

**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**

19 FEBRUARY 2026

DAY 29



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

PROCEEDINGS ON 19 FEBRUARY 2026

CHAIRPERSON: A very good morning to all of you. Good morning, Advocate Maema. Good morning, Advocate Chauke. And welcome back, Advocate . You are sitting too far away. Why are you not sitting to your colleague? Advocate Mtsweni, should she not be sitting next to you?

ADV MTSWENI: Chairperson, I asked her that and I could not get an explanation. I am glad, maybe she has got a plausible explanation.

ADV NGCUKAITOBI SC: We do not want to know.

CHAIRPERSON: I see you have put the text NPA there. Is it? Yes. Perhaps that is the reason why she is sitting at the back. She is not NPA. We are just trying to get our house in order, Advocate Ngcukaitobi.

ADV NGCUKAITOBI SC: That is in order, thank you.

CHAIRPERSON: Is Advocate Mohlamonyane here?

ADV MTSWENI: He is in the building, Madam Chair, but he will not be joining us today.

CHAIRPERSON: And is that ...[intervenes].

ADV MTSWENI: No, these are my staff.

CHAIRPERSON: I would imagine that you should be sitting close to each other so that you can whisper to each other and confer with each other. Advocate Khooe, you are too far from your brother. You can copy from Advocate Chauke's team. You can see they are sitting as a very close-linked team. And

sometimes I see them having a conference.

ADV NGCUKAITOBI SC: Madam Chair, I would like to dismiss my junior.

CHAIRPERSON: He can sit at the other side of *Nthati Mkhabela*. Otherwise, everybody is good here? Our lady in front of us at the corner, are you good? We are happy to have you here every day. You lighten up our spurs. Good morning.

ADV MAEMA: Good morning once more, Chairperson.

CHAIRPERSON: You are still under oath, sir, and Advocate Ngcukaitobi, you may proceed.

GLADSTONE SELLO MAEMA: (still under oath)

EXAMINATION BY ADV NGCUKAITOBI SC (CONTINUES):

Thank you, Madam Chair. Good morning, Advocate Maema. Can I ask you to go back to paragraph 429, which is where we left the evidence-in-chief of your statement?

ADV MAEMA: I am there, Chairperson.

ADV NGCUKAITOBI SC: Yes. Now, if you recall where this is at right now, it is after Advocate Chauke has been instructed to step aside from the case by Advocate Nxasana. Correct?

ADV MAEMA: That is correct, Chair.

ADV NGCUKAITOBI SC: And from paragraph 429, you explain what Advocate Nxasana did pursuant to the removal of Advocate Chauke. So you can take us there.

ADV MAEMA: That is correct, Chairperson. In paragraph 429:

“Advocate Nxasana directed that a full prosecutorial memorandum be presented by the end of May 2014. The prosecution team prepared a memorandum signed by me, and the application was forwarded to Advocate Noko, was forwarded by Advocate Noko to Advocate Nxasana...”

Correction:

“...to Mr Nxasana on the 4th of June 2014. This memorandum is attached hereto as Annexure GSM 85.”

ADV NGCUKAITOBI SC: Yes. If we can go through that. There is something I wanted to ask you about this. The one, you kept on saying in your evidence, that even though the decisions were made by you, you felt that they always had to get the endorsement of a DPP.

ADV MAEMA: Of course, decisions are made by the prosecution team, but in terms of protocol, the prosecution authority in the province vests in the DPP, so the communication of the prosecution decision from the team would be channelled to the National Director via the DPP.

ADV NGCUKAITOBI SC: Yes. And is this how you dealt with you saw the role of Mr Chauke?

ADV MAEMA: That is how I saw his role, 100%.

ADV NGCUKAITOBI SC: And that did not change when Advocate Chauke was substituted by Advocate Noko?

ADV MAEMA: It did not change at all.

ADV NGCUKAITOBI SC: Yes. Because when you look at that memorandum, the prosecution memo, it starts at 1A-826, and the signature thereof is at 1A-837.

ADV MAEMA: That is correct, Chair.

ADV NGCUKAITOBI SC: You see that it is still signed by you.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Yes, but you are saying it was not sent by you to the National Director, it was sent by Advocate Noko.

ADV MAEMA: What happens is the prosecution memorandum is the memorandum of prosecutors, so it will not be signed by the DPP.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: But the communication attaching the prosecution memo being forwarded to head office will be done under the covering letter of the DPP.

ADV NGCUKAITOBI SC: Yes, that is the point. That does not make it Advocate Noko's memorandum.

ADV MAEMA: It completely does not make it. It remains the prosecutor's memorandum.

ADV NGCUKAITOBI SC: And the same applies to Mr Chauke. When he forwards the memorandum, it is not his memorandum, it is your memorandum.

ADV MAEMA: 100%, Chairperson.

ADV NGCUKAITOBI SC: Yes. Thank you very much. Then, from paragraph 430, what do you deal with there?

ADV MAEMA: Paragraph 430, Chairperson, I deal with an email. In an email sent on my behalf on 14th of July, I had contacted Advocate Noko via email to state that the file submitted to the National Director, Mr Nxasana, contained witness statements from Colonel Aiyer, Bhekinkosi Ndondlo, Simphiwe Mathonsi, Andrew Carsten Cochrane, Commissioner Brown, and Nkosinathi Hopewell Shozi, as well as the High Court application by Mr Mkhize, and documents regarding the monetary awards.

ADV NGCUKAITOBI SC: Yes. Carry on right up to 432.

ADV MAEMA: At 431:

“I further stated that General Johan Booyesen is charged with racketeering on the basis that, as head of the Durban Organised Crime, and as successor to Colonel Aiyer, he managed the operation of Serious Violent Crime by providing resources, approving operations, and holding management meetings, and

further participated in the predicant offences by supplying information to tracking teams concerning the movements of suspects, including Magojela.”

432:

“I also stated that I reviewed the prosecution team's briefing and supporting documents, and was satisfied that there was a strong case for charging Booyesen, and recommend that the racketeering certificates be authorised. The email is attached hereto as Annexure GSM86.”

ADV NGCUKAITOBI SC: Yes. Is that the email at 1A-832?

ADV MAEMA: The email at 1A-838.

ADV NGCUKAITOBI SC: 838, correct. Yes, GSM86.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Can you take us through that email? It is from Tertia T Van Biljon.

ADV MAEMA: Tertia Van Biljon was the PA to the DPP:

“Dear, Advocate Noko. The file was handed to the NDPP...” ...[intervenes].

ADV NGCUKAITOBI SC: Which DPP now?

ADV MAEMA: That is the DPP in the North West where I am based.

ADV NGCUKAITOBI SC: I see, but the subject matter is proposed response to the NDPP's question. What does that mean?

ADV MAEMA: This was on the 14th of July 2014. So what had happened was, with the presentation that we had done to the NDPP, there were some questions that were asked and we were dealing with those questions.

ADV NGCUKAITOBI SC: And this was now Advocate Nxasana?

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: Because we know there had been a meeting where Advocate Chauke was removed.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And that meant you said you saw him walk out because he was sitting on your right.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: And were those questions raised in that meeting?

ADV MAEMA: Those questions were raised in that meeting.

ADV NGCUKAITOBI SC: And what questions were those?

ADV MAEMA: Chairperson, Mr Nxasana had indicated that he was not satisfied with the strength of the state case. So what we needed to do was to draw specific portions of the case to his attention, just as highlights to show how the accused, particularly General Booyen, was linked to the

case.

ADV NGCUKAITOBI SC: Was that linked to the judgment?

Because at that point, when he came in, he came in in a storm of a judgment.

ADV MAEMA: That is correct. When the judgment had nullified the racketeering authorisations.

ADV NGCUKAITOBI SC: What I am saying is his questions to you about the lack of satisfaction.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Were they connected to the judgment at all or not?

ADV MAEMA: They were connected to the issues that were raised in the judgment.

ADV NGCUKAITOBI SC: So he says to you, I need you to explain to me how you are dealing with the issues raised in the judgment.

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: And I need to be satisfied that we have got a good case.

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: So that is what it means when it says NDPP's question.

ADV MAEMA: Yes, yes.

ADV NGCUKAITOBI SC: Thank you. And then what were you trying to say to him?

ADV MAEMA: We were trying to show to him by drawing his attention to specific statements in the dockets that shows the role that General Booyesen had taken in the matter.

ADV NGCUKAITOBI SC: So he was interested only in General Booyesen?

ADV MAEMA: Chairperson, at that stage, it was the racketeering charges, including General Booyesen, that were set aside. So we wanted to have him added back on the case. So the focus was specifically on how he was linked with the charges.

ADV NGCUKAITOBI SC: Yes, and I understand. I mean, you had so many accused. That is the point I am making. And I am trying to understand why the NDPP would only be interested in General Booyesen because we know that even Advocate Batohi was only interested in General Booyesen.

ADV MAEMA: Chairperson, at that time, the focus was the charges had to be withdrawn on the basis of the Govern judgment, withdrawn against General Booyesen. In respect of the balance of the accused persons, the matter was still on the roll. So what we had to do was to convince the National Director that we still have a case against General Booyesen and we are trying to convince the National Director to consider reissuing the racketeering authorisations. As paragraph 39 of Govern J's judgment indicated, that if there is additional information, nothing prevents us from re-

enrolling the matter.

ADV NGCUKAITOBI SC: And I would have imagined that the racketeering certificate applied to all of the accused that were charged with 2(1)(e) and 2(1)(f).

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, but that comes back to this point. It seems here that the NDPPs tend to isolate General Booyesen and he becomes the subject of attention.

ADV MAEMA: That is correct. They tend to want to find out where is the evidence that links him.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: When it is actually the racketeering offences and the predicate offences that all go along, that are intertwined.

ADV NGCUKAITOBI SC: All right, thank you. The letter then says, dear Advocate Noko, can you explain why it says, dear Advocate Noko, but you are responding to the NDPP? Your email.

ADV MAEMA: What happened, if you go to the next page, 1A-839, you will see forwarded on behalf of GS Maema.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: So, because Advocate Noko at the time was our coordinator, it had to go through her first, and then she would forward it to the National Director, including any additions that she might wish to add.

ADV NGCUKAITOBI SC: Is this part and parcel of the way you worked, that every time you need to communicate with the NDPP, it is via the DPP?

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Every time you need to communicate with the NDPP, it must go through the DPP.

ADV NGCUKAITOBI SC: Thank you. And then you say the file that was handed on, can you just explain that? Handed to, rather.

ADV MAEMA:

“The file that was handed to the NDPP on Thursday the 26th of June contained the following witness statements...”

And I list the statements. Colonel Aiyer's statement dated the 3rd of August 2012, 31 August 2012, as well as 13 March 2012. The statement of Bhekinkosi Ndlondlo Mthiyane dated 31 July 2012, Simphiwe Matonzi dated 15 March 2012, Andrew Carson Cochrane dated 6 May 2012, Commissioner Brown dated 8 May 2013 and 9 May 2013, Nkosinathi Hopewell Shoji dated 31 August 2012, and 15 March 2013, the High Court application by Mr Mkhize, and monetary awards. And then I deal with the legal basis for charging General Booyesen.

ADV NGCUKAITOBI SC: Yes, can you deal with that as

well?

ADV MAEMA:

“In respect to the racketeering charges, General Booyesen replaced Colonel Aiyer, who was the head of Durban Organised Crime. He managed the operation of the Serious Violent Crime Unit, as we see based at Cato Manor, directly by, among others, providing resources, approving their operations, and hold regular management meetings with them. We will elaborate in the prosecution memo.”

ADV NGCUKAITOBI SC: Just to stop there. The one part that has not come out clear so far is the fact that he actually held regular management meetings with them.

ADV MAEMA: Yes, he did hold regular management meetings with them at Cato Manor. He would leave the provincial office and come to Cato Manor to plan and to regularly engage with them.

ADV NGCUKAITOBI SC: And what was the source of that evidence?

ADV MAEMA: The witnesses that we spoke to, Colonel Aiyer, who was completely sidelined and ignored by both the Provincial Commander, General Booyesen, as well as the SVC team that was supposed to be reporting to him.

ADV NGCUKAITOBI SC: Thank you very much. Then you deal in B with predicate offences.

ADV MAEMA: That is correct, Chairperson. Predicate offences:

“General Booysen took part actively as a participant in the commission of the offences by directly or indirectly supplying information to the tracing team of the whereabouts of the suspect. For example, when Magojela was traced, he provided information relating to his movement out of Pietermaritzburg and the vehicle that he was using. We will elaborate more in the prosecution memo.”

ADV NGCUKAITOBI SC: Is this what we dealt with extensively three days ago?

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Carry on.

ADV MAEMA:

“I have received a full briefing from the prosecution team and perused the documents that they supplied me. I am convinced that they make a good case for Booysen to be charged and recommend that the racketeering certificates be

authorised. In relation to your interventions, I understand...”

ADV NGCUKAITOBI SC: Stop here. What do you mean, your interventions?

ADV MAEMA: It would refer to the role that the NDPP was playing to try and understand and to try and to question us and to ...[intervenes].

ADV NGCUKAITOBI SC: You deal with it after the comma.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: You say, I understand it.

ADV MAEMA:

“In relation to intervention, I understand it to refer to Advocate Chauke's interventions in court. When counsel who represented the then-acting NDPP made wrong concessions in court during argument, I am informed that Advocate Chauke then approached counsel and corrected him. The court adjourned after the applicant's response. Counsel indicated that the corrections will be made after the adjournment. The court then adjourned without affording counsel the opportunity to rectify the concessions made.”

ADV NGCUKAITOBI SC: What is this referring to?

ADV MAEMA: This is referring to the time when Advocate Laurance Hodes was arguing in court. My understanding was when the Court asked – we do not have any statements linking the accused to the case.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: When he started, he said, yes. When you say yes, his view was that, well, I hear what you are saying. Then he would continue to explain. But when you start your response with yes, then it gives the impression that you agree with the Court that there is no evidence linking General Booyesen to the case. Because his explanation to us was, when he responded in the affirmative to what the Court was asking him, he was saying, yes, I follow. Then he would continue to give an explanation. But then the Court understood that to mean, yes, there is no evidence linking General Booyesen to the case.

ADV NGCUKAITOBI SC: We went through that yesterday. We saw in the end where it is explicit that the advocate said that there is evidence linking General Booyesen. But here I am more focused in Advocate Chauke.

ADV MAEMA: Okay.

ADV NGCUKAITOBI SC: Remember that he is charged in these proceedings, among others, for the role he played in the opposition to the review that was brought by General

Booyesen. Now, what is puzzling here is that there is a man sitting in court. There is an advocate who is making a wrong concession. One of the staff from the NPA goes to correct them. I do not understand why he then gets charged. It seems to be a good thing for the NPA.

