a copy thereto marked GSM83.”

ADV NGCUKAITOBI SC: Yes. Now, this is also one of the issues that are being put at the door of Advocate Chauke, the decision to institute a leave to appeal.

ADV MAEMA: Yes.

10 **ADV NGCUKAITOBI SC:** Yes. Now, your memorandum was that we should not appeal.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And it is dated, as I recall, on the 5th of March 2014.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And the leave to appeal is submitted on the 16th of March.

ADV MAEMA: That is correct.

20 **ADV NGCUKAITOBI SC:** And that is in relation to a judgment of the 26th of March.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: So this is very, very close, if not exactly, on the 15th day.

ADV MAEMA: It is very close to the 15th day, which is allowed to file a notice of appeal without filing a condonation

application.

ADV NGCUKAITOBI SC: Yes. After the 15th day, what happens if you have not appealed?

ADV MAEMA: You will have to, together with your application for leave to appeal, file a condonation.

ADV NGCUKAITOBI SC: And if your condonation is refused because you do not have a good reason?

ADV MAEMA: Then *cadit quaestio*, the matter ends.

ADV NGCUKAITOBI SC: Yes. Now, I just want to go back
10 to the discussion then, because your view is not no appeal,
but there is the risk that *dies* is lapsing.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: What actually happened? Just
enlightened us?

ADV MAEMA: What we did was we just held the view that,
perhaps, let us just file a notice of appeal. And we know that
it has to be filed in the name of the National Director. And
we knew that we had to bring him on board, but we felt we
might not have the luxury of time. The *dies induciae* might
20 lapse on us. And we might just have to file a condonation
application. So we decided, let us file this leave to appeal.
If he decides not in his name, then we just withdraw it.

ADV NGCUKAITOBI SC: Yes. Now, at this point, I want to
remind you of your letter of delegation that you had received
right at the outset on the 9th of March 2012. Did it include

the authority to institute a leave to appeal?

ADV MAEMA: It expressly included the authority to file an appeal.

ADV NGCUKAITOBI SC: And whose decision here was it that a leave to appeal must be instituted?

ADV MAEMA: It was our decision, the prosecution team, with the exclusion of Advocate Chauke.

ADV NGCUKAITOBI SC: Yes, but he was still mandated to approach the State Attorney.

10 **ADV MAEMA**: Chairperson, as the leader in the office, we thought it appropriate to ask him to approach the State Attorney.

ADV MAEMA: No, I understand. That is what you decided.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: But the question is one of authority. You have the authority because you have been given it expressly by Advocate Jiba.

ADV MAEMA: The delegation, yes.

20 **ADV NGCUKAITOBI SC**: Yes. It says it includes the power to appeal.

ADV MAEMA: It does.

ADV NGCUKAITOBI SC: And to oppose an appeal.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: And then you say to Advocate Chauke, I have decided we should appeal this. Please tell

the State Attorney.

ADV MAEMA: Yes, because institutionally the DPP is the one who does those communications.

ADV NGCUKAITOBI SC: Then the leave to appeal is GSM83, which is at page ...[intervenes].

ADV MAEMA: 1A-802.

ADV NGCUKAITOBI SC: 1A-802. If you could take us through that, that would be helpful. Not that you should read all of the grounds of appeal, but some of the salient ones.

10 Particularly paragraph 1, 2, 3, and 4, and 5. Because that was the central concern you had, why there should be no leave to appeal.

ADV MAEMA: That is so.

ADV NGCUKAITOBI SC: And then consulted with Advocate Hodes. And what was his view, by the way? I did not ask you that question. Advocate Hodes, did he think there was a good prospect or did he think there was no good prospect?

ADV MAEMA: He thought there was, he was in agreement with the view to appeal. He thought there was a good
20 prospect of success.

ADV NGCUKAITOBI SC: Carry on then with the grounds for leave to appeal.

ADV MAEMA:

“The grounds for leave to appeal are the following. Firstly, the learned judge

attributed various concessions to the applicant's counsel, which are unfounded by both the argument and the answering affidavit. At no stage was it conceded, as held in paragraph 24 of the judgment, that these decisions were subject to judicial review based on the principle of legality. The only concession that was made in argument by the applicant's counsel was that, as contained in paragraph 6 of the judgment, to the effect that this Honourable Court could have jurisdiction to hear this matter on the basis of the decision of *Estate Agents Board v Lek* 1979(3) SA 1048(A)."

