

**THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS  
REGARDING EFFORTS OR ATTEMPTS TO STOP THE INVESTIGATION OR  
PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES  
(TRC CASES INQUIRY)**

**HELD AT:**

Sci-Bono Discovery Centre, Corner of Miriam Makeba & Helen Joseph Street  
Newtown, Johannesburg

**BEFORE:**

**COMMISSIONERS:**

The Honourable Ms Justice Sisi Khampepe (Judge Ret.) – Chairperson  
The Honourable Mr Justice Frans Diale Kgomo (Judge President Ret.)  
Adv Andrea Gabriel (SC)

**EVIDENCE LEADERS:**

Adv Ishmael Semanya (SC)  
Adv Vas Soni (SC)  
Adv Fana Nalane (SC)  
Adv Nompumelelo Seme  
Ms Baitseng Rangata

**REPRESENTATIVES**

Adv KD Moroka (SC) – DoJ representative  
Adv Varney (SC) – The Calata Group  
Adv D Pillay – The Calata Group  
Ms A Thakor – The Calata Group  
Adv Motlalepule Rantho (for SAPS)  
Mr Lukhele for (NPA Representative)  
Adv Nwabisa Ntshizana (for Ex-NDPP's Officials)  
Adv Bridgette Nthambeleni (for Adv Jiba)

**2 JULY 2026**

**DAY 53.1**

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PROCEEDINGS ON 2 JULY 2026

CHAIRPERSON: Good morning.

ADV SONI: Morning, Chairperson.

CHAIRPERSON: Mr Soni?

ADV SONI: Thank you, Chairperson. Chairperson, Commissioners, today we are going to start with the evidence of Mr Nxasana.

CHAIRPERSON: Yes.

ADV SONI: May the witness be sworn in, Chair?

CHAIRPERSON: Thank you. Mr Nxasana, are you going to give  
10 your evidence under oath or affirmation?

MR NXASANA: Under oath, Chair.

CHAIRPERSON: Yes. Do you swear that the evidence you will give will be the truth, the whole truth and nothing but the truth? If so, raise your right hand and say 'so help me God'.

MXOLISI SANDILE OLIVER NXASANA: duly sworn states

CHAIRPERSON: Thank you. Mr Soni?

ADV SONI: Thank you, Chairperson. May I just say, Chairperson that the evidence of the witness is summarised in a sworn statement he has made, and that statement appears at pages 195 to... 1995 to  
20 2002, Chairperson.

CHAIRPERSON: Yes.

EXAMINATION BY ADV SONI: Mr Nxasana, you were for a short period of 20 months the National Director of Public Prosecutions, is that correct?

MR NXASANA: That is correct, Chair.

ADV SONI: And you have been asked to give evidence on your tenure as NDPP in regard to certain matters?

MR NXASANA: That is correct, Chair.

ADV SONI: You have made a statement with the assistance of one of the evidence leaders relating to the evidence you are about to give?

MR NXASANA: That is correct, Chair.

ADV SONI: Now, please have a look at the file in front of you, and you will see at page 1995 there is a document titled "sworn  
10 statement". Do you see that?

MR NXASANA: I see that, Chair.

ADV SONI: And it says it is your statement.

MR NXASANA: It is indeed my statement. I see that the statement is initialled by myself and at the end it is signed by myself.

ADV SONI: All right. And you confirm you did sign it?

MR NXASANA: I do confirm I did sign the statement.

ADV SONI: And you have read the statement?

MR NXASANA: Yes, I have read the statement.

ADV SONI: You confirm the correctness of what is contained in that  
20 statement?

MR NXASANA: That is correct.

ADV SONI: Now, can I just ask you to confirm that you were the NDPP from 1 June, sorry, from 1 October 2013 to 1 June 2015?

MR NXASANA: That is correct.

ADV SONI: That is a period of 20 months.

MR NXASANA: That is correct.

ADV SONI: We will deal with the issue of you being appointed as NDPP in a moment, and also at the time you left. Can I just ask you in regard to your statement, would I be broadly speaking correct if I say to you that your statement is effectively in two parts? The first part relates to the basis on which you were asked to give evidence before the Commission, and that is reflected at paragraphs 3 to 7 of your statement. And the second part deals with your tenure as the NDPP and the challenges you faced in matters relating to TRC cases;  
10 and that is dealt with at pages 8, at paragraphs 8 to 25 of your statement.