ADV MAEMA: In fact, he is making the NPA look good. He is preventing the NPA from making a mistake.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: It is supposed to be applauded instead of it being looked at in a negative connotation.

ADV NGCUKAITOBI SC: It is unclear what they say he should have done. He is sitting in court. There is an argument that a wrong concession is made. What is he expected to do?

ADV MAEMA: In fact, it was very brave of him to approach. He could not fold his arms and let a wrong concession be made.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: It was proper of him to have done what he did.

ADV NGCUKAITOBI SC: Thank you. Then we have dealt with the statements from 429 to 432. Unless there is something you feel has been left out, we can move on to the next era, which is the era of Advocate Abrahams.

ADV MAEMA: That is correct, Chair. We can move on.

CHAIRPERSON: Advocate Ngcukaitobi, just out of interest, you will probably remember the authority or the pronouncement by the Court regarding concessions made by counsel in court. You may just ask your junior to search for that Constitutional Court authority, which may be of assistance at a later stage.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. Let me, Advocate Maema, test your legal knowledge. Is a legal concession made by counsel in court binding on the client?

ADV MAEMA: No, it is not.

ADV NGCUKAITOBI SC: Thank you. It seems your legal knowledge is excellent. Thank you, Madam Chair. Actually, we have noted this. Now, from section (iii), paragraph 433, you deal with the Abrahams' authorisation, but you first deal with the transition from 433, which is largely common cause. We know the circumstances in which an Advocate Nxasana vacated office.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: It is through litigation, and there is a reported judgment of the Constitutional Court. The result was that Advocate Abrahams replaced him on the 18th of June 2015. That is all common cause, unless you want to comment on that.

ADV MAEMA: That is common cause.

ADV NGCUKAITOBI SC: Yes. What then happened when

Advocate Abrahams came into the scene in relation to the prosecution of this case?

ADV MAEMA: Chairperson, on his resumption of office, because we believed that we had a case, we also made a presentation to him. We also furnished him with the dockets on his request. We waited and waited, and I think it was in 2016.

ADV NGCUKAITOBI SC: Yes, but did he ask you to make those? Did he ask for a briefing on the case? How did it happen practically?

ADV MAEMA: Yes. No, no. When he came to office, he did not only ask for a briefing. Because at that stage we were based in the DPP office in South Gauteng, then he directed that we should be based at national officer, at his office, so that we can deal not only with this matter, but with other challenging matters that he had in his office.

ADV NGCUKAITOBI SC: So he took your entire team from Johannesburg to Pretoria?

ADV MAEMA: That is correct. He took some of the team members, myself and Advocate Mathenjwa, we then worked from head office.

ADV NGCUKAITOBI SC: You see, Advocate Chauke is also charged in these proceedings for an attempt to have these charges against Cato Manor reinstated during the era of Advocate Abrahams.

ADV MAEMA: That is correct, Chair.

ADV NGCUKAITOBI SC: Is that factually true?

ADV MAEMA: It is factually untrue. It is actually the prosecution team that was trying to have the charges against General Booysen reinstated. Because we felt, we were convinced that it is the right thing to do.

ADV NGCUKAITOBI SC: What role did he play, Advocate Chauke?

ADV MAEMA: Nothing at all. Because at that stage, then we were at head office, there was no need for him to have any role.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Because then we could brief the National Director directly. Some of the instances, he would just walk into your office. So we had direct access to the National Director.

ADV NGCUKAITOBI SC: Yes. So he is asking for a briefing, and then what happens?

ADV MAEMA: He asked for a briefing. We gave him the briefing. We waited and waited and waited. And then one of the Mondays when I returned from a part heard that I was dealing with in the North West, Advocate Mathenjwa then informed me that the racketeering authorisations were signed.

ADV NGCUKAITOBI SC: Let us just go through it in a

sequence because you deal with it sequentially from Paragraph 434.

ADV MAEMA: Chairperson, on 17 August 2014, I ...[intervenes].

ADV BALOYI-MERE SC: Sorry to interrupt. Before he goes, he reads Paragraph 434. At Paragraph 433, he refers to Mr Nxasana as Advocate. Is it a typo, an error, or does it need to be corrected? Or at that time, Nxasana has been admitted as an advocate?

ADV MAEMA: Chairperson, Mr Nxasana was an attorney, but ordinarily because his predecessors were advocates, everybody just refers to him as Advocate Nxasana, but he is Mr Nxasana. He is an admitted attorney.

CHAIRPERSON: Remember I asked you the question yesterday, and you referred to him, you said he is not an advocate, he is an attorney.

ADV MAEMA: That is correct.

CHAIRPERSON: And I see in several paragraphs you refer to him as an advocate, and I get confused. There is clearly a difference in that, Advocate Maema.

ADV MAEMA: There is clearly a difference, but all of us just fall into the same trap of referring to anybody in the head office as advocate when there are those that are rightly there in their capacity as attorneys.

ADV NGCUKAITOBI SC: Your statement refers throughout

actually to Advocate Nxasana. I personally always thought he was Advocate Nxasana, but anyway, until these proceedings.

ADV MAEMA: No, he is proudly an admitted attorney, Mr Nxasana.

ADV NGCUKAITOBI SC: That will have to be corrected. That was the question asked by Advocate Baloyi-Mere. Is that a typo, or does it need to be corrected?

ADV MAEMA: It is a typo. It is a typo, and I apologise. I did not pick it up. Chairperson, I was focussing more on the content rather than on the...

CHAIRPERSON: So you will refer to him as Mr Nxasana.

ADV MAEMA: Mr Nxasana, that is correct, Chairperson.

ADV NGCUKAITOBI SC: Thank you. So you were at 434.

ADV MAEMA:

“Mr Nxasana vacated office in May 2015.

Advocate Abrahams was appointed on 18 June 2015.”

Paragraph 434:

“On 17 August 2015, I prepared another prosecution memorandum with a draft indictment that was to accompany the new POCA authorisations that were prepared by Advocate Noko on 18 August against General Booyesen and other accused.”

Chairperson, as I prepared by Advocate Noko, I would do the typing and the preparation, and then I will present them to the DPP for consideration.

ADV NGCUKAITOBI SC: Yes, I mean, we know now from the evidence of Advocate Noko that at this stage, she says she was fully familiar with the case and she was happy to endorse the motivation for the issuance of fresh racketeering charges.

ADV MAEMA: That is correct, Chairperson. At 435:

“On 27 August, the prosecution team made a presentation to guide Advocate Abrahams through the evidence. The presentation document, which is dated 9 July 2015, is attached hereto us as Annexure GSM87.”

ADV NGCUKAITOBI SC: Yes, let us just look at that. It is at 1A-840.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes, there are those names there. Who are those people?

ADV MAEMA: Chairperson, the names, Advocate Sello Maema, Advocate Mathenjwa, Advocate Jabulani Mlotshwa, Advocate Mahlubi Ntlakaza, Advocate Matshidiso Moleko, Advocate Pumeza Futshane, those were the members of the prosecution team. And on the side there, I wrote Advocate

Moipone Noko, the DPP in KZN, who was at the time the supervisor of the team.

ADV NGCUKAITOBI SC: Yes. So it is dated 9 July. So is that when it was drafted versus the 27th of August 2015, which is where you say it was presented? So I am not sure. Yes, just clarify the dates.

ADV MAEMA: Chairperson, my recollection was that it was presented on the 9th of July 2015.

ADV NGCUKAITOBI SC: Yes, I mean, your statement says it was presented on the 27th of August.

ADV MAEMA: It would have been presented on more than one occasion, but the first time that it was presented was 9 July 2015.

ADV NGCUKAITOBI SC: Okay.

CHAIRPERSON: Was the presentation not made on 27 August 2015?

ADV MAEMA: There was also a presentation made on 27. The same presentation was also made. Chairperson, what we do is we will do a presentation, and when there are issues that we have to deal with, we will return with the same presentation and then deal with the issues that were raised in the presentation.

CHAIRPERSON: Let me understand this. The presentation document was dated 9 July.

ADV MAEMA: That is correct, the slide presentation.

CHAIRPERSON: Yes. It is dated 9 July, and the actual presentation was made on 27 August 2015.

ADV MAEMA: Chairperson, we presented on the 9th of July as well as the 27th of August 2015.

CHAIRPERSON: When did you prepare that presentation?

ADV MAEMA: The one for 9 July? This very presentation?

CHAIRPERSON: Were there two slides prepared? Or separate presentations prepared?

ADV MAEMA: It was the same slide. So the same slide, Chairperson, that we presented on 9 July, we also presented on 27 August. Except that on 27 August, we dealt with the issues that were raised in the July presentation.

CHAIRPERSON: You see, what is confusing to me is that this presentation is dated 9 July as if it was made on the 9th of July 2015, the way I read the second sentence. And then the first sentence, it says the presentation was made on 27 August. That is where I get confused, but just explain to us that paragraph 435. Maybe you can read it before, and then just explain to us.

ADV MAEMA:

“On 27 August, the prosecution team made a presentation to guide Advocate Abrahams through the evidence. The presentation document, which is dated 9 July, is attached hereto as GSM87. We

also handed Advocate Noko's first application for authorisation and my original prosecution memorandum to Advocate Abrahams."

ADV NGCUKAITOBI SC: That is the point, is it not? It seems that what happened is that the presentation itself was drafted on 9 July 2015, but the actual talking to it was on 27 August 2015.

ADV MAEMA: Chairperson, I will have to check, but my...

ADV NGCUKAITOBI SC: What do you need to check?

ADV MAEMA: I just wanted to go to my notes.

ADV NGCUKAITOBI SC: Go to your notes.

ADV MAEMA: Chairperson, on this note, I think now it is getting more confusing. Presentation NDPP, 7 April 2014. 60 slides.

ADV NGCUKAITOBI SC: That is irrelevant to Advocate Abrahams.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: That is irrelevant because Advocate Abrahams was not in office by then.

ADV MAEMA: This is the presentation to Mr Nxasana.

ADV NGCUKAITOBI SC: Yes, but this is about the presentation to Advocate Abrahams. Yes, that is what I am dealing with.

ADV MAEMA: You are talking about a presentation in 2015.

This book ends at 14 June 2015. The only book that could help me is this one, but my notes on this book ends on the 14th of June 2015.

ADV NGCUKAITOBI SC: Yes, but could I probably assist you? If you go to GSM88, it seems clear that the presentation was on the 27th of August because if you look at the next annexure, you give further information that was requested.

ADV MAEMA: On GSM88?

ADV NGCUKAITOBI SC: Yes. If you look at GSM88, which is at page 1A-899.

ADV MAEMA: I am there, Chairperson.

ADV MAEMA: There it is under the tramlines:

“Notes and comments after the briefing session to the National Director of Public Prosecution on 27 August 2015.”

ADV MAEMA: Yes, now it makes it clear.

ADV NGCUKAITOBI SC: Can we go back then? I think you ended up confusing yourself unnecessarily.

ADV MAEMA: Yes.

CHAIRPERSON: And confusing us.

ADV MAEMA: In the process. In the process, Chairperson.

CHAIRPERSON: But it is now clear. Thank you for that.

ADV NGCUKAITOBI SC: Thank you very much. Now, I wanted to take you to the actual presentation, which is at 1A-840.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: I am there, Chairperson.

ADV NGCUKAITOBI SC: And then we were still at the front page, asking who those people are, and you have explained who they are.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Now, is there anything in the presentation? I mean, you have spoken extensively about these charges, but is there anything in the presentation that you wish to emphasise, that you told Advocate Abrahams?

ADV MAEMA: Chairperson, we went through the entire presentation, just as it is. On all the dockets, on the incidents, we will freeze it there and then deal with it. Yes, we went through the presentation as it is.

ADV NGCUKAITOBI SC: And what was his attitude?

ADV MAEMA: His attitude at the time was he will consider it and then he will revert back to us.

ADV NGCUKAITOBI SC: Yes. Now, you move on from there at paragraph 436, where you explain what he said to you.

ADV MAEMA: Yes.

“Advocate Abrahams advised that he was not prepared to authorise the issue of the POCA certification at that time, and informed the prosecution team that he

wanted additional information to be obtained and investigations pursuant thereto be conducted.”

ADV NGCUKAITOBI SC: Now, that is the next annexure that I had to ask you to refer to.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Yes, which is at 1A-899. Just take us through those items that he was concerned should be given before he issued the before considering to issue the racketeering authorisation.

ADV MAEMA: Chairperson, the issues are dealt with in GSM88.

ADV NGCUKAITOBI SC: So what is GSM88?

ADV MAEMA: GSM88 is a memo that the prosecution, that I prepared as the lead of the prosecution team towards Advocate SK Abrahams to deal with the issues that were raised in the presentation on 27 August 2015.

ADV NGCUKAITOBI SC: Yes. Okay, and what is the heading there in the tramlines?

ADV MAEMA: In the tramlines:

“Notes and comments after the briefing session to the National Director of Public Prosecutions on 27 August 2015.”

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA:

“Pursuant to the briefing to the National Director of Public Prosecutions regarding the authorisations of the racketeering certificate, Mr Mlotshwa, a team member, was tasked to compile a list of outstanding documents, investigations, to enable the National Director to advance the matter with the National Commissioner.”

ADV NGCUKAITOBI SC: Who is the National Commissioner referred to here?

ADV MAEMA: In 2015.

ADV NGCUKAITOBI SC: No, but it is National Commissioner of what?

ADV MAEMA: National Commissioner of Police.

ADV NGCUKAITOBI SC: Okay, so whoever was the National Commissioner of Police in August 2015?

ADV MAEMA: Who was the National Commissioner in 2015?

ADV NGCUKAITOBI SC: No, I am not asking you to remember who it was. We can find that information out.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: I am saying that what he is talking about is that he will be engaging with the National Commissioner of Police.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: For what purpose?

ADV MAEMA: In relation to the parts of the documents that he was not happy with. The organisational structure of the KZN, the entire police management structure, the Organised Crime facet thereof, as well as specifically the Durban Organised Crime.

ADV NGCUKAITOBI SC: Yes. All right, carry on. Minutes. Well, here it says, herewith are the outstanding documents. What were those outstanding documents?

ADV MAEMA: Those outstanding documents were minutes of the meeting at the Provincial Commissioner's level regarding the operational successes and shooting incidents involving Cato Manor Serious Violent Crime.

ADV NGCUKAITOBI SC: Yes. Now, just on that issue of shooting incidents involving the Cato Manor SVC, I mean, in this particular case, we are dealing only with a portion. But what was the actual scope or scale of the shooting incidents?

ADV MAEMA: Chairperson, I do not follow the question.

ADV NGCUKAITOBI SC: In this case, your indictment deals with a limited number of shooting incidents involving Cato Manor SVC.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: But what was the actual scale of the shooting incidents? Was it broader?