10

Two:

"The applicant's counsel, having made this concession, still submitted that the correct court to determine these issues would be the trial court and that no basis had been made out for this court to have had this matter at this stage."

20

Three:

"The submission is borne out by the finding at paragraph 9 of the judgment that

a proliferation of applicants brought prior to a criminal trial...”

ADV NGCUKAITOBI SC: Applications, not applicants.

ADV MAEMA:

10 “...a proliferation of applications brought prior to a criminal trial must be discouraged. Additionally, the learned judge held that, in this narrow instance, this court was the appropriate forum and that the appropriate procedure had been adopted on the grounds that the issue raised in this matter was to question whether Mr Booysen can be charged with the two POCA counts which required a determination of the validity of the issuing of the authorisations, and further, that this application related to only one of a number of accused persons, consequently, could most conveniently be dealt with in a separate application which did not affect the conduct of the trial. Whereas, it is submitted that the trial court would be the best suited to determine this issue at the commencement of the trial, and would then do so in respect of all accused with a

20

view to avoiding a multiplicity or proliferation of such applications, for no basis existed to hold that it appeared to have been accepted that the fate of the second ...[indistinct] decision must follow that of the first one. They are separate and distinguishable decisions that have their own jurisdictional requirements.”

Five:

10 “No concession was made in argument by the applicant’s counsel and they had no statements contained in the docket implicated Booysen in any of the offences with which he has been charged. Nevertheless, at paragraph 29 of the learned judge held that the dockets could therefore not have provided a rational basis for arriving at the ...[indistinct] decision.”

20 **ADV NGCUKAITOBI SC:** Yes, so in the leave to appeal, it was expressly contested that no concession was made by ...[intervenes].

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Now, the leave to appeal is lengthy. I do not intend to take you there. I wanted to deal

only with the issue of the concession.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Now, in File 3 of the black file, now, you will find this issue of the concession addressed in an extract from the answering affidavit of Advocate Sean Abrahams, starting at page 259. Do you have 259?

ADV MAEMA: I am at 259, Chair.

ADV NGCUKAITOBI SC: Yes. If you can skip the pages to 266.

10 **ADV MAEMA**: I am at 266, Chair.

ADV NGCUKAITOBI SC: Yes. Under Roman figure two, the heading, alleged concessions by Hodes SC.

ADV MAEMA: I can see that, Chairperson.

ADV NGCUKAITOBI SC: Now, what did Advocate Abrahams say about this alert concession? Paragraph 164.

ADV MAEMA: Paragraph 164:

“The applicants herein, in their defence of the decision of Govern J, place considerable emphasis upon his finding that Jiba’s counsel made concessions, which they suggest should
20 be considered by this Court.”

165:

“But the examination of the transcript suggests that what is characterised as a concession made by Hodes, Jiba’s counsel, is at best ambiguous. At first

blush, Hodes in a truncated series of responses to questions from the Bench, does appear to concede that there was no evidence in the dockets linking Booysen to the offences. However, in a series of responses shortly thereafter, Hodes qualified his language in a manner that knocks the props from beneath the applicant's case and makes clear that he

10 did not convey what the applicants claim he did. Hodes made it clear that some of the evidence upon which Jiba relied had not been disclosed to Booysen. Jiba's had regard to a memorandum from the second respondent, which she was not prepared to hand over. There was far more implicating the applicants than just those four statements that she referred to, page 67, lines two to 20."

20 **ADV NGCUKAITOBI SC**: Paragraph 167.

ADV MAEMA: 167:

"Soon thereafter, the following exchanges appear in the transcript, attached hereto as 18."

This is now Govern J:

“An uncontested assertion is made by Booyesen that none of that evidence in the docket implicates the applicant. Do you accept it as an uncontested assertion? Mr Hodes then replies, I accept that it is uncontested, that that would be sick and that it is stated in this papers for the trial court to eventually decide. But I do accept that there is an intervention in page 67,
10 line 25, page 68, line 125.”

Paragraph 168:

“It is somewhat confusing language that is said to constitute a concession that the contents of the docket did not implicate Booyesen.”