MR NXASANA: That is indeed correct.

ADV SONI: Is that broadly correct?

MR NXASANA: That is broadly correct, Chair.

ADV SONI: Now, I just want to deal with these matters in turn, if you do not mind. And you say in paragraph 3 that you were requested by way of a request for information to deal with certain matters that the Commission has been asked to enquire into. Is that correct?

MR NXASANA: That is correct, sir.

20 ADV SONI: And that RFI appears as MNI1 and at page 2003.

MR NXASANA: Yes, I see that.

ADV SONI: If you look at paragraph 3 of that RFI, it says that you were asked to deal with the period that you were the NDPP, and in paragraph 4 it says that please can you furnish the Commission with any documents that you may have or information relating to the

matters that the Commission is dealing with.

MR NXASANA: Yes, I see. I see those paragraphs.

ADV SONI: All right. I am going to ask you to go back to your statement, and your answer to that request is at paragraph 4 of your statement. Would I be correct?

MR NXASANA: That is correct, Chair.

ADV SONI: And what do you say in paragraph 4? You are free to read it or to summarise it or expand on it.

MR NXASANA: I am saying:

10                   “I am not in possession of any National  
Prosecution Authority documents, including  
documents in connection with the issues raised  
by the Commission’s terms of reference. It is my  
evidence that during my tenure with the NPA, I  
never dealt with the TRC cases at all.”

ADV SONI: And that is the tenure of your evidence.

MR NXASANA: That is correct.

ADV SONI: Let us just deal with the matters that you were asked to  
deal with in your statement, and that you will see is contained in  
20 paragraph 5 of your affidavit where you refer to Annexure MN2 to  
your affidavit, and that annexure MN2 is at page, starts at page 2005.  
Is that correct?

MR NXASANA: That is correct, Chair.

ADV SONI: And if you turn over to page 2006, you will see the  
specific matter that you were asked to deal with in a statement is a

letter written to you in your capacity as the NDPP, a letter written to you on 16 January 2014 by the Legal Resources Centre dealing with a matter, a TRC matter.

MR NXASANA: Yes, I see that, although it says the letter was written to me in my capacity as an Acting National Director of Prosecution.

ADV SONI: Okay, I am... Sorry, you are quite right. I am going to come to that in a minute when we look at the letter, but that is what you were asked to deal with. Now, can I just ask you, before we go  
10 to the letter, what is your response to that request that you deal with that LRC letter of 16 January 2014?

MR NXASANA: My response, Chair, is that I have never seen this letter. The only time I have seen this letter is when it was furnished to me recently by the Commission, the TRC commission.

ADV SONI: All right. Now, can I take you to that letter, please? That letter appears at page 2010 and it is MN2.

MR NXASANA: I see the letter.

ADV SONI: All right. Now, you will see that that letter; and I am just trying to go through the essential parts of this part of your evidence,  
20 that letter is dated 16 January 2014. You see right on the top left-hand side it is written to the Acting National Director of Public Prosecutions, and then under that it says: "Dear Mr Nxasana". That is yourself, is that right?

MR NXASANA: That is correct, Chair.

ADV SONI: Now, the point you made is; it is written to you in your

capacity or your purported capacity as acting NDPP, but what was your position as at the date of this letter?

MR NXASANA: Chair, I was never appointed as the Acting National Director of Public Prosecutions. I was appointed as the National Director of Public Prosecution with effect from 1 October 2013.

ADV SONI: So during ...[intervenes]

COMMISSIONER KGOMO: Substantively?

MR NXASANA: Substantively, yes.

COMMISSIONER KGOMO: Okay.

10 ADV SONI: So, at the time this letter was written, you were the NDPP, not in an acting capacity.

MR NXASANA: That is correct, Chair.

ADV SONI: All right. Now, there are a couple of matters that you wish to raise about this letter. I just ask you to look at paragraph 1 of this letter. It says; so it is addressed to you and it says:

“We refer to the letter of Adv Abrahams, the  
Acting Director of the PCLU, which is dated 5  
December 2013.”

Now, until the last day or two, had you seen this letter from Mr  
20 Abrahams?

MR NXASANA: No, Chair. I had not seen it. I only saw it, I think, yesterday, if not the day before yesterday.