ADV MAEMA: The scale was far too broader, as I indicated earlier. So what we did was we focused on those incidents

where we were of the view that we would be able to bring evidence before the Court that shows who participated in those incidents.

ADV NGCUKAITOBI SC: Yes, but this here is broader when it says shooting incidents involving the Cato Manor SVC.

ADV MAEMA: It is broader, yes.

ADV NGCUKAITOBI SC: They have shot a lot more people than they have been charged for?

ADV MAEMA: No, they have shot a lot more people. We saw a lot more dockets than we decided to charge them on.

ADV NGCUKAITOBI SC: Yes, thank you. Item 2.

ADV MAEMA: Item (ii):

“The structures of the Organised Crime units nationally and provincially, as well as the names of the responsible incumbents in KwaZulu-Natal.”

ADV NGCUKAITOBI SC: And what was the importance of this information?

ADV MAEMA: The importance thereof was to see where to zoom in with the enterprise.

ADV NGCUKAITOBI SC: Okay.

ADV MAEMA: To see whether – because the debate that we had was, is this the Provincial Organised Crime as it is the entire structure, or is it the Durban Organised Crime portion of the entire KZN Organised Crime? And as I say, after

debating and after looking at most of the information and look at how the events unfolded on the scene, we decided to zoom on Cato Manor SVC as the enterprise.

ADV NGCUKAITOBI SC: Yes, but this information was necessary to enable you to unearth precisely what the responsible unit is.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Item 3.

ADV MAEMA: Item 3:

“The police standing orders regarding outside operations when a police unit or police officer is operating outside his or her area of jurisdiction.”

ADV NGCUKAITOBI SC: Why was this important for Cato Manor?

ADV MAEMA: It was important because there were lots of incidents in KZN, but there were some of the incidents that were outside KZN. So what we wanted to see was, were internal processes followed when operations were going to be undertaken outside KZN? For instance, the operation that they conducted in Rustenburg, there was also another operation where, you know, they would pursue the people that they wanted, wherever they are. But we just wanted to make sure that when they operate outside the province, have they followed the standing orders, have they followed the internal

processes.

ADV NGCUKAITOBI SC: Places like Tembisa, Heidelberg.

ADV MAEMA: Heidelberg, yes.

ADV NGCUKAITOBI SC: Yes, those ring a bell?

ADV MAEMA: Yes, yes, they do. They do ring a bell.

ADV NGCUKAITOBI SC: I mean, what would be a reason for a Cato Manor unit to drive from Durban to kill a person in Heidelberg?

ADV MAEMA: Yes, but that was what they were doing. Heidelberg is still nearer. Rustenburg in the North West where one of the incidents took place, I mean, it is really very far.

ADV MAEMA: Or to kill a person in Tembisa.

ADV MAEMA: To kill a person in Tembisa, yes. It is outside their jurisdiction.

ADV NGCUKAITOBI SC: Or to kill a person in Midrand.

ADV MAEMA: That is correct. We saw those incidents.

ADV NGCUKAITOBI SC: When you say where the correct procedures followed, I mean, what did you discover? It is unclear because the point that you ultimately arrived at is this is a killing machine. This entire thing is a killing squad.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: That is why it goes anywhere to kill a person and then go back.

ADV MAEMA: That is correct. Irrespective of what the

internal processes are, because they know they have protection from the level of General Johan Booysen.

ADV NGCUKAITOBI SC: Yes. Item 4.

ADV MAEMA: Item 4 was the ...[intervenes].

ADV RAMAGAGA: Just a minute. I thought the question was as to whether there is anything that was found out about this issue of whether proper processes, internal processes were undertaken or not.

ADV NGCUKAITOBI SC: That is correct.

ADV RAMAGAGA: Thank you. Can you please respond to that question?

ADV MAEMA: Chairperson, the processes were not followed. They just did as they pleased because they knew they had the protection of General Booysen.

ADV RAMAGAGA: Thank you.

ADV MAEMA: Thank you, Chair.

ADV NGCUKAITOBI SC: Item 4 is standing orders on police operational plans. Why was this important?

ADV MAEMA: It is important to see whether – because ordinarily, the information at our disposal was that an application has to be made for the operation to be approved first. And then only after it has been approved, then will the operation be executed.

ADV NGCUKAITOBI SC: Just explain that. What we have seen here, we have seen Just take the Magojela instance.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: On the 15th of September 2008, a telephone call is made to Mr Mostert by General Booysen where he says that I have got some information about the movements of the suspect.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Nothing happens on that day. The following day at half past six, the same call is made. Now there is specific information that the suspect is moving from Free State to Pietermaritzburg.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: To give money to someone. Where do you say that that application ought to be authorised? That operation ought to be authorised?

ADV MAEMA: What happens is, if there is a particular operation that they were going to do that is planned, then an application is made to the province for the application to be approved. But in an instance where it is an emergency, like somebody that they have been tracking that they have not been able to get and they receive information that he is in the vicinity, an approval would also be made telephonic.

ADV NGCUKAITOBI SC: Okay.

ADV MAEMA: Yes, in case of an emergency. That approval would then be made by General Booysen or Commissioner Brown. Yes. Now, even if it were to be made telephonic,

subsequent to the operation – because there would be financial implications – subsequent to that operation, documents must be exchanged with the province to show that that operation was a police operation that was approved.

ADV NGCUKAITOBI SC: In other words, in each of the 23 dockets, there should be information inside the police showing that the operation was prior approved. And if there was no way of prior approving it, it was approved telephonically.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: But there is a paper trail for each of these operations.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: And there was no such paper trail.

ADV MAEMA: There was no such paper trail.

ADV NGCUKAITOBI SC: I see. And does that confirm or disprove the prosecution thesis that this was a killing squad?

ADV MAEMA: It confirms the theory that we are working on that this was just a killing squad.

ADV NGCUKAITOBI SC: Yes. And then, item (v), standing orders on incidents involving police shooting.

ADV MAEMA: That is Standing Order 251, where the police discharge a firearm in the course of their operation.

ADV NGCUKAITOBI SC: Yes. My learned junior reminds me that we had come across that standing order as part of

your affidavit to the Judge Zondo Commission.

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: Which regulates how to implement section 49 of the Criminal Procedure Act.

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: Madam Chair, I wonder if we cannot – it is actually an important annexure, but I think we made an error by not including it because it is central to this case. It is available, but it is not part of the record, but that Standing Order 251 is a crucial piece of the puzzle. Do you have it, Advocate Maema?

ADV MAEMA: No, I do not have it.

CHAIRPERSON: Can you make a note, Advocate Ngcukaitobi, to have your junior get it? Then you can hand it up later.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

CHAIRPERSON: But you can speak to it if you remember its contents.

ADV NGCUKAITOBI SC: Yes. Can you outline? You are the one who introduced Standing Order 251, so that is because you know it.

ADV MAEMA: Chairperson, I read it more than eight to 10 years ago. But it regulates the extent to which power, force or violence can be used. It is more or less section 49(2) in which instances may police use force to overcome resistance

when a suspect is being arrested.

ADV NGCUKAITOBI SC: What are those instances?

ADV MAEMA: Well, the force that is regulated in the Standing Orders is in compliance with the force that is in Section 49(2). It must be a reasonable force to thwart or to bring the suspect under control.

ADV NGCUKAITOBI SC: Yes. Perhaps let me do this to advance this debate. If you go to File 3, this file, the first page there is the judgment of the Constitutional Court in a case called *S v Walters*. Can you see that?

ADV MAEMA: I can see that, yes.

ADV NGCUKAITOBI SC: The judgment by Judge Kriegler.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Do you recall this judgment?

ADV MAEMA: Yes, I have read this judgment before.

ADV NGCUKAITOBI SC: It is a judgment that was dealing with what?

ADV MAEMA: Chairperson, I have read it some time ago.

CHAIRPERSON: Paragraph 1 of that judgments is telling.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: The case concerns the constitutionality of statutory provisions that permit force to be used when carrying out an arrest.

ADV NGCUKAITOBI SC: Yes, so it is the constitutionality of section 49(2).

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: Allowing the police to use force.

ADV MAEMA: To use reasonable force to bring a suspect under control, yes.

ADV NGCUKAITOBI SC: Yes. Now, this entire discussion was settled in that judgment and then the police then subsequently drafted standing orders to give effect to this judgment.

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: Now, there is a summary of the circumstances in which force may be permissible at page 50, paragraph 54 of the judgment.

ADV MAEMA: Paragraph?

ADV NGCUKAITOBI SC: 54 of the judgment, page 50 of the bundle.

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: What does Judge Kriegler say there?

ADV MAEMA: Paragraph 54:

“In order to make perfectly clear what the law regarding this topic is.”

ADV NGCUKAITOBI SC: And what is the topic?

ADV MAEMA: The topic relates to the use of minimum force in effecting an arrest.

ADV NGCUKAITOBI SC: Yes. So the purpose of the force

is to effect an arrest.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: It is not to kill a person.

ADV MAEMA: It is not to kill a person.

ADV NGCUKAITOBI SC: What does he say?

ADV MAEMA: I tabulate the main points.

“a) The purpose of the arrest is to bring before court for trial persons suspected of having committed offences.

b) arrest is not the only means of achieving this purpose, nor always the best.

c) arrest...” ...[intervenes].

ADV NGCUKAITOBI SC: What are the other means of bringing the suspect to court?

ADV MAEMA: You can issue a summons. You can warn an accused person to come to court. Perfectly acceptable method of getting a suspected person.

ADV NGCUKAITOBI SC: If you look at, I think, 10 of the people that they killed in relation to Nkosi Zondi and in relation to Superintendent Choncho, where there are three letters from the attorneys saying we will hand ourselves in. Would that be an acceptable way of effecting an arrest or of getting a person to appear in court?

ADV MAEMA: That is correct, Chairperson. That would be

a very effective way of bringing a person to book, bringing him to court. But, Chairperson, also in respect of the Magojela, they handed themselves, they were handed to Cato Manor by the, I think it was the Mtunzini Police Station. They were handed in. And Cato Manor said, no, we do not want them.

ADV NGCUKAITOBI SC: Sent in by their own attorneys.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: All right. That is B. And then C?

ADV MAEMA:

“c) arrest may never be used to punish a suspect.”

ADV NGCUKAITOBI SC: In other words, where summons is appropriate, that is what should happen.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Especially when someone says, I am here, I am handing myself in.

ADV MAEMA: Yes. Instead of then you arresting a person on a Friday, and when you know that the courts are not operational on Saturday and Sunday, only on Monday you can consider whether they should be considered.

ADV NGCUKAITOBI SC: And then D?

ADV MAEMA:

“d) where arrest is called for, force may only be used...” ...[intervenes].

ADV NGCUKAITOBI SC: No, may be used.

ADV MAEMA:

“...where arrest is called for, force may be used only where it is necessary in order to carry out the arrest.”

ADV NGCUKAITOBI SC: Just explain that concept because it is actually at the centre of this case.

ADV MAEMA: In instances where it is important to use arrest, force may be used only when it is absolutely necessary in order to bring an accused person to court.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: So it should be, you cannot start with an arrest. It must be one of the last considerations.

ADV NGCUKAITOBI SC: No, I am talking about the use of force. The purpose for the use of force is what?

ADV MAEMA: Well, the purpose for the use of force would be to restrain, to bring the person that you are arresting under control.

ADV NGCUKAITOBI SC: Well, it says necessary in order to do what?

ADV MAEMA: Necessary in order to carry out the arrest.

ADV NGCUKAITOBI SC: Yes. Now we have a man who is handcuffed and then is executed while handcuffed.

ADV MAEMA: You have already arrested him. You have already restrained him. Is it necessary to shoot and kill him?

It is not necessary at all.

ADV NGCUKAITOBI SC: And E?

ADV MAEMA:

“e) where force is necessary, only the least degree of force reasonably necessary to carry out the arrest may be used.”

ADV NGCUKAITOBI SC: Yes, that is also a crucial point here.

ADV MAEMA: So even then, you use as minimum degree of force as reasonably justifiable in the circumstances.

ADV NGCUKAITOBI SC: Yes. So somebody fetches a malfunctional gun, which is not even in the body of the accused, and then they shoot them with the R5.

ADV MAEMA: No, it is just...

ADV NGCUKAITOBI SC: Yes, and then F?

ADV MAEMA:

“In deciding what degree of force is both reasonable and necessary, all the circumstances must be taken into account, including the threat of violence the suspect poses to the arrestor or others, and the nature and circumstances of the offence the suspect is suspected of having committed. The force being proportional

in all these circumstances.”

ADV NGCUKAITOBI SC: Yes, and the constant theme here is that we were all under threat. I mean, when you look at F, would that be constitutional?

ADV MAEMA: It would be unconstitutional. In their instances, there was no threat. There was no reason to use violence.

ADV NGCUKAITOBI SC: Well, we have a 16-year-old boy who is sleeping, and then he is executed with a machine gun.

ADV MAEMA: That is just terrible, just bad.

ADV NGCUKAITOBI SC: And then G?

ADV MAEMA:

“g) shooting a suspect solely in order to carry out an arrest is permitted in very limited circumstances only.”

ADV NGCUKAITOBI SC: Then what are those in H?

ADV MAEMA:

“h) ordinary such shooting is not permitted unless the suspect poses a threat of violence to the arrestor or others, or is suspected on reasonable grounds of having committed a crime involving the infliction or threatened infliction of serious bodily harm and there are no other reasonable means of carrying out the

arrest, whether at the time or later.”

ADV NGCUKAITOBI SC: Yes. Well, here we have no warrant of arrest. A man gets out of his house, he is naked, he lifts his hands, he is executed.

ADV MAEMA: It is completely unlawful, unconstitutional.

ADV NGCUKAITOBI SC: Then I?

ADV MAEMA:

“i) these limitations in no way detract from the right of an arrestor attempting to carry out an arrest to kill a suspect in self-defence or in defence of any other person.”

ADV NGCUKAITOBI SC: Yes, but what should the arrestor have been doing in those circumstances?

ADV MAEMA: So, if, where ...[intervenes].

ADV NGCUKAITOBI SC: I mean, what is the arrestor doing when they kill a person? What is he trying to do according to this?

ADV MAEMA: No, when an arrestor kills ...[intervenes].

ADV NGCUKAITOBI SC: No, but he is trying to carry out an arrest.

ADV MAEMA: He is trying to carry out an arrest to kill a suspect in self-defence or in defence of maybe somebody that is ...[intervenes].

ADV NGCUKAITOBI SC: I mean, on the 23 instances, was

there a single one where there was an attempt to carry out an arrest?

ADV MAEMA: No, there was not any attempt to carry out an arrest.

ADV NGCUKAITOBI SC: Yes. So would this be the – this is the law of the Constitutional Court. I mean, it does not, the Constitutional Court is clear on this about how the police must behave when they are in possession of machine guns against unarmed and defenceless suspects.