169:

“Govern J followed up with the following question. Yes, that may be so, but uncontested assertion is that statements
20 in the docket do not implicate the applicant and that the question is whether there is information under oath so that it is what she says she has considered in arriving at the decision. Can there be a rational connection between the decision

arrived at and those things? Information under oath and statements in the docket, page 68, line six to 11. At 170, importantly, Hodes answered that there could indeed be a rational connection. I submit that there can, M'Lord. I accept that it was unchallenged, that in the applicant's view, he is not implicated in the statements in the docket. But what was made clear from the annexure, M'Lord, is that the entire docket was not furnished. Own emphasis added. Page 68, lines 12 to 20.”

10

171.

“Once Hodes had an opportunity to clarify what he had meant, it became clear that his concession was that it was indeed Booyesen's case that Booyesen was not implicated in the statements in the docket that had been produced by the NPA, but Hodes was at pains to make clear that Jiba had relied on inculpatory material in parts of the docket that were not produced. This material did link Booyesen with the underlying offences. If one has regard to

20

the contents of this paragraph and the subparagraphs, it is apparent that the first respondent was of the view that the statements in the docket do in fact implicate the applicants in the commission of the offences (page 72, line 17 to 20).”

172:

10 “Govern J was, with respect, wrong when he wrote this leave's four annexures to the answering affidavit mentioned above.

These are the only documents not contained in the docket on which the NDPP says she based the ...[indistinct] decision. She says that they are all statements made under oath.”

ADV NGCUKAITOBI SC: Yes, thank you. Now, I mean, if you just go back to the extract from the exchange in court at paragraph 171, where it is quoted that Advocate Hodes said:

20 “If one has regard to the content of those paragraphs and the subparagraphs, it is apparent that the first respondent was of the view that the statements in the docket do in fact implicate the applicant.”

The applicant there was Major General Booyesen in the commission of the offences.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: I mean, can it be said that a person who says the opposite has conceded that the docket does not contain statements that implicate the applicant?

ADV MAEMA: It cannot be justified, on a mere reading of that section.

ADV NGCUKAITOBI SC: Yes. Now, is this the information or was there any other information that Advocate Hodes presented to you to show that he did not make the concession
10 that the docket does not implicate Major General Booysen?

ADV MAEMA: Chairperson, all he did was he transcribed the argument and furnished us with the copy.

ADV NGCUKAITOBI SC: I see.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And you could read it for yourselves?
ENQUIRY INTO THE SOUTH GAUTENG DIRECTOR OF PUBLIC PROSECUTIONS' FITNESS TO HOLD OFFICE

ADV MAEMA: We could read for ourselves. It was typed. We could see that he did not make that concession.

ADV NGCUKAITOBI SC: Yes. Well, it seems he actually
20 said the opposite.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: He said the information in the docket does implicate.

ADV MAEMA: Does implicate the applicant, yes.

ADV NGCUKAITOBI SC: Now, you are now with your

counsel. You have decided, well, we should not appeal, but you thought in order to arrest *dies non*, we should appeal, but you have the authority. You get Mr Chauke to write to the state attorney. Correct?

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Yes. Now, that is what was dealt with at paragraph 423 of your statement. Then at 424, now that the application for leave to appeal has been served, what happens?

10 **ADV MAEMA:** Shortly thereafter, Mr Nxasana then issues an instruction that the application for leave to appeal must be withdrawn. On 26 March 2014, instructions were issued to the state attorney to withdraw the application for leave to appeal. A copy of the email to the state attorney is attached as Annexure GSM84.

ADV NGCUKAITOBI SC: Yes, 84. At page, it is shortly after the leave to appeal, at page 1A-825.

ADV MAEMA: Yes.

20 **ADV NGCUKAITOBI SC:** Just before you deal with that, who in fact prepared the leave to appeal? If you look at the email from Estelle on the 17th of March 2014, that is the second email on that same page.

ADV MAEMA: That is correct, on the bottom.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA:

“Attached, please find final leave to appeal to be served and filed on the 18th of March. Regards, Advocate Lawrence Hodes SC.”

It was counsel himself who prepared the leave to appeal.

ADV NGCUKAITOBI SC: Yes. And then the email we were trying to focus on the 26th of March 2014, at 1A-825, where is that email from?

ADV MAEMA: The email is from Advocate Chauke. It is sent
10 to Estelle, sent to nelsongovender@justice.gov.za, and then it is sent also to Advocate Moipone Noko.

ADV NGCUKAITOBI SC: Yes, and then what does it say?