ADV SONI: Chairperson, Commissioners, for your convenience, we have asked that that letter be added to your file and you will see it is contained at the end of the LRC letter and it is 2018, A1 to A4, A5,

sorry. Now, on page 2, paragraph 5 of the letter, you will see that at line four of paragraph 5:

“In the year prior to October 2010, there is a reference to the letter written by Adv Ramaite dated 31 January 2013.”

You see that reference at paragraph 5, sir?

MR NXASANA: Where are we now?

ADV SONI: At page 2011, paragraph 5 of MN2.

MR NXASANA: Yes, I see that, ja.

10 ADV SONI: All right. So, that letter that is referred to, the letter of Dr Ramaite dated 31 January, have you seen that letter prior to this week?

MR NXASANA: No, Chair. I had not seen it until recently this week.

ADV SONI: That letter too, Chairperson is annexed to, well, is included in your bundle, just for the sake of convenience. I want to point out, Chair, and the reason I have included it in the bundle is you will see that Mr Nxasana says that he did not see the letter addressed to him until it was sent to him by the Commission, did not see the letter that Adv Abrahams wrote, did not see the letter that Dr Ramaite  
20 wrote. Now, those letters are obviously important, but ...[intervenes]

ADV MOROKA: Chair, I am sorry, if I might just interrupt, and my apologies for interrupting. We are trying or I am trying to find these documents that Mr Soni is referring to. They do not seem to be in the bundle that was sent to us.

ADV SONI: It is contained in the affidavit of Adv Abrahams,

Chairperson, these documents; and we just included it in your bundle for the sake of convenience, but they are not necessary because I do not want to deal with them. I am just explaining to you, Chair why it will not be appropriate for this witness to deal with those letters. He knows nothing about them. He has seen them now. And as you will see from the rest of his evidence, he is not in a position to explain or to answer the complaints made by the LRC.

CHAIRPERSON: Yes.

10 ADV SONI: So that is the purpose of presenting these letters to you and leading Mr Nxasana on this, but not dealing with the letters themselves. But I want to say, Chairperson that what is contained in those three letters is of extreme relevance to the Commission and they will be dealt with by, or we will raise them with Adv Abrahams when he comes to testify.

CHAIRPERSON: Yes.

ADV SONI: They are important to the Commission's work.

CHAIRPERSON: Yes.

20 ADV SONI: In essence, though, Mr Nxasana, can I just ask you, and you deal with this in paragraph 6 of your letter; what does the letter of the LRC effectively complain about? You deal with it in paragraph 6 of your affidavit.

MR NXASANA: Well, my reading of the LRC letter, it details the failures of the NPA in the handling of the case of the late Ms Nokuthula Simelane, who is the sister to Ms Thembisile Simelane.

ADV SONI: You have to speak up, Mr Nxasana.

MR NXASANA: Oh, am I not audible? Okay, sorry. My reading of the letter from the LRC dated 16 January 2014, it details the failures of the NPA in the handling of the case of the late Ms Nokuthula Simelane, who is the sister to Ms Thembisile Simelane. It is evident from this letter that the LRC and the family of Ms Nokuthula Simelane were critical and angered by the manner in which the Priority Crimes Litigation Unit, a unit within the NPA tasked with, amongst other things, the management and direction of the investigation and prosecution of TRC cases, had failed in their mandate and duties  
10 associated with that mandate. That is the...

ADV SONI: The thrust of ...[intervenes]

MR NXASANA: The thrust of their complaint.

ADV SONI: Now, just dealing with that, you say you became aware of that complaint or those complaints when the letter was sent to you by the Commission.

MR NXASANA: That is correct, Chair.

ADV SONI: That is the first time you became aware of it.

MR NXASANA: That is correct.

ADV SONI: Now that you have read the letter, are you in a position,  
20 and the letters of Mr Abrahams and Dr Ramaite, are you in a position to tell the Commission whether the complaint is valid or not?

MR NXASANA: Chair, after reading the letters, my feeling is that they have a valid complaint. The letters have a valid complaint.

ADV SONI: But are you in a position to say whether what Mr, what Adv Abrahams and Dr Ramaite said in response to the LRC's

complaint, whether those are a complete answer or part of an answer to the LRC's complaint?

MR NXASANA: No, I am not in a position to say that, because I was not privy to the whole matter and it was never brought to my attention. I do not know the facts of the matter until I received this from the TRC.

ADV SONI: Now, the letter from the LRC was written to you, although they said you were in an acting capacity.