ADV MAEMA: Who are posing no threat at all to them, to their lives or to the lives of their colleagues.

ADV NGCUKAITOBI SC: I think it has been found that Standing Order 251, Madam Chair, which will be circulated later, but I need to proceed with the evidence-in-chief.

CHAIRPERSON: Yes, thank you.

ADV NGCUKAITOBI SC: Thank you. Now, we have to go through this on Item 1A-900, Item (v), because it then takes us to what the Constitution actually requires, what the law in this country is.

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: Now, there is one more point that was raised by Advocate Noko, and I want your comment on it. Advocate Noko says, look, if you use disproportionate force, you become an aggressor yourself.

ADV MAEMA: Of course, yes.

ADV NGCUKAITOBI SC: And therefore, you become guilty of murder.

ADV MAEMA: That is correct, Chairperson, yes.

ADV NGCUKAITOBI SC: Is that the correct law?

ADV MAEMA: That is the correct law, yes.

ADV NGCUKAITOBI SC: And she says even in circumstances of self-defence, it no longer is self-defence when you are using disproportionate force.

ADV MAEMA: Of course, then you become the aggressor.

ADV NGCUKAITOBI SC: Yes. Okay. Then, item (vi).

ADV MAEMA: (vi) is a minute of KwaZulu-Natal Provincial Commander of the SAPS wherein the killings of the suspects who allegedly killed Superintendent Choncho was discussed.

ADV NGCUKAITOBI SC: And what happened here? I mean, this is the funny thing, because this docket of Superintendent Choncho has been requested for three months from the NPA. It has not been produced. It looks like this information was requested even in 2015.

ADV MAEMA: That is correct, Chair. Even in 2012, when we started, we looked for this docket.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: But we felt we will be hemmed. What do you call it? You hamstring yourself if you say, I want to look at it first. If we cannot get it, then we do other things and we see whether we will get it in the meantime. But we never got to

get it.

ADV NGCUKAITOBI SC: And then they gave us a half-cooked docket in the killing of Nkosi Zondi, where it is so clear that they have removed various pages.

ADV MAEMA: That docket, we were not able to get it.

ADV NGCUKAITOBI SC: Yes. Well, it has been submitted here in this proceedings, but it is so clear that it has been tampered with. Now, then, so you made no progress there either on item six?

ADV MAEMA: Item six, yes, we made no progress.

CHAIRPERSON: If you can just remind me, the docket pertaining to the deceased Nkosi Zondo, Zondi, I beg your pardon, the one that you say had been tampered with, where do we find it so that we can just flag it?

ADV NGCUKAITOBI SC: I think it came from the researchers about two days ago.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI SC: But let me, we can find it now, the actual references.

CHAIRPERSON: Yes. I remember they flagged them. Let me just ask our researchers. I know that they flagged those. Please come, Advocate Manganye.

ADV NGCUKAITOBI SC: Yes, I think I have got it. It is BH0001, Bheki Themba CAS 113/01/09. You can just see, you know, the first statement is A1, but it ends at A1 and then

it does not follow, so the rest of it has been removed. Then the next one is unsigned and there is also an unsigned affidavit of General Booyesen who says he was at the scene, despite everyone telling us that he was never at the scene. But to answer your question, Madam Chair, it is BH0001.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI SC: Bheki Themba CAS 113/01/09.

CHAIRPERSON: Thank you. Our researchers will get that.

ADV NGCUKAITOBI SC: Yes. They were able to give it to us, so we are grateful to them.

CHAIRPERSON: Yes, well, they brought them to our attention yesterday afternoon, so we did not just get to go through them. Yes, thank you.

ADV NGCUKAITOBI SC: Sorry, thank you, Advocate Maema. We were at item 6. That is when we digressed to Nkosi Zondi. Even the dockers the NPA has, you can see that there has been some work done on them. Now (vii).

ADV MAEMA: (vii) is the informer files relating to Cato Manor SVC section and Major General Booyesen.

ADV NGCUKAITOBI SC: What is this referring to?

ADV MAEMA: Informer files is police work on the basis of informers giving them information. And when an informer is giving information to the police, then they write a motivation for consideration or for approval of payment to the informer for the information that has been supplied, particularly when

that information was successful in dealing with crime.

ADV NGCUKAITOBI SC: No, I am talking about this one particularly, relating to Cato Manor SVC and Major General Booyesen. What is the point being made? That Major General Booyesen has informer files, or what exactly is being made?

ADV MAEMA: The point that is being made is that Major General – remember in the Magojela murder, as he was relaying information to the tracking team, he was relaying it on the basis of the informer who was giving him information.

ADV NGCUKAITOBI SC: At least that is what he alleged. We do not know for a fact.

ADV MAEMA: Yes. So what we wanted to see is if there would be an informer there, then ordinarily internal process would say, informer is giving me information, I had gone there and the operation continued. So then what you would do is, if we procure the informer files, the informer files will tell us, even if it does not identify the informer, it will tell us what information he had that led to the breakthrough.

ADV NGCUKAITOBI SC: Yes. No, what I am saying is, is it the rule that if you have an informer in the police, there has to be a file relating to that informer? Even if the informer may not be identified, they could be identified by number.

ADV MAEMA: By number, that is correct, yes.

ADV NGCUKAITOBI SC: But there is a file that exists.

ADV MAEMA: There is a file that exists that relates to that

informer.

ADV NGCUKAITOBI SC: And why is that so? Why should it be recorded that there is a file that we have got Informer 2023, for instance?

ADV MAEMA: Well, because then there is financial implications. That informer gives information and is paid on the basis of the information that is supplied.

ADV NGCUKAITOBI SC: Now, they had alleged, I know Major General Booyesen alleged that there was an informer. Even in the Nkosi Zondi killing, it was also alleged that there was an informer.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: But when you look at that docket, there is absolutely no reference to any informer file.

ADV MAEMA: Yes. Well, in the docket, because the identity of the informer would be protected, you do not expect to get information related to the identity of the informer.

ADV NGCUKAITOBI SC: But what you do not see is even the ...[intervenes].

ADV MAEMA: The information.

ADV NGCUKAITOBI SC: Yes, the information that there is an informer, which is the source. Now, did you succeed in getting this information?

ADV MAEMA: We did not succeed in getting the information.

ADV NGCUKAITOBI SC: Yes, so you could never prove the

claims that were made that Major General Booyesen was relying on informers.

ADV MAEMA: We could not get the informer files.

ADV NGCUKAITOBI SC: And in that file, there is also payments made.

ADV MAEMA: There is payments made.

ADV NGCUKAITOBI SC: In the Nkosi Zondi file, the very last page of that file, there is R30 000 being claimed by Major General Booyesen allegedly to be paid to an informer.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: Yes, it is at page BH0152. It says:

“Claim received from Director Booyesen and forwarded for FA. The informer was paid the amount of R35 000 cash and received and signed by the informer.”

So all you see is that money was claimed by Director Booyesen, paid to the informer, but you have got no other information.

ADV MAEMA: That is correct.

ADV RAMAGAGA: I want to come in here just to get clarity on the issue of the informers. We hear from your testimony that there is an informer file. There is a file that is referred to as informer files.

ADV MAEMA: That is correct, Chairperson.

ADV RAMAGAGA: Now, the informer file, is it each

individual informer having a file or is it a file that contains information of a group of informers?

ADV MAEMA: Chairperson, my understanding from my interaction with the police is there is an informer file relating to a specific informer. That would then have the claims that the police have made in relation to the information that the informer had supplied. That would then lead to the solving of crime.

ADV RAMAGAGA: Okay. Let us talk about a case docket. Would a case docket ordinarily have information that suggests that particular information was obtained or received from an informer? Or is it something that is done separately from that very file that would have been created for the informer? And if you do not know, you should indicate. If you know, indicate. Because it is important information, and ja.

ADV MAEMA: Chairperson, my information is very scanty. It relies on my interactions with the police. So perhaps, not being a police, I should not even venture into the information relating to informers.

ADV RAMAGAGA: Okay, that is fine and that is fair enough. It is not your area.

ADV MAEMA: Yes.

ADV RAMAGAGA: But then are you able to assist with the issue of whether in the main dockets, I mean you worked on

very many dockets.

ADV MAEMA: Yes.

ADV RAMAGAGA: As to whether it would be indicated in the main docket as to whether information, specific information that is in the docket was obtained from an informant or not.

ADV MAEMA: Chairperson, in some of the dockets, Part B of the docket will indicate if there is information from the informer and that informer would be referred to in a number as we have said earlier. But you find certain dockets where there is – even the information, even the number of the informer is just silent.

ADV RAMAGAGA: So, from this statement, what you are communicating to us is that there are those where there would be an informer information and there are those that would not reflect such information.

ADV MAEMA: That is correct, Chair.

ADV RAMAGAGA: And you do not know as to whether it is a requirement that it appears in the case docket or not.

ADV MAEMA: No, there is no requirement that it appears in the case docket. In fact, what happens is the police will try as much as possible to protect the identity of an informer, even to the prosecutor. So, even if information from an informer would be a breakthrough, the police would never at any stage reveal the identity or say anything that goes to the

direction of revealing the identity of the informer.

ADV RAMAGAGA: Thank you.

ADV BALOYI-MERE SC: Advocate Ngcukaitobi, I have a follow-up on the set of questions that you asked up to where the informer was paid an amount of R35,000. We now know that after every killing there would be a motivation for monetary award. I see Mtsweni is shaking his head vigorously. Advocate Mtsweni is shaking his head vigorously. My apologies. Well, it might not be after every killing, but there would be a motivation for monetary award.

ADV NGCUKAITOBI SC: Yes.

ADV BALOYI-MERE SC: That is the first thing. The second thing, we know that the Stanger Taxi Association would collect money to reward the Cato Manor unit who had carried out the murders. Now, we have the state paying the so-called informer, while I take it that Major General Booysen would be the handler in the Magojela case because he said he was in touch with the informer all the way.

ADV NGCUKAITOBI SC: Yes.

ADV BALOYI-MERE SC: So, he would have been his handler. So, the handler gets paid by the state, the informer gets paid by the state, and there is the third payment from the Taxi Association.

ADV NGCUKAITOBI SC: Yes.

ADV BALOYI-MERE SC: What does that mean, or what does

it imply, where for the murder of one person we have three payments coming into the hands of the role players?

ADV NGCUKAITOBI SC: Thank you, Madam Chair. The money to the informer presumably also goes to the handler.

ADV MAEMA: Chairperson, it is like I indicated, having been a prosecutor, the information relating to informers is that of the investigators, and they guide it with their ...[intervenes].

ADV NGCUKAITOBI SC: No, I do not think this is about informers per se, but it is just about the collection of cash relating to the murder of these people. So, there are three sources. There is money that has been motivated by the state, anything between R10 000 to R35 000.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: There is cash payment going through the hands of these handlers to the informers. In this case, we know it was R35 000.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And then there is the cash payments that the taxi bosses are also collecting. And we know from the statements of Dlondlo and Mathonsi that in the one instance, I witnessed the collection. In the other instance, I witnessed the passing over of the cash. That is really the point.

ADV MAEMA: Well, Chairperson, it is a system that these payments are just not proper in my view.

ADV NGCUKAITOBI SC: Yes, but what do they mean for the purposes of the prosecution in a racketeering case?

ADV MAEMA: Chairperson, remember for the prosecution, we want information under oath that we will be able to utilise in court.

ADV NGCUKAITOBI SC: Yes, but what is the effect of it on the operations of the enterprise?

ADV MAEMA: I do not understand.

ADV NGCUKAITOBI SC: Well, if you have all of these payments made, what are these payments for? Was it to enable the enterprise to operate? What exactly is going on?

ADV NGCUKAITOBI SC: Yes, it would be then to facilitate, to have an environment fertile for the enterprise to function in.

ADV NGCUKAITOBI SC: Yes, so does it support your case or not support your case?

ADV MAEMA: It does support our case, yes.

ADV NGCUKAITOBI SC: Now, I did want to take you to the specific, I mean, you said that information about informers ordinarily would not be in the docket. I mean, in the Bheki Themba one, which certainly in my respectful view has been tampered with extensively, there is extensive references there to the interactions of the police and the informers. I mean, just as an example, if you look at BH0147.

ADV MAEMA: Is that the Bheki Themba CAS 113

...[intervenes].

ADV NGCUKAITOBI SC: Yes, exactly.

ADV MAEMA: 1/09.

ADV NGCUKAITOBI SC: Yes, so if you look at the investigation diary.

ADV MAEMA: Yes, yes.

ADV NGCUKAITOBI SC: Are you in that page? Which page are you at?

ADV MAEMA: Page C24.

ADV NGCUKAITOBI SC: Now, look at C19 of the investigation diary, which is BH0147.

ADV MAEMA: Thank you.

ADV NGCUKAITOBI SC: So just look at the bottom of the page. This is the 3rd of February 2009.

ADV MAEMA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. At the bottom there, it says ...[intervenes].

ADV MAEMA:

“Post-entry informer phoned after he was tasked to trace OS suspect.”

Which I understand to be outstanding suspect.

ADV NGCUKAITOBI SC: Then number 2.

ADV MAEMA: Number 2:

“Informer asked the suspect to pay his licence disc of his car and arrangements

were made to meet for payment, and that was a trap for informer to trap the suspect.”

ADV NGCUKAITOBI SC: Yes, 3.

ADV MAEMA:

“The informer was further tasked to place the suspect in a place where he can be identified easily.”

ADV NGCUKAITOBI SC: Yes, same thing, 4. So you can go through every page there, but it is extensive references to the informer. That is why in the end Director Booyesen now makes a claim, and no one knows. It is said that the informer has signed for the claim, but there is no proof that the informer has signed for the claim. The only proof is that the claim was made by Director Booyesen. So that is why I am asking you about these informers. You say the information will not be in the docket, but in one docket it is there.

ADV MAEMA: In some of the dockets it would be, in some of the dockets it would not be. But in all the dockets you will never find an instance where a name and an address of an informer is disclosed.

ADV NGCUKAITOBI SC: I understand, but an informer file will be there even if they are identified by number.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Now that takes me back to where

I started. So the absence of these informer files from these dockets, a lot of these dockets, what does that mean?

ADV MAEMA: Well, it means anybody can just say there is an informer file when there is in fact no informer file, or there is no informer at all.

ADV NGCUKAITOBI SC: Yes. And if it once existed, why is it not in the docket?

ADV MAEMA: Chairperson, if you ask that question, they would say, well, it would not be in the docket because they would not want the identity of that informer to be known. But the system is such that it is easy, even when there is no informer, for anybody to say there is information from an informer.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Because such information, you cannot gauge its correctness against the contents of the dockets, whether it is part B or part C of the docket.