ADV MAEMA:

“Good day, State Attorney Govender. On Tuesday, 25 March 2014, the NDPP has decided not to appeal their judgment in the Booyesen matter. Accordingly, the notice of application for leave to appeal must be withdrawn. Kind regards, NA Chauke,
20 Director of Prosecutions, South Gauteng.”

ADV NGCUKAITOBI SC: Yes. And again, when the instructions are coming from you, he is the conduit, but it seems also when they are coming from the top, he is also the conduit.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Yes, but he is criticised only in respect of one set of decisions and not the other.

ADV MAEMA: Not the other.

ADV NGCUKAITOBI SC: Now, then, once it has now been withdrawn on the 26th of March 2014, the leave to appeal has been withdrawn, but you are still of the view that fresh certificates must be reissued. Correct?

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: You are then called into a meeting
10 at paragraph 425.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Which was on the 7th of April 2014.

ADV MAEMA: That is correct, Chair.

ADV NGCUKAITOBI SC: What happened in that meeting?

ADV MAEMA:

“The prosecution then was then called into
a meeting with Mr Nxasana to update him
on the matter. The meeting was
scheduled for 7 April 2014. In preparation
20 for the meeting of 7 April, the prosecution
team prepared a PowerPoint presentation
with the intention to utilise the
presentation for purpose of briefing Mr –
briefing Advocate Nxasana on the matter.”

It must be Mr Nxasana on the matter. 427:

“In that meeting, Mr Nxasana informed the prosecution team that in his view, it was unnecessary to appeal the judgment as paragraph 39 and 40 of Govern J's judgment indicated that the NDPP was not precluded from issuing fresh authorisation certificate. He further directed that a prosecution memo be prepared requesting the issuing of authorisations in terms of POCA, and advised that once the memorandum was presented, he would recuse himself and delegate his decision-making functions in relation to the matter to Doctor Ramaite.”

ADV NGCUKAITOBI SC: Now, just explain that aspect of it, because the recusal is the first time it is coming in. What was the basis for the recusal?

ADV MAEMA: Well, he indicated that when he was an attorney in Durban, he had appeared for some of the Cato Manor members in some of the matters. So it would be, he might be conceived not to bring an impartial mind to bear on the merits because he had represented some of them in the past. He then indicated that he would delegate the decision-making to his deputy, Doctor Silas Ramaite at the time.

ADV NGCUKAITOBI SC: Yes, but the instruction was that

you should proceed with the application for a fresh racketeering certificate.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Then it seems there is something else he said in that meeting in paragraph 428.

ADV MAEMA: That is so, Chairperson:

10 “In that same meeting, Mr Nxasana also stated that in view of the fact that Advocate Simphiwe Mlotshwa was no longer the acting DPP, Advocate Noko was appointed as DPP of KwaZulu-Natal, there was no longer a need for Advocate Chauke to manage the prosecution team. He was to be removed from his role in the matter.”

ADV NGCUKAITOBI SC: Was he actually removed, Mr Chauke?

20 **ADV MAEMA**: Yes, he was actually removed in the meeting. I can remember him standing up in the meeting and leaving the meeting. I was actually sitting next to him, he was on my right.

ADV NGCUKAITOBI SC: Yes, and then at paragraph 429.

ADV MAEMA: 429:

“Advocate Nxasana directed that the full prosecution memorandum be presented by the end of May 2014. The prosecution

team prepared a memorandum signed by me and the application was forwarded by Advocate Noko to Advocate Nxasana on the 4th of June 2014. This memorandum is attached hereto marked GSM85.”

ADV NGCUKAITOBI SC: Yes, so we can have a look at that at 1A-826.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: What is that document?

10 **ADV MAEMA:** It is the prosecution memo that we prepared through which we are going to seek the re-issuing of fresh racketeering authorisations.

ADV NGCUKAITOBI SC: And then if you look at where it is signed, which is 1A-837.

ADV MAEMA: That is correct, Chairperson. Then there I sign in my capacity as a Deputy Director of Public Prosecution.

ADV NGCUKAITOBI SC: Yes. And we do not have to go through it. I mean, it is still aligned with your view that there
20 is still a strong case based on the existing evidence.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And new racketeering certificates must be issued.

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: Now, this is submitted on the 4th

of June. And then a month and a half later, there is an email referenced at paragraph 430. So what was the decision of Advocate Nxasana now that you have told him that our view is that we should press ahead with the prosecution?

ADV MAEMA: Mr Nxasana's view is that we should get more information.