MR NXASANA: Yes.

10 ADV SONI: They also, that letter is also addressed to you, Mr Nxasana.

MR NXASANA: Yes.

ADV SONI: Ought that letter to have been brought to your attention?

MR NXASANA: Chair, I see that the letter is specifically; it is addressed to me as the acting national director and I was in the office on 16 January 2014, but I see that it was sent by way of a facsimile, fax. I am not sure, because this was never brought to my attention. I have never seen it. Perhaps that might be the reason. But looking at the previous letters, if one has regard to the response by Adv Shaun  
20 Abrahams, the way he is responding to the LRC, he refers to a letter.

ADV SONI: Sorry, that is at page 2018B1, am I correct?

MR NXASANA: That is page...

ADV SONI: Or maybe it is not contained in your file, I do not know.

MR NXASANA: Ja, no, no, it is here.

ADV SONI: But you were saying that that letter?

MR NXASANA: I see if we refer to this letter at page 2018B1, the first paragraph. It is written by Adv Abrahams and is addressed to Legal Resources Centre. First paragraph says:

“I acknowledge receipt of your letter addressed to the Acting National Director dated 28 November 2013, which was brought to my attention on 4 December 2013. Again, I was in the office, as I have stated, on 28 November 2013.”

I have never seen even this letter of 28 November 2013, which was  
10 addressed to the Acting National Director and I have never seen even this response by Adv Abrahams to the letter of 28 November by the LRC. And then, to me, then it is a continuation, I would then suppose it is a continuation that the letter of 16 January 2014, when I say I have never seen it, it is the same thing as what happened. But it is clear in the letter by Adv Shaun Abrahams that there was a letter that was addressed to the acting NDPP, which was referred to him. It was never referred to me. And he then responded to that letter without even responding, referring it to me.

COMMISSIONER KGOMO: Mr Soni, if you can indulge me.

20 ADV SONI: Yes, yes.

COMMISSIONER KGOMO: I know you would come to this, but Mr Nxasana, if you can just read, please, paragraph 17 of your statement, because I want to enquire something about it. Read paragraph 17 to the record.

MR NXASANA:

“In July 2014 I received correspondence from the president that he had taken a decision to institute an inquiry against me on the basis that I was not fit and proper to hold office as the NDPP. Eventually, the president issued me with a notice of suspension in July 2014 on the basis that I was not fit and proper to be an NDPP. I then launched...”

There is, I think “I then launched a legal challenge”.

10                   “Ultimately, I relinquished my position as the NDPP through a mutual separation agreement.”

COMMISSIONER KGOMO: Yes. Now when the letter addressed to the acting NDPP, but also referring to you by name, you were not on suspension.

MR NXASANA: I was never on suspension.

COMMISSIONER KGOMO: I see here the notice of suspension. It was just a notice of suspension, but you were not suspended.

MR NXASANA: It was a notice that was given to me that the president intended to suspend me pending the disciplinary inquiry  
20 into my fitness to hold office.

COMMISSIONER KGOMO: Yes, but the point is in any event that you were in office when this letter was addressed to you.

MR NXASANA: It would appear so, because it was in January, I think, January 2014.

COMMISSIONER KGOMO: Yes.

MR NXASANA: Yes, Commissioner.

COMMISSIONER KGOMO: Because I find it very strange. And that fax number, whose fax number is that?

MR NXASANA: I cannot recall.

COMMISSIONER KGOMO: Okay. Thank you, Mr Soni.

ADV SONI: Thank you, Chair.

MR NXASANA: But Commissioner, that is not the only letter in January. I have referred again to the letter that was sent to the Acting National Director of Public Prosecution in November 2013. I  
10 was in the office, but it never came to my attention. And I see that in the letter by Adv Abrahams, he then responded to the letter. He said it was brought to his attention. It does not mention by who was it brought to his attention.

COMMISSIONER KGOMO: And he writes the letter whilst you were in office?

MR NXASANA: That is correct.

COMMISSIONER KGOMO: And he had not spoken to you?

MR NXASANA: That is correct. Because I am saying, I have just seen this letter for the first time, even the one that was written by Dr  
20 Ramaite, but that one I understand. It was in January 2013 when I was not even at the office, because I was appointed in; I assumed office in October 2013.

COMMISSIONER KGOMO: Thank you, Mr Soni.