ADV NGCUKAITOBI SC: Yes. So in other words, this informer system is capable of an abuse.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Now on the question around why in some dockets there is no information of informers and then in others there is, I mean, did you work out why that is so?

ADV MAEMA: No, Chairperson, we did not work out why that was so. As prosecutors, Chairperson, our focus is we find a

docket, is there information in the docket that links us to a suspect? Can we charge that suspect? You know, the rest of the things we did not – we would question some of them, but our focus is do we find case dockets where we can, where there is evidence implicating somebody in the shooting and can we, is there sufficient evidence to charge that person?

ADV NGCUKAITOBI SC: No, the problem is that it is your own reports that is talking about looking for these informer files.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: It is the prosecutors themselves that are looking for the informer files under item (vi).

ADV MAEMA: Because, Chairperson, what we wanted to see, we wanted to see if this assertion that they are informers, that they are making, are they genuine assertions or whether they are incorrect. And the only way of doing so was to check if they were in, they in fact had informer files that they claimed for and that they had paid, without getting the identity of those informers.

ADV NGCUKAITOBI SC: And then you found that actually in the majority of cases there were no such files.

ADV MAEMA: We found that there were no such files, yes.

ADV NGCUKAITOBI SC: Thank you. So then there is (vii).

CHAIRPERSON: Sorry, counsel, on page BH0152.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: C24. You see against the date 09 March 2009, it says claim received from Mr Booyens and forwarded for FA. What is FA?

ADV NGCUKAITOBI SC: We understood it, Madam Chair, to be financial approval. Yes.

ADV MAEMA: I also understand it the same way, Chairperson.

CHAIRPERSON: Thank you.

ADV NGCUKAITOBI SC: Thank you. We are at (vii).

ADV MAEMA: That is correct, Chair.

ADV NGCUKAITOBI SC: Procurement documents relating to the resourcing of the Cato Manor SVC section.

ADV MAEMA: That is (viii), Chairperson.

ADV NGCUKAITOBI SC: We are in eight. So where are we? We finished seven?

ADV MAEMA: We finished seven.

ADV NGCUKAITOBI SC: So we are on eight. Yes, correct.

ADV MAEMA: Procurement documents relating to the resourcing of the Cato Manor SVC section, signed by Major General Booyens.

ADV NGCUKAITOBI SC: You have now got the hang of it. I am asking you why was that important and did you actually get it and what did it tell you?

ADV MAEMA: The procurement documents relating to resourcing?

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: Yes. Here it would show that Major General Booyesen had rendered Aiyer as head of the Durban Organised Crime redundant. So he was dealing directly with the procurement and resourcing of the Cato Manor SVC as if he is their commander and the real commander was supposed to be Aiyer.

ADV NGCUKAITOBI SC: And then what did you find here?

ADV MAEMA: We found that Major General Booyesen made sure that they were fully resourced. They had fully functional cars with sirens. You know, they were the elite unit. They had everything.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: In terms of equipment and everything, he made sure that they were fully resourced.

ADV NGCUKAITOBI SC: No, but your point, as I understand, is not whether they were resourced or not. Your point is that the person who was responsible for signing procurement-related material instead of being Colonel Aiyer was Major General Booyesen.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: What I am asking you, what did you find when you were trying to establish that information?

ADV MAEMA: We found that it was Major General Booyesen who was resourcing the Cato Manor SVC.

ADV NGCUKAITOBI SC: No, but who was signing the documents? Because the resources are coming from the state.

ADV MAEMA: Major General Booyesen was the one who was signing the supply of whatever resource that Cato Manor required. When it was supposed to be Aiyer who was signing it, it was Major General Booyesen.

ADV NGCUKAITOBI SC: Yes, thank you very much.

CHAIRPERSON: And that signifies his role as the boss or as the manager.

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: Somebody who has control of this unit.

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: Yes, and then ...[intervenes].

ADV BALOYI-MERE SC: But sorry, but did you find the actual documents with his signature? Did you at some stage receive such documents?

ADV MAEMA: We did, Chairperson. We saw where he procured torches, where he procured – what do you call this – reflector jackets. He made sure that they were resourced and it was him who signed. Him who approved all of those procurement memos.

CHAIRPERSON: Counsel, there is something to that effect in these documents.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: Your junior will probably take us there where mention is made of the very point the witness is mentioning.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: It may well be that there are those documents that you are referring to in relation to the point.

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: And moving of offices and Major General Booyesen overturning it.

ADV MAEMA: That is correct, the moving of offices.

ADV NGCUKAITOBI SC: Just explain that to the Panel.

ADV MAEMA: Chairperson, what happened is Colonel Aiyer issued an instruction that they must move from where they were to the Durban Organised Crime. Now, there was huge resistance and they complained that where the Durban Organised Crime office is will not be conducive for questioning suspects. But they resisted and Major General Booyesen said it will not happen, do not even worry about it. So they had the protection from General Booyesen.

ADV NGCUKAITOBI SC: But he himself issued the letter. Major General Booyesen wrote the letter, signed it himself.

ADV MAEMA: Chairperson, you are referring to the letter moving them?

ADV NGCUKAITOBI SC: Yes, the letter telling Colonel Aiyer that they will not move.

ADV MAEMA: Yes, General Booyesen himself said they will not move. So they knew that they had the backing of General Booyesen at all instances.

ADV NGCUKAITOBI SC: We will find those three documents. Then (ix), NDPP to facilitate the signing of Danikas Greek witness statement. We have gone through the iterations up until the final one was signed.

ADV MAEMA: That is correct, Chair.

ADV NGCUKAITOBI SC: And you mentioned that you, what was your evidence on the signature appearing in the English version and in the Greek version of Mr Danikas? Do you have any personal knowledge of that or not? Because you said at some point you were moved from the case.

ADV MAEMA: What happened was when the statement, the English statement was produced and prior to the Rule 35 discovery of the document to the Defence, I then had to make sure that I sent it to Danikas so that he can confirm the translation. Now, when he showed me, when he indicated that there are - he showed me, I think, three or four mistakes in the letter, in the affidavit.

ADV NGCUKAITOBI SC: In the translated version.

ADV MAEMA: In the translated version. I then brought it to attention of the ...[indistinct] desk and said, I am informed that there are these three mistakes in this translation. Can it be presented to the same – can it be presented to the

translator to confirm and/or to correct? And then there was that discussion as to whether the same or a different one. I said it would be better than if it is the same, but if they cannot get the same presented to anyone, that would be fine.

But then what happened was when the translator translated from Greek to English, they then took the signature of Mr Danikas from the Greek statement and superimposed it on the English statement. So they take a picture of the signature and you superimpose it on the English version. Now, the NPA at some stage was of the view that I am the one who did the superimposition.

ADV NGCUKAITOBI SC: Why not? Why did the NPA, even Advocate Batohi in this De Kock report made this astonishing accusation that it was you?

ADV MAEMA: Yes, and then fortunately, you know, there was, what do you call it, a trail of letters between me and ...[indistinct] of the ...[indistinct] desk relating to all of this. I would never have superimposed a statement.

ADV NGCUKAITOBI SC: No, I mean, the problem was that they read an email from you where you said it was superimposed and then they just missed the it and then they said you admitted that you had superimposed it. You are not in a trial today. Advocate Chauke is in a trial.

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: But when Advocate Abrahams was

concerned about the facilitation of the signing of the Danikas statement, what was that about? That really was the question.

ADV MAEMA: Because we are going to use Danikas as a witness, we wanted to obtain his statement and the NDPP would facilitate, that means if I would ask for approval of the trip to go to Crete, then the NDPP would consider it.

ADV NGCUKAITOBI SC: Yes, but why was that considered important? Remember that at this point we already had the unsigned statement which was criticised by the judge and then at this stage when Mr Sean Abrahams comes in, why is it important? Because it is talking about the signing of a statement.

ADV MAEMA: Well, it is important because a signed statement will add to the evidence that we have with regards to the Cato Manor SVC. Because we wanted somebody inside who would tell us how they operated. Initially we thought one of the accused persons would agree to become a 204, but then it never materialised. We asked the DPCI and IPID to see if any one of the accused persons were willing to attend a section 204, but it was not fruitful.

ADV NGCUKAITOBI SC: I saw in this report of De Kock that they also talk about Mr Danikas as a section-204 witness, was that correct?

ADV MAEMA: No, he has never been a section-204 witness.

We never had any information linking him to participation in any offence.

ADV NGCUKAITOBI SC: Thank you. So you thought, Advocate Abrahams thought the signing would strengthen your evidentiary material.

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: Which we know was in fact obtained.

ADV MAEMA: Yes, yes.

ADV NGCUKAITOBI SC: Now, item 10.

ADV MAEMA:

“The following documents from Assistant Commissioner Brown's statement attached hereto for ease of reference to be obtained. POCOC Instructions 5 of 2000 and Instructions 5 of 2001.”

That is a provincial Organised Crime. It was an Organised Crime instructions that was issued by the Provincial Commissioner's Office:

“Files or any documents kept by Lieutenant General EG Van Rensburg who headed the Transport Violence Investigation Task Team.”

Because we thought these documents would assist us in seeing whether there is – because when you have a resource

which is a car that is going to be utilised, whether particularly outside the province, there must be documents relating to the utilisation. Who uses that vehicle, for what purpose it is being used. So we thought there might be information relating to the use of their cars if they are going to engage in an operation outside the province. The next bullet:

“Documents kept for Provincial Priority Committee for Transport Violence chaired by Major General Booysen.”

We also thought these documents could shed light on if there is an operation that they are going to undertake outside the province. We thought there could be some information in that document that would make it easier for us to get more information.

The next bullet: Provincial TVPC ACA files. We were talking about the arch-lever files. The next bullet, documents of the ...[intervenes].

CHAIRPERSON: What was this TVPC, this acronym?

ADV MAEMA: Chairperson, I have forgotten what the TVPC is. There are just such a lot of acronyms. Having been out of the environment for some time, I have forgotten now what they are. The next bullet, documents of the PCCF and ...[intervenes].

CHAIRPERSON: And how are they going to assist?

ADV MAEMA: Chairperson, we thought in those documents

we will find information, particularly the motivation for the use of, when they seek approval. We thought it would indicate why are they going there. It will shed some light in order to guide the investigation.

ADV NGCUKAITOBI SC: Which point are you referring to? There is one that specifically is asking for the Priority Committee for Transport Violence chaired by Major General Booyesen. And then there is the Provincial TVPC ACA file.

ADV MAEMA: Chairperson, particularly those where Major General Booyesen was involved, we thought we would find information that would explain most of the activities that they were engaged in. And then the NDPP would then speak to the Assistant Commissioner or the Commissioner to ease, to make it easier for us to obtain some of those documents. We would also remember that most of those documents would be classified and would have to be reclassified in order for them to be released, to be used by us.

ADV NGCUKAITOBI SC: Yes, next item.

ADV MAEMA: And the next bullet would then be documents of the PTCC. I also cannot remember what the PTCC is.

CHAIRPERSON: No, PCCF.

ADV MAEMA: PTC.

CHAIRPERSON: PTC?

ADV NGCUKAITOBI SC: PCCF.

CHAIRPERSON: Or you are at Provincial? Where are you

now?

ADV MAEMA: I was at the last ...[intervenes].

ADV NGCUKAITOBI SC: No, no, no, there is before that.

CHAIRPERSON: Before that, there is also PCCF.

ADV MAEMA: Documents of the PCCF and Prof Joins [?] relating to the taxi violence between KwaMaphumulo and Stanger Taxi Association.

ADV NGCUKAITOBI SC: What is that? I mean, that seems to be directly relevant because it is addressing what we are dealing with in this case.

ADV MAEMA: That is correct. That is why we were seeking documents relating to, or reports relating to taxi violence between KwaMaphumulo and Stanger Taxi Association.

ADV NGCUKAITOBI SC: Yes, but why would they be at Provincial?

ADV MAEMA: Chairperson, at the Prof Joins [?], any issue which is a thorn in the province is discussed at the Prof Joins. It is discussed ...[intervenes].

ADV NGCUKAITOBI SC: What is this Prof Joins?

ADV MAEMA: It is a joint committee of the police, prosecutors, justice, to deal with the issues that are challenging in the province.

ADV NGCUKAITOBI SC: I mean, the reason I am asking you about this is that there is the oddity of this case of two allegedly warring Taxi Associations, if they were warring at

all, but being assigned to one unit, which is also a very localised unit, and geographically this also does not make sense. Why would you say Stanger and KwaMaphumulo must be assigned to this particular unit?

ADV MAEMA: Chairperson, Cato Manor in KZN was perceived to be a fire extinguisher. It was perceived to solve the challenges that they had in KZN.

ADV NGCUKAITOBI SC: I see.

ADV MAEMA: So they would utilise them for most of the things, for most of the challenges, particularly the violent ones.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: That is why when you got there, we looked at various categories of offences, ATM bombings, taxi violence, as well as just ordinary criminal gangs. They were utilised all over. Even when there is a bus strike or taxi, when there is a boycott of buses, they would use Cato Manor.

ADV NGCUKAITOBI SC: As a fire extinguisher?

ADV MAEMA: Yes, they were fire extinguishers.

ADV NGCUKAITOBI SC: They did not in fact extinguish the fire, but started it.

ADV MAEMA: Instead of extinguishing it, they do other things. They kill.

ADV NGCUKAITOBI SC: You were at documents of the PTCC, which you also said you did not know what it was.

ADV MAEMA: I cannot remember what the PTCC is.

ADV NGCUKAITOBI SC: That might not be helpful. And then any other relevant document pertaining to the activities of the Cato Manor unit for the period 2008 to 2011. That seems to be a generic request.

ADV MAEMA: That is correct, Chair.

ADV NGCUKAITOBI SC: Now, that document is then signed by yourself?

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Yes. Now, that was in...

ADV MAEMA: On the 27th of August 2015.

ADV NGCUKAITOBI SC: Yes. That is the memorandum you sent immediately after the meeting with Advocate Abrahams.

ADV MAEMA: That is correct, Chair.

ADV NGCUKAITOBI SC: And these are the documents, as I understand, that he needed in order to consider what to do about the fresh racketeering authorisation.

ADV MAEMA: That is correct. You know, whether our identification of the enterprise was correct, whether we had placed it correctly when you said part of Durban Organised Crime, or whether we needed to go provincial.

ADV NGCUKAITOBI SC: So you say you obtained some, but not everything.

ADV MAEMA: We obtained some. We could not obtain all these.

ADV NGCUKAITOBI SC: Yes. Is that what you are dealing with at 438? Paragraph 438.

ADV MAEMA: That is correct, Chairperson:

“Having obtained these items, I amended the prosecution memorandum. My October memorandum of 2015 was submitted to Advocate Abrahams with an application for authorisation from Advocate Noko during October 2015 with the drafted POCA certificate.”