ADV NGCUKAITOBI SC: Okay. Can you deal with paragraph 430 of your statement?

10 **ADV RAMAGAGA**: Maybe before he proceeds to that paragraph.

ADV NGCUKAITOBI SC: Thank you.

ADV RAMAGAGA: Advocate Maema.

ADV MAEMA: Chairperson.

ADV RAMAGAGA: It would appear from this prosecution memo that you signed that Advocate Nxasana, or rather, I beg your pardon, he is my colleague, Attorney Nxasana did not require the Director of Public Prosecutions of KwaZulu-Natal, whether acting or as a substantive prosecutor, to sign the memo asking for the issuance of the certificates.

20 **ADV MAEMA**: That is correct, Chair. He was not specific as to who it comes from.

ADV RAMAGAGA: It would be fair to say that it was not necessary for the prosecutor, the Director of Public Prosecutions, to sign the memo.

ADV MAEMA: That is so.

ADV RAMAGAGA: Thank you.

ADV NGCUKAITOBI SC: Thank you.

ADV BALOYI-MERE SC: Sorry, as a follow-up, from paragraph 428. No, 427. Mr Nxasana makes it clear that he might be conflicted. He does not want to take the decision.

ADV MAEMA: That is correct, Chair.

ADV BALOYI-MERE SC: And your evidence is that GSM85 was submitted to Mr Nxasana when, in fact, he had already indicated that he will delegate that function to Doctor
10 Ramaite.

ADV MAEMA: That is correct, Chair.

ADV BALOYI-MERE SC: And then Mr Nxasana comes back to you and says he needs more evidence. Does that mean that Mr Nxasana, contrary to what he said, that he will recuse himself, he still considered the prosecution memorandum and made a decision while he knew that there is a potential of a conflict of interest?

ADV MAEMA: Chairperson, what would happen is that in the deliberations that we have with the office of the NDPP, he
20 would be present and he would participate. So what I understood there for him to mean is he would participate in the deliberations, but coming to the signing of the racketeering authorisation, he would delegate that function to his deputy, Advocate Ramaite. Because then what would happen, it is a decision of the NDPP. but whether it is taken

by him or it is taken by his deputy, it would still be the decision of the NDPP. But he continued participating in the deliberations, Chairperson.

ADV BALOYI-MERE SC: My question is how do you, on one hand, say I might be conflicted because I have already represented some of the Cato Manor members, and then I will delegate this function to my deputy, but still continue to participate in the deliberation? Is that not a way of influencing the direction of the deliberations, especially if you
10 are aware that you are conflicted and you are an officer of the court?

ADV MAEMA: I agree, Chairperson, in a way it would. Strictly speaking, once he steps down and he says I am conflicted, I would have expected him not to be even part of the deliberations, but he continued to become part of the, he continued as part of the deliberations.

ADV BALOYI-MERE SC: That is bizarre.

ADV MAEMA: I agree, Chairperson, it is.

CHAIRPERSON: Do you want to complete this part up to
20 GSM86? We have to pause.

ADV NGCUKAITOBI SC: Yes. Madam Chair, yes, we might well pause because we still have a witness that we have told to wait for us, so we just need to complete that as well. And I see it is three minutes past five.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI SC: So if we could pause here, that would be appreciated.

CHAIRPERSON: So we will pause here at GSM85 at paragraph 429. Tomorrow you proceed from 430.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

CHAIRPERSON: Yes, thank you, Advocate Maema. Thank you very much. You are still under oath.

ADV MAEMA: Yes, Chair.

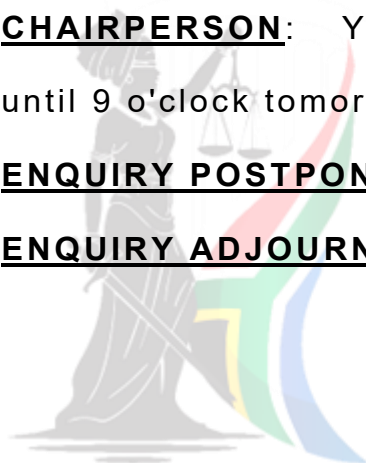
CHAIRPERSON: We will proceed tomorrow at 9 o'clock.

10 **ADV MAEMA:** That is correct, Chair.

CHAIRPERSON: You are still under oath. We will adjourn until 9 o'clock tomorrow morning.

ENQUIRY POSTPONED TO 19 FEBRUARY 2026

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