ADV NGCUKAITOBI SC: Yes. All right, carry on. And again, here, Mr Chauke, who was charged for all of this, is not playing any role.

ADV MAEMA: He is not playing any role.

ADV NGCUKAITOBI SC: He is in Johannesburg.

ADV MAEMA: That is correct, Chairperson. So it is unfair, really, to ascribe decisions that were made by the prosecution team to him. It is me and my prosecution team who made the decision. And if NPA has any quibbles with it, it is me that they have to face.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: It is strange, Chairperson. I waited since 2019 until I left in 2022/23 to be charged. I was removed. I was coming to the office reading the newspaper. I was not charged because I wanted to answer and tell them why all of

these things happened.

ADV NGCUKAITOBI SC: And paragraph 439.

ADV MAEMA:

“Advocate Abrahams was still not satisfied with the prosecution memorandum and the POCA applications for authorisation and instructed me to travel to Greece to consult with Mr Ari Danikas. I already had in my possession Danikas' unsigned statement, which was Annexure NJ3 to the answering affidavit deposed to by Advocate Jiba in the matter before Govern J.”

ADV NGCUKAITOBI SC: Paragraph 440.

ADV MAEMA: Paragraph 440:

“I then met with Mr Danikas on 19 January 2016. I consulted him on 20 January 2016. He was accompanied by his Greek lawyer, whose name I will not attempt to call out, and an English barrister, Olive Powell. I was accompanied by the head of the Witness Protection Programme, Mr Dawood Adams. Mr Danikas supplemented his aforesaid statement, NJ3, and handed me additional

photographs and video clips on a flash disc. I then requested Danikas to ensure that the contents of our consultation are part of the statement that he will furnish to me through diplomatic channels. Consequently, I then returned with Mr Danikas' supplemented but unsigned statement.”

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: What did I mean by then that he ensure that the contents of our consultation are also included in the statement? There are issues that I asked him to deal with, incidents that he could remember. So I wanted him to deal with those incidents in the statement that he would make.

ADV NGCUKAITOBI SC: You read it yesterday. It is extensive in relation to incidents.

ADV MAEMA: Yes, it is.

ADV NGCUKAITOBI SC: Thank you. Paragraph 441.

ADV MAEMA: Paragraph 441:

“Mr Adams and I briefed Advocate Abrahams regarding our consultation and then handed him a copy of Mr Danikas' supplemented statement and also showed him certain photographs and video clips on the flash drive concerning the manner

in which Cato Manor SVC dealt with suspects.”

ADV NGCUKAITOBI SC: Yes. Thank you.

CHAIRPERSON: Thank you. You may pause there, Advocate Maema, Advocate Ngcukaitobi.

ADV NGCUKAITOBI SC: Yes, Madam Chair.

CHAIRPERSON: I will take a tea break until quarter to 12.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

CHAIRPERSON: You are still under oath, Counsel.

ADV MAEMA: That is correct, Madam Chair.

ENQUIRY ADJOURNS

ENQUIRY RESUMES

CHAIRPERSON: Good afternoon, or good day, everyone. Good day. Advocate Chauke, good afternoon. Advocate Maema, you are still under oath.

ADV MAEMA: Good afternoon, Chairperson.

CHAIRPERSON: Good afternoon. Yes, are we in the afternoon?

ADV NGCUKAITOBI SC: Almost.

CHAIRPERSON: Almost. We have an hour to make some progress.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

CHAIRPERSON: You may proceed.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. Just an update. We have found some of the correspondents we were

dealing with yesterday, and my learned junior will liaise with the researchers. Thank you. What we have not been able to find is what we were talking about this morning, but it will also be traced.

CHAIRPERSON: Before you proceed, we have now been given the answering affidavit in relation to Advocate Batohi application.

ADV NGCUKAITOBI SC: All right, thank you.

CHAIRPERSON: As regards the replying affidavit, I do not know who is going to update us because *Nthathi* Matubatuba is not here. Neither is Mr Simelemetsha. Is there anybody from the state attorney? There are so many interlocutory applications that I am getting confused now. My law researcher, Attorney Maibane, correctly reminds me that the answering affidavit is an answer to the decoupling application by the NPA. And we were told that the evidence leaders are – let me correct myself. The evidence leaders have not indicated what their position is as regards the decoupling application. What is the position?

ADV MTSWENI: Madam Chair, as we indicated – I think yesterday, I cannot recall, but earlier this week we indicated that we will not be participating in that application. We will be abiding. And I think, Madam Chair ...[intervenes]

CHAIRPERSON: No, that is the substantive application by Advocate Batohi.

ADV MTSWENI: No, even in the decoupling application, our position is we will not be participating.

CHAIRPERSON: Are you now telling us that you will file a notice to abide as regards the decoupling application?

ADV MTSWENI: Indeed so, Madam Chair. Mr Simelemetsha will attend to it. We will make sure that he delivers the relevant notice.

CHAIRPERSON: If I may sound a caution, have you read that application? Because certain allegations are made about what the evidence leaders did not do. I will caution that you reconsider your position.

ADV MTSWENI: Whether to oppose or not, Madam Chair, we will take care of that. And if needs be, if there is a need for us to file an affidavit dealing with those allegations, we will do so.

CHAIRPERSON: I am just mentioning because we have read that application and it is somewhat strange to me that you do not even seek to answer those allegations pertaining to yourself as evidence leaders.

ADV MTSWENI: We will take Madam Chair's advice and reconsider.

CHAIRPERSON: You may wish to reflect and you will let us know tomorrow morning what the position is.

ADV MTSWENI: Indeed so, Madam Chair.

CHAIRPERSON: Advocate Ngcukaitobi, we have now been

given your answering affidavit in the decoupling substantive application.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: We will look at it later.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

CHAIRPERSON: Thank you. And there seems to be no indication about the filing of a reply in the notice of motion of that application and I am disappointed that nobody from the state attorney is here to be updated about what is to happen, except the junior advocate. When do you propose to file a reply affidavit, if any?

ADV LEKGETHO: Thank you, Madam Chair. I am waiting for instructions, but there is an intention to file a replying affidavit. So we are just confirming with client, thank you. Thank you, Madam Chair, I was saying that there is an intention to file a replying affidavit, in fact, my senior is settling a draft and we are trying to confer with client. They have a strat plan, so we are not getting speedily responses, but to confer with them in relation to the deposing of the replying affidavit. I am unable to commit a time or a date when the replying will be filed. But I doubt it will be today.

CHAIRPERSON: Yes, thank you. In the notice of motion, you made no mention of when you will file your replying affidavit.

ADV LEKGETHO: Madam Chair, if my memory serves me

well, we did. The panel would recall that the timeframes had been moved forward to allow the teams to respond to the application, because the times were truncated, so they were moved. But I think what I can accept is that in relation to the replying affidavit, there would have been no indication of when will that be filed.

CHAIRPERSON: Is there any indication in the notice of motion?

ADV LEKGETHO: I should think so, Madam Chair. When I drafted it, I put in the date, ja.

CHAIRPERSON: Yes, thank you.

ADV LEKGETHO: Thank you.

CHAIRPERSON: We are asking these questions, because we have to decide on how we are going to deal with that application, whether we deal with it on papers, or we afford you an opportunity to file written submissions, or you will argue on your feet. Because we do not have time to be dealing with so many applications instead of focussing on the real crux of the matter, why we are here. Yes, thank you. You may proceed, Advocate Ngcukaitobi.

ADV NGCUKAITOBI SC: Thank you, Madam Chair. Advocate Maema, we were just about to deal with the authorisations by Advocate Abrahams in February 2016. Correct?

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. There is something in the De Kock panel report which says that well, it was not correct for Advocate Abrahams to issue his authorisation, because even at that stage the affidavit of Mr Danikas had not yet been signed. But the previous paragraph you have just read, that you actually returned from Greece with a supplemented but yet unsigned statement. Is that correct?

ADV MAEMA: That is correct, Chairperson.

ADV NGCUKAITOBI SC: Yes. Was there anything untoward in Advocate Abrahams issuing the POCA authorisation, even though the statement at that stage was not yet signed?

ADV MAEMA: No, there was nothing untoward. On the discussions that we had with Mr Danikas, we were convinced that the statement would have been signed. And remember from the beginning I did not want to have a statement signed and commissioned by us in Greece and we bring it here contrary to the provisions of the Mutual Legal Assistance Act. Because it is clear in the provisions of section 2 and 3 of the Mutual Legal Assistance Act that a witness who is outside the country, if you intend to use his statement in a subsequent trial, that statement has to be channelled through diplomatic channels.

ADV NGCUKAITOBI SC: I understand. I am just asking now a narrower question about the absence of signature or a so-called deposition. Because the report says it was unsworn.

ADV MAEMA: There is nothing untoward because the POCA does not require information to be under oath.

ADV NGCUKAITOBI SC: Thank you very much. So it is on that basis then that you have now done the supplementary information gathering.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: You have gone to Greece, you have spoken to the witness, you are confident the witness will testify.

ADV MAEMA: That is correct.

ADV NGCUKAITOBI SC: But you have a reason not to disclose that the witness will testify.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: And what is that reason?

ADV MAEMA: That reason is, you know, the more we say he is going to testify, we are the ones who are placing his life in danger. And if we convince, if we say he is not going to testify, then the focus shifts on him and he becomes a little bit more settled. So to say he is going to be used as a witness outright in the public, the effect, it puts a lot of pressure and it attracts a lot of untowards towards him.

ADV NGCUKAITOBI SC: Okay.

CHAIRPERSON: Advocate Ngcukaitobi, just give us just a minute. Thank you, Counsel. I am sorry to interpose, just settling an urgent matter. You may proceed.

ADV NGCUKAITOBI SC: Thank you. Now, the witnesses you were disclosing at the time, okay, excluded Mr Danikas, but were there any other witnesses that were in the same category that you felt for security reasons should not be disclosed? Remember that we had looked at the statements two days ago. I think of Ndlondlo, whose details were scratched out. And I think Mathonsi, whose details were also scratched out.

ADV MAEMA: But in the category of Mr Danikas' witnesses who were outside the country, he was the only one.

ADV NGCUKAITOBI SC: No, no, I am talking even local witnesses that you felt you did not want their identity to be known for the same security reasons.

ADV MAEMA: Yes, there were other witnesses whose identity we did not want revealed for the same security reasons.

ADV NGCUKAITOBI SC: Can you remember them?

ADV MAEMA: It would be Mathonsi, it would be Ndlondlo, Bheki, what is Ndlondlo's name? Yes.

ADV NGCUKAITOBI SC: Yes. Now, why specifically was it an issue that there was a security concern?

ADV MAEMA: Chairperson, any person that had anything to do with Cato Manor would tell you that when they are involved in any matter where they are involved, anything can happen to them. So their lives would be at stake. A witness even,

Chairperson remember we spoke about Ba. Even when he came to consult us, he was very scared. They were very scared of their lives.

ADV NGCUKAITOBI SC: Yes. Why were they scared of their lives?

ADV MAEMA: Because Cato Manor was the law unto themselves, they did not... we remember in one of the conversations it was said, I can make somebody disappear. So Cato Manor was very feared. They referred to them as Cato and they were very scared of them.

ADV NGCUKAITOBI SC: Yes. So, Mr Abrams has now, Advocate Abrams has now signed the authorisation on the 13th of February.

ADV MAEMA: That is correct, Chair.

ADV NGCUKAITOBI SC: 2016, paragraph 443.

ADV MAEMA: Paragraph 443.

“The second authorisations with the accompanying prosecution memorandum were based on the contents of the docket in the following statement to show that there was a police management structure under whose command responsibility the murder and offences were committed.”

43.1:

“The KZN provincial structure”

Subparagraph 2:

“Statements from Durban Organised Crime Unit Commander Aiyer.”

Subparagraph 3:

“Statements from KZN Provincial Head Office Assistant Commissioner Brown.”

Subparagraph 4:

“Urgent application papers under case 13759/2008 instituted by Mr Bongani Mkhize, wherein he successfully interdicted the Cato Manor Unit from unlawfully killing him.”

Subparagraph 5:

“Draft statements of Mr Danikas after consultation in Greece.”

Subparagraph 6:

“Motivation for monetary and non-monetary awards, which demonstrate that Mr General Booyesen and members of his command, excluding Colonel Aiyer, received money and non-monetary awards for the killing of people who were suspected of the killing of a Superintendent Choncho.”

Subparagraph 7:

“Statement of Mathonsi which explain how

the plan to eliminate members of KwaMaphumulo Taxi Association were hatched and orchestrated.”

Subparagraph 8:

“Statement of Ndlondlo (Mthiyane), which explain the role of Stanger Taxi Association in the killing of members of KwaMaphumulo Taxi Association by members of Cato Manor Unit.”

Subparagraph 9:

“Statement of Mkhize, which singles out the incident of the killing of Kopolota Nduli and Nathi Mthembu, who were members of KwaMaphumulo Taxi Association.”

ADV NGCUKAITOBI SC: Thank you. You have already dealt with extensively with why you believed that evidence to have been sufficient and you have explained the draft statement of Mr Danikas.

ADV MAEMA: That is correct, Chair.

ADV NGCUKAITOBI SC: Section D, we dealt with that yesterday because we had to address the De Kock panel report.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Can we skip to section E which is paragraph 484?

ADV MAEMA: That is correct, Chair.

ADV NGCUKAITOBI SC: Now this is now the Batohi era. It was once the present era but it is now the past era as well.

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: Can you deal with that? I mean I know right at the beginning on day one you wanted to get into this phase and we kept asking you to hold on.

ADV MAEMA: Chairperson, yes ...[intervenes]

CHAIRPERSON: I beg your pardon, Counsel. I thought that you went through this report. Are there specifics?

ADV NGCUKAITOBI SC: Yes, there are specific parts. Not this section of the Batohi era. Now there is 485. Can you deal with that?

ADV MAEMA:

“On 12 April I was instructed by Mr McAdam, the Acting Special Director of the Priority Crimes Litigation Unit, to hand over to him all Cato Manor dockets. During this time there was a pending High Court application where the accused had sought to challenge the aforesaid racketeering authorisations. This process had halted the commencement of the trial.”

ADV NGCUKAITOBI SC: Now, I want to also address 486, because yesterday, I am not sure if you had forgotten or what

had happened, when you dealt with that meeting of the 8th of July when everyone was convened by Advocate Batohi to inform them and I asked were there any responses and then you said well the hierarchy in the NPA is that when a decision is made there are no responses. The problem is that that is at slight variance with what is contained at 486, 487, 488, 489 and 490, because it seems that what actually happened is there was a pushback in that meeting. Look at your statement.

ADV MAEMA:



“On 8 July 2019, the National Director of Prosecutions, Advocate Batohi, convened a meeting where she invited the prosecution team and advised us that she had constituted a panel to look into the Cato Manor prosecutions. A report had been received from the Panel which was led by Advocate de Kock and the recommendation with which she is in agreement was that all the racketeering authorisations should be withdrawn.”

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: 487:

“The prosecution team, and I in particular, raised a concern as to how the Panel could

make such a recommendation without consulting the prosecutors who had long been seized with the matter.”

ADV NGCUKAITOBI SC: If we can just stop there now, I think yesterday you said once she made that, the meeting was over in two minutes. That is what I need you to clarify in the light of the paragraphs that come after that.

ADV MAEMA: Chairperson, yes. I, in particular, and I remember the team members also saying, but how is this possible? How can, we were really taken aback. How can a decision like this be made without our views being heard? Ja, and all that she told us was she has taken a decision and that is where the matter ends. That is why I say ...[intervenes]

ADV NGCUKAITOBI SC: Now, I am saying just in fairness to yourself, I am specifically driving you to respond to yesterday, having said she announced her decision, the meeting was over in two minutes, but in your statement saying actually we responded to her position. So it could be that your recollection yesterday was not correct and you can just explain that to the Panel that you made an error, but this is what actually happened.

ADV MAEMA: Chairperson, you know, whatever concern that we raised was completely brushed off. So I myself overlooked the resistance that we tried to show there. So

yes, I had made a mistake when I said it was... but the meeting was very brief and short. It was made clear to us that whatever that we would say would not change her mind. Decision has been made. She is withdrawing the racketeering authorisations.

ADV NGCUKAITOBI SC: Yes. Thank you very much.

ADV BALOYI-MERE SC: Sorry, a follow-up. Mr Maema, your previous statement that the meeting lasted just two minutes and no one said anything, was it meant to mislead this Panel into looking at the former NDPP as someone who never engaged?

ADV MAEMA: Chairperson, with the greatest respect, I would never mislead. This experience has been very painful to me. This experience was not pleasant. And even that day, I look at the – I would want to forget what happened on that day. I would want to forget that I was ever a member of the National Prosecuting Authority because of how the era of Advocate Batohi treated me. So it could be in that vein that I then made a mistake and said, you know, it was just one way we being told what happened and the meeting being over in a second. Chairperson, I apologise if I would give an impression that I would want somebody portrayed in a light that that person is not actually what he or she is.

ADV NGCUKAITOBI SC: Yes, thank you. That is what I needed you to just clarify. That is why I took you back to the

statements, just to reconcile them with your statement yesterday.

ADV MAEMA: I appreciate that, Chairperson, and I applaud you for it.

ADV NGCUKAITOBI SC: There is nothing I have done. I am just helping you as a witness. That is all. Not to get yourself in trouble.

ADV MAEMA: It helps my healing, Chairperson.

ADV NGCUKAITOBI SC: Advocate Maema, there has been developments pertaining to you in particular recently as of November and December 2025, when evidence was given here. Do you want to explain to the Panel what actually happened about criminal charges involving yourself?

ADV MAEMA: Chairperson, on a particular date, I think it was this year, early in January, I received a call from a police officer whose name I noted in my book. I was jogging in the morning and I said, well, I am on the road, I will give you a call when I get home. Because the call I received very early in the morning, around between 07.00 and half past seven. When I got home, I returned the call and he identified himself as an official from the unit that is headed by Advocate Johnson in the NPA.

So it was an investigator and a prosecutor who wanted to... let me think, what did they say they wanted to do? They wanted to serve a J175. A J175 is a subpoena to

appear in court. And then I wondered, J175, what are the charges? And I was told the charges are three counts of fraud. And I asked, what are the basis of the fraud? And how am I summoned to court without my version having been heard?

Because when there are allegations of commission of offence against anybody, the prosecution policy, as well as the *audi alteram partem* rule, requires that you hear the other side. You hear a version from the person that you have allegations against. The officer then went out and made a call and spoke to Advocate Paul Louw in the office of the National Director and then came back and said to me, we will give you the contents of the allegations in writing and we give you until a date in February this year on which I should then submit a warning statement of what my views are.

Because it was difficult at this stage to say what my views are when I do not have particulars of the said fraud allegations. And then what I did was, when the allegations were not forthcoming, I then sent an email to the official of the NPA to ask them if they are going to want a warning statement from me, maybe the best thing would be to place me in possession of the dockets that we had at the time that we drafted the indictment, then I will be able to give them a full account of my involvement in the Cato Manor matter.

ADV NGCUKAITOBI SC: Mr Maema, how I got my

information in this enquiry in the second week of December from Advocate Chauke, that you had been approached by these members of the NPA shortly after we had announced you as a witness. So between the two of you, whose recollection is correct?

ADV MAEMA: No, it was then. I made a note of exactly when it happened, the day that it happened.

ADV NGCUKAITOBI SC: Well, can you just check your note? Well, the last time you checked your note, it did not turn out well, but anyway.

ADV MAEMA: Chairperson, I did make a note.

MS RAMAGAGA: Advocate Ngcukaitobi, were you asking for the date on which he received the J175?

ADV NGCUKAITOBI SC: The date on which he was approached by these investigators, that is what I understood.

MS RAMAGAGA: Or subsequent to receipt of the J175?

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: I found the note, Chairperson.

ADV NGCUKAITOBI SC: When was it?

ADV MAEMA: On the 12th of December 2025.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA: I say:

“On Friday, the 12th of December 2025, at 06.31 in the morning, I missed a call from this number...”

And I say what the number is.

“The number called me again at 07.59, as I was training, as I was doing road running, I had my phone in my pocket at the time.”

I recently started training, so I thought if I have trouble, I can phone my daughter to come and collect me.

CHAIRPERSON: So Advocate Chauke was correct?

ADV MAEMA: Advocate Chauke was correct.

ADV NGCUKAITOBI SC: Yes.

ADV MAEMA:

“I answered the call and promised the caller to call when I finished. He indicated he will call later.”

CHAIRPERSON: You have already told us that. Let counsel proceed.

ADV NGCUKAITOBI SC: Now, these alleged fraud allegations, what do they relate to?

ADV MAEMA: They related to my involvement in the Cato Manor case.

ADV NGCUKAITOBI SC: In the Cato Manor case.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: Yes. Now, the 12th of December was day two of the cross-examination of Advocate Batohi, yes, and your name had been announced as a witness.

ADV MAEMA: That is correct, Chair.

ADV NGCUKAITOBI SC: Yes. Now, how did you interpret people alleging you have committed fraud because you have brought a case against Major General Booysen in the middle of the cross-examination where you are a witness?

ADV MAEMA: It was very strange. I was wondering whether it is a scare tactic to scare me from involvement in these proceedings. That is the only way I interpreted it because all of these things happened a long time ago. Why only at that stage, only after the announcement that I would be asked to come and testify?

ADV NGCUKAITOBI SC: Yes. That was the fear of Advocate Chauke, that you were being intimidated.

ADV MAEMA: Well, I also had the same fear, Chair.

ADV NGCUKAITOBI SC: Thank you, Madam Chair.

CHAIRPERSON: You said earlier on that you had been following the proceedings.

ADV MAEMA: That is correct, Chair.

CHAIRPERSON: The enquiry.

ADV MAEMA: Yes, I have.

CHAIRPERSON: In other words, by the 12th of December 2025, you would have known that Advocate Batohi was on the second day of her testimony or of her testifying under cross-examination.

ADV MAEMA: That is correct, Chair. Chairperson, I have the name of the member of the DPCI who came. It is Captain

McLeod. Captain McLean. I wrote it M, capital M, little small c and L-E-N.

CHAIRPERSON: MC?

ADV MAEMA: L-E-A-N.

CHAIRPERSON: L-E-A-N.

ADV MAEMA: McLean.

CHAIRPERSON: Yes, thank you.

ADV NGCUKAITOBI SC: Madam Chair, I have finished my evidence-in-chief. I have the standing order. I am not sure if it has been circulated, but we have the standing order now. Perhaps the witness can look at it if he wants to comment on it.

ADV MAEMA: Thank you.

ADV NGCUKAITOBI SC: Your memory in some parts is very sharp, Advocate Maema, because you immediately announced the standing order 251. So it is standing order 251.

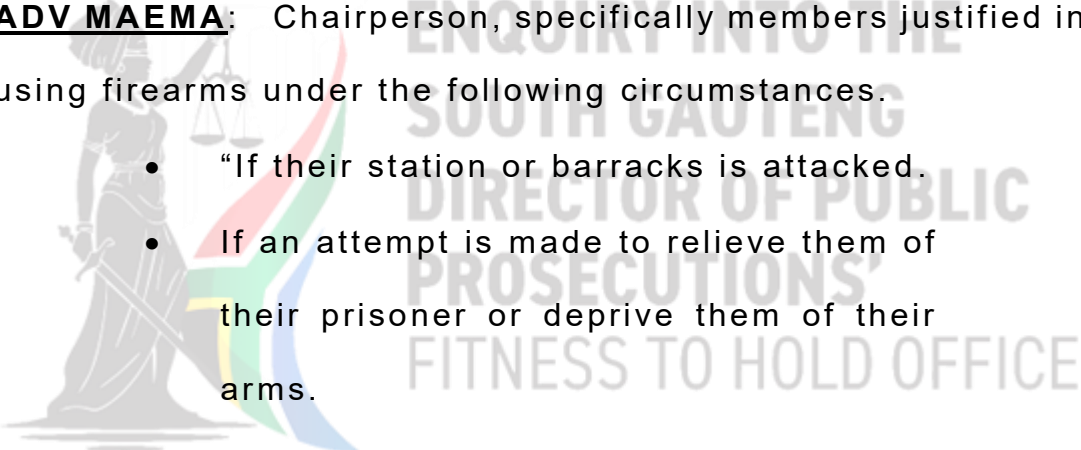
ADV MAEMA: It is, Chairperson. Is there anything you want to add on the standing order? It was around the issue of section 49(2) of the Criminal Procedure Act and the parameters of the use of force in the context of effecting an arrest.

ADV MAEMA: Chairperson, you can see also paragraph 251.5.4 it refers to section 49(2) of the Criminal Procedure Act. It mentions the parameters within which force can be

used by the police. This is one of the documents that we looked at, because it was clear in the docket that we were analysing, that there was use of force. We had to look at what internal regulations say insofar as the use of reasonable force in dealing with a possible resistance or a possible starting of a refusal to be arrested.

ADV NGCUKAITOBI SC: But I mean, under paragraph 251.5, it sets out the circumstances in which members may be justified to use force. Those are tabulated under 1, 2, 3, 4. What are those?

ADV MAEMA: Chairperson, specifically members justified in using firearms under the following circumstances.

- 
- “If their station or barracks is attacked.
 - If an attempt is made to relieve them of their prisoner or deprive them of their arms.
 - To defend themselves or any other person or persons from death or serious injury if attacked.
 - When other means are ineffectual to effect the arrest or to prevent the escape of a prisoner convicted of a serious crime or of a person who is committed or is suspected of having committed an offence included in

Schedule 1 of Act 51 of 1977.

In this connection attention is especially drawn to the provisions of section 49(2) of Act 51 of 1977.”

ADV NGCUKAITOBI SC: I am also interested in the next one, it is also very crucial, 251.6.1.

ADV MAEMA: Chairperson, it says:

“It must constantly be borne in mind that however justified a member may consider himself to be in shooting, whether or not the result are accompanied by loss of life, this act with all its accompanying circumstances will have to be subjected to an investigation. A member who is placed in such circumstances shall have to prove that he acted with all reasonable care and without recklessness or negligence but that he was compelled by the circumstances to make use of his firearm and that the degree of force and nature of the weapon used were not out of proportion to the circumstances necessitating the use of force.”

ADV NGCUKAITOBI SC: If you can just stop there, I mean it is most extraordinary, their own standing order places the onus on the shooting policeman to show that the shooting was

justified.

ADV MAEMA: In the circumstances, yes.

ADV NGCUKAITOBI SC: And then it places an onus on the police to conduct an investigation and where that investigation is conducted it is up to the shooter to show that the shooting was justified.

ADV MAEMA: Yes, yes.

ADV NGCUKAITOBI SC: And here we found two glaring instances where firstly the investigations are superficial and they are never put to an onus to justify the shooting, the policeman.

ADV MAEMA: Yes, it is contrary to what the standing order provides for.

ADV NGCUKAITOBI SC: Thank you Madam Chair, I have finished my evidence-in-chief, thank you for the time.

MS RAMAGAGA: May I ask some questions especially with regard to that paragraph 251.8.1, do you see that?

ADV MAEMA: 251.6.1.

MS RAMAGAGA: 251.6.1, thank you very much, yes you are correct. I am trying to understand exactly how the IPID or the DPCI works.

ADV MAEMA: Yes. Chairperson.

MS RAMAGAGA: Now any killing that has been done or that has been caused by the police officer in the course of his or her employment, would then become a subject of the IPID

investigation.

ADV MAEMA: That is correct, Chairperson.

MS RAMAGAGA: That investigation, does it in certain circumstances end at the IPID or the IPID investigators look at the information, make their own findings and then transfer the matter to the NPA to consider any recommendation that would have been done by the IPID investigators?

ADV MAEMA: Chairperson, the IPID would look at that shooting incident and then analyse, make recommendations, and those recommendations together with the report and the docket goes to the Director of Prosecutions to make a determination as to whether there is an offence and whether anybody can be held accountable for that shooting.

MS RAMAGAGA: So it is correct that every killing that would have been caused by the police in the course of his or her employment as a police officer, would finally end at the table, at the desk of the NPA for a determination whether to prosecute or not?

ADV MAEMA: That is correct, Chairperson.

MS RAMAGAGA: Thank you.

CHAIRPERSON: Thank you, Advocate Ngcukaitobi. I just want to verify a few aspects before we ask Advocate Mtsweni to proceed. Look at paragraph 490 of your affidavit, it is at 1-138.

ADV MAEMA: I am there, Chairperson.

CHAIRPERSON: The second paragraph reads:

“The NDPP's response...”

Referring to Advocate Batohi;

“...was that she was not reviewing the decision of the prosecution team but that of Jiba and Abrahams.”

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: She was responding to your disagreement with the De Kock panel's recommendation.

ADV MAEMA: That is correct.

CHAIRPERSON: Now, as she responded in this way, does that not presuppose that she would have had regard to the comprehensive memoranda that you had submitted to the erstwhile NDPPs?

ADV MAEMA: Ordinarily, Chairperson, when she says I am reviewing the decision of my predecessors, the decision of her predecessors would have been based on the recommendations and the prosecution memo that we made. So, ordinarily, I would have expected that to have been taken into account.

CHAIRPERSON: Your memoranda?

ADV MAEMA: Yes, the prosecution memoranda.

CHAIRPERSON: Yes. My recollection of Advocate Batohi's evidence was that she never read the dockets.

ADV MAEMA: That is correct. I remember following it.

CHAIRPERSON: It seems to me that in saying so, it means she had not even had regard at that time to the summaries that had been provided by Advocate Noko.

ADV MAEMA: That is correct, Chairperson. The summaries of the dockets that were provided by Advocate Noko.

CHAIRPERSON: Yes.

ADV MAEMA: Yes, Chairperson.

CHAIRPERSON: What do you make of that?

ADV MAEMA: Chairperson, you know, I was taken aback. I was just astonished at how an NDPP would act in the manner that she does. Because I would have expected an NDPP to have looked at the dockets, at the summaries, to have looked at the views of the DPP. Because the DPP is the one who has original prosecution authority in the province. So the fact that not the summaries, not the dockets, nothing was looked at, I found that very astonishing. Particularly in the light that when Advocate Abrams dealt with the matter, he looked at all of these things and he even said, bring me the dockets and we brought the dockets to him on a Friday. And he was, I do not know what happened, but we got the dockets back a week thereafter. Which shows that he wanted to convince himself, even from the information in the dockets, that there is information linking the accused persons to the offences.

CHAIRPERSON: You have now had a sight of the De Kock panel's memorandum.

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: Upon which he relied.

ADV MAEMA: Yes, yes, Chairperson.

CHAIRPERSON: You confirm that no mention of the dockets, or at least there are no summaries of the dockets, that are the subject matter of this Cato Manor matter, in that memorandum.

ADV MAEMA: That is correct, Chairperson. Yes.

CHAIRPERSON: Does the memorandum by the De Kock panel take into account the prosecution team memoranda that had been presented to the erstwhile NDPPs in any way?

ADV MAEMA: Chairperson, I do not follow the question, does the?

CHAIRPERSON: I am asking, does this memorandum by the De Kock panel, take into account the memoranda that you had prepared, not once, not twice, if I remember, and forwarded to the erstwhile NDPPs, Advocate Nxasana, Advocate Abrahams?

ADV MAEMA: Not at all, Chairperson. It does not take that into account.

CHAIRPERSON: Paragraph 484, mention is made that Advocate Batohi assumed office on the 1st of February 2019. I think that is common cause now.

ADV MAEMA: That is correct, Chairperson. I remember it was in February 2019, yes.

CHAIRPERSON: That is when she was now appointed as the NDPP.

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: That is on her return from The Hague.

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: At paragraph 491, the end of your affidavit, you state:

“On 16 July 2019, Advocate Batohi withdrew the charges against General Booysen and the other accused.”

ADV MAEMA: Those charges specifically are the racketeering charges that she withdrew.

CHAIRPERSON: That she withdrew.

ADV MAEMA: That is correct, Chairperson. And then she referred the balance of the charges, the predicate offences, to the DPP in KZN. I have not met her, Advocate Harrison?

CHAIRPERSON: Advocate Zungu then, Advocate Harrison.

ADV MAEMA: Yes, yes.

CHAIRPERSON: Correct?

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: Now, when you look at the time span between the 1st of February 2019 and the 16th of July 2019, it gives you approximately six months, two weeks.

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: And the decision that was taken on the

16th of July, that decision of withdrawing the charges, followed the report of the panel, the De Kock panel.

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: On the 8th of July, the same year. If you look at 486, the opening paragraph, sentence in paragraph 486.

ADV MAEMA: Yes, yes, following that meeting that she convened, yes.

CHAIRPERSON: So she had almost eight days.

ADV MAEMA: Yes.

CHAIRPERSON: Eight calendar days to make a final decision.

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: Following the presentation of that memorandum by the De Kock panel.

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: Now, if you look at the matrix, the evidential matrix that have been brought to our attention, all this evidence, the dockets, the memoranda, all the documents that have been presented to us, would it have been possible for the NDPP, given all the circumstances, to fully apply her mind to then make a decision within that short period of time?

ADV MAEMA: No, Chairperson. My view is that the period was too short for a proper analysis and for a proper applying your mind to the issues involved.

CHAIRPERSON: Unless, of course, she based her decision entirely, entirely on the De Kock panel memo.

ADV MAEMA: Exactly.

CHAIRPERSON: Without more.

ADV MAEMA: Without more, yes.

CHAIRPERSON: What is this decision? What do you make of this decision?

ADV MAEMA: Chairperson, the decision is not rational. The decision is not grounded on all the facts. The decision is, in my view, with the greatest of respect, incorrect.

CHAIRPERSON: Can such a decision be subjected to review in terms of the law?

ADV MAEMA: Chairperson, I would submit that it is susceptible to be reviewed.

CHAIRPERSON: Supposing it may not, what would then be the natural next step, proper step to take by the NDPP?

ADV MAEMA: Chairperson, the NDPP can re-look at this matter afresh and apply his mind properly to the matter, in my view.

CHAIRPERSON: If he does not?

ADV MAEMA: If he does not, Chairperson, then I would urge the family members of the deceased to ask what is happening to this. Because they still keep on asking. They must ask what is happening to these matters. Then it will prompt the National Director perhaps to revisit the decision in terms of

section 179(5).

CHAIRPERSON: I am asking this question because you are a lawyer. You know the mandate of this Panel.

ADV MAEMA: Of course, Chairperson.

CHAIRPERSON: In the terms of references.

ADV MAEMA: I looked at the terms of references. I have them here.

CHAIRPERSON: I suppose this will be a matter for argument by the parties.

ADV MAEMA: Yes, and we have able participants here whose task I will be following with envy, Chairperson.

CHAIRPERSON: Yes, but in the interest of justice?

ADV MAEMA: In the interest of justice, Chairperson, my view is that these matters must go to court. These killings must go to court. Evidence must be presented in an open court. That is why we are in this democracy the way we are, so that things must be ventilated in an open court.

CHAIRPERSON: So far remedies are concerned, despite the powers that this Panel has. The Panel may, in the interest of justice, even consider making certain recommendations regarding this aspect.

ADV MAEMA: That is correct, Chairperson, yes.

CHAIRPERSON: Advocate Ngcukaitobi, the documents relating to procurement in relation to item 8 of the memo, the notes, that is the outstanding documents that were listed,

item 8, that procurement document is still outstanding?

ADV MAEMA: Yes, Madam Chair.

CHAIRPERSON: Your juniors will look for that?

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: And if they may also remember, as was the case with regard to documents that are prepared by the NPA and/or the evidence leaders, such documents must be properly listed as exhibits, properly numbered.

ADV NGCUKAITOBI SC: Yes, thank you.

CHAIRPERSON: I think this will come at the end of the case of Advocate Chauke.

ADV NGCUKAITOBI SC: Yes, Madam.

CHAIRPERSON: But they must start preparing so that nothing falls through the cracks.

ADV NGCUKAITOBI SC: Yes. Madam Chair, I presume with the documents they found from yesterday they can just liaise with the researchers?

CHAIRPERSON: Yes.

ADV NGCUKAITOBI SC: Show them where they are.

CHAIRPERSON: Yes. I think all of you, our researchers, are at our disposal to work with them and as we work together to assist you. Just check one last time. How many authorisations were granted, the Racketeering Authorisation Certificate, before the assumption of office by Advocate Batohi?

ADV MAEMA: Two sets, Chairperson. The first set was granted by Advocate Jiba on the 17th of August 2012. And then the second set was the one approved by Advocate Abrams on the 13th of February 2016.

CHAIRPERSON: Yes, thank you.

ADV MAEMA: Thank you, Chairperson.

CHAIRPERSON: My sister would like...

ADV BALOYI-MERE SC: Advocate Maema, at paragraph 490, maybe let me preface my question with this. You have already dealt with the provisions of section 179(5) of the Constitution, and in particular D, where the NDPP is given a power to review a decision to prosecute or not.

ADV MAEMA: That is correct, Chairperson.

ADV BALOYI-MERE SC: But that refers to the decision to prosecute or not by the DPP.

ADV MAEMA: That is correct, Chairperson.

ADV BALOYI-MERE SC: Now, at paragraph 490, that last line, you say:

“The NDPP's response was that she was not reviewing the decision of the prosecution team, but that of Jiba and Abrams.”

Meaning she is reviewing the decision of Advocate Jiba and Advocate Abrams.

ADV MAEMA: That is correct, Chairperson.

ADV BALOYI-MERE SC: Was she empowered by any

legislation to review the decisions of Advocates Jiba and Abrams? And if yes, direct us to the enabling provisions, and if no, give us your reasons why you would say no.

ADV MAEMA: Chairperson, I would say no, because section 179(5) sets out the circumstances under which the National Director may exercise her review powers. And to say you are reviewing the decisions of your equals in rank, National Director, your decision of your predecessors is your decision. How do you review your own decision? Because you are a National Director, the previous decision-maker is a National Director. It is *functus officio* insofar as we are concerned. That is why at some stage I said perhaps what she could have done was to approach Court to review that decision. Not herself review it, because it is her own decision. It is your predecessors. You assume that decision. You assume the office.

ADV BALOYI-MERE SC: But then if she was not allowed to review her predecessors' decisions, how should the present NDPP now approach this matter without reviewing or without flaunting the provisions of the Constitution by revisiting this matter?

ADV MAEMA: Chairperson, that is why I am more on the cautious side, because we have a Constitution in this country. Rather, there should be a representation. The families of the deceased are still not happy with this. So rather, even if it is

a one-pager, say I am happy with this decision. I want to know what happened to my relative. I want to know what happened to my dad. Can you explain to me what happened to my dad? In that process, the present National Director can then relook the decision of the predecessor in line with section 179(5)(d).

ADV BALOYI-MERE SC: Now, Advocate Maema, reinstating these withdrawn charges, would that amount to reviewing?

ADV MAEMA: Reinstating...

ADV BALOYI-MERE SC: Remember when you testified and even Advocate Batohi testified that when a matter is withdrawn, it can be reinstated subject to further evidence being received or being unearthed.

ADV MAEMA: Yes, yes.

ADV BALOYI-MERE SC: So I am asking, if the present NDPP were to reinstate these charges, would that amount to reviewing his predecessor's decision to withdraw the charges? Or it would be in the process of prosecution where you can withdraw and reinstate?

ADV MAEMA: Chairperson, there is a lot of consternation about what happened, what the Cato Manor Serious Violent Crime did. Even on the basis of the consternation that is there, in my respective view, the present National Director can revisit the decision of the predecessor. But I would be much more careful, I would say, I would in an attempt to

comply with the constitution, I would say 179(5)(d) says receive a representation and a complaint from the family or from some person who is not happy. At least you then be sure of having complied with the Constitution. Alternatively, like I said yesterday, Chairperson, a declaratory order.

But a declaratory order, Chairperson, I hear what you say, it would mean that for every case that has been withdrawn, a prosecutor must get a declaratory order. That would be an untenable situation. But Chairperson, this is a very serious matter. It affects lots of lives in KZN. And as a National Director, I will tread carefully in ensuring that I comply with the Constitution. But I also consider the sadness and all that is accompanying the families of the deceased persons in KZN.

ADV BALOYI-MERE SC: Is there presently a law that bars the present NDPP from reinstating the withdrawn charges?

ADV MAEMA: There is no law, Chairperson. Not at all.

CHAIRPERSON: Looking at the history of this matter from 2008 or at least 2007, I remember there is one docket that emanates from 2007.

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: Until today, how many years now? Approximately 10 years?

ADV MAEMA: Close to 10 years. Not quite 10.

CHAIRPERSON: 20 years.

ADV MAEMA: Oh yes 20.

CHAIRPERSON: Approximately 20 years. And in 20 years, justice has not been dispensed with regard to these matters that are still hanging in the air.

ADV MAEMA: That is correct, Chairperson. It is an untenable situation. Justice done requires some promptness. And with the lapse of that period of time, a lot of injustice has happened and it would be appreciated if it can be brought to an end.

CHAIRPERSON: And as we often say, we as lawyers, justice delayed is justice denied.

ADV MAEMA: Denied, Chairperson, yes.

CHAIRPERSON: Yes, paragraph 485, that is what I was looking for earlier. You speak about you having been instructed by McAdams from the Acting Special Director of the Priority Crime Litigation. Is this within the NPA?

ADV MAEMA: This is within the NPA.

CHAIRPERSON: Yes.

ADV MAEMA: Chairperson, when we moved from the DPP offices, this is the unit to which we were annexed. We became part of the Priority Crime Litigation Unit in the office of the NDPP.

CHAIRPERSON: And who is the head of this unit?

ADV MAEMA: The head used to be Tory Pretorius. When he left, it was Chris McAdams. I do not know who the head

is now. But there is a unit, Priority Crime Litigation Unit, in Advocate Batohi's office.

CHAIRPERSON: And evident from paragraph 485, the Cato Manor dockets were handed to this unit.

ADV MAEMA: That is correct, Chairperson, and I have a signature of Advocate McAdams receiving the dockets. Because those are important murder dockets, I had to make sure that somebody, that when I leave, I hand them over to a responsible person.

CHAIRPERSON: It follows that all these dockets are still within the possession of the NPA itself.

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: Thank you, Advocate Maema. Are you done, Advocate Ngcukaitobi?

ADV NGCUKAITOBI SC: Yes, indeed, Madam Chair. I am finished.

CHAIRPERSON: Advocate Mtsweni, before we adjourn, would you please indicate what your position is?

ADV MTSWENI: Madam Chair, given the fact that the Panel had indicated that we would have to adjourn at 1 o'clock, I would prefer that we start with the, I would not call it cross-examination, clarification exercise, tomorrow.

CHAIRPERSON: It is always better to speak louder, sir.

ADV NGCUKAITOBI SC: I am trying my best, Madam Chair.

CHAIRPERSON: To the mic, the mic is dropped. Just raise

it up.

ADV MTSWENI: Thank you, Madam Chair.

CHAIRPERSON: You are an officer of court. You know in court you speak so loud, all of us. Just raise it a little bit. Yes, sir?

ADV MTSWENI: No, the idea was, since you indicated that we would have to adjourn at 1 o'clock due to the commitments you have, I would suggest, subject to approval, that we start with the clarification exercise tomorrow morning. But I can assure you, we should be done by tea time or shortly after tea time. I do not have much quibble with Advocate Maema's evidence, but I just need to make sure that I gather my notes properly so that the exercise flows.

CHAIRPERSON: Thank you, Counsel. We will adjourn until tomorrow morning, 9 o'clock. This will afford you an opportunity to reflect on the questions that you would like to pose to the witness, Advocate Maema. Advocate Maema, thank you very much. We will adjourn until tomorrow morning at 9 o'clock. You are still under oath.

ADV MAEMA: That is correct, Chairperson.

CHAIRPERSON: Yes.

ADV MAEMA: Thank you.

CHAIRPERSON: We adjourn.

ENQUIRY ADJOURNS UNTIL 20 FEBRUARY 2026

ENQUIRY ADJOURN

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