ADV SONI: Yes, thank you. Commissioner, if I could just say that during the course of the evidence, these matters will hopefully shed

some, some light will be shed on these matters, because those are the issues that are in the second part of the affidavit starting at paragraph 8. Now, Mr Nxasana, you accept that as the NDPP, if something went wrong with, for example, TRC cases, ultimately you would have to be held responsible for it.

MR NXASANA: That is correct, Chair.

ADV SONI: All right, and we know now that there is the series of complaints from the LRC. There are responses from junior, officers junior to you, but they are not brought to your attention.

10 MR NXASANA: That is correct.

ADV SONI: Now, just as an observation; and they are never brought to your attention while you are in office?

MR NXASANA: No, the TRC matters are never brought to my attention.

ADV SONI: Does that not suggest something about the reporting lines and the responsibilities of people at the NPA in regard to, in this particular case, TRC matters?

MR NXASANA: Chair, as the letters were clearly addressed to the acting NDPP, one can only think that the LRC, because they were  
20 dealing with the acting national director before I assumed office. Maybe it was a mistake on their part when they addressed the letter when I was now in the office to me as an Acting National Director of Public Prosecutions, but those letters should have come to me. Unfortunately, they did not, which is worrisome to the extent that Adv Shaun Abrahams had to respond to the letter without me giving him

the instruction, as the letter was clearly addressed to the Acting National Director of Public Prosecutions, which I think was a mistake of the LRC to refer to me as an Acting National Director of Public Prosecutions.

COMMISSIONER KGOMO: But at least they addressed it to you in name, "Dear Mr Nxasana".

MR NXASANA: Yes, that is why I say it was; I presume it was a mistake on their part to address me as the acting national director. And then I say that, because they had been, I think it is because they  
10 had been dealing with the acting national director immediately prior to them sending that letter, because I see it was in January and I had assumed office just two, three months before that.

COMMISSIONER GABRIEL: Mr Soni, can I interrupt to ask a question?

ADV SONI: Yes, yes.

COMMISSIONER GABRIEL: So during this time, what were the reporting mechanisms at the NDPP? Did you have EXCO meetings? What I am trying to establish from you is; did the PCLU report to you in any regular manner or form?

20 MR NXASANA: The PCLU, the structure was that there is the NDPP at the apex. Then we have the deputy national directors as the unit heads. And the PCLU will report to the special director at the time, it was Adv Mrwebi. And yes, indeed, we would have EXCO meetings. But then you will see, as we go on, that I mentioned here that I was operating in a very strange environment, a very hostile environment,

such that I did not even get the handover report from my predecessor, the Acting National Director of Public Prosecutions. And I am sure that if that had happened, I am sure that the matters of the TRC matters would have been covered there and that they would have been brought to my attention.

COMMISSIONER GABRIEL: So during your tenure, were there any EXCO meetings?

MR NXASANA: There were.

COMMISSIONER GABRIEL: There were.

10 MR NXASANA: Yes.

COMMISSIONER GABRIEL: And you were present at those meetings?

MR NXASANA: Yes.

COMMISSIONER GABRIEL: So you would have presumably received reports from the PCLU?

MR NXASANA: Yes.

COMMISSIONER GABRIEL: Thank you.

ADV SONI: Did those reports deal with TRC matters?

20 MR NXASANA: No. I cannot remember any report dealing with the TRC matter.

ADV SONI: Although there were PCLU reports that were discussed at the EXCO meetings?

MR NXASANA: Yes.

ADV SONI: Thinking about it now, does that sound strange that such an important aspect of the PCLU's work was not dealt with at

EXCO meetings during the 20 months you were there?

MR NXASANA: Yes, it was very strange indeed. I see that it was very strange, especially when this Commission was set up. Initially, I did not understand why it was set up until I followed it and then said oh, there is something like this. And then I received also the communication from the... And at first I said what do they want from me, because I know nothing about the TRC matters. I have never dealt with them. And that is what I have always been communicating to the evidence leaders who would call me and I would tell them that:

10 but why do you need me, because I have never dealt with this?

ADV SONI: And now that you think about it, does it sound strange to you that there was, certainly at EXCO meetings; that matters relating to TRC cases were not discussed, including problems that they may have encountered?

MR NXASANA: Very strange and very worrisome, especially now that I have gone through these documents. These are very critical matters that should have been dealt with expeditiously; and ja, they should have been dealt with and they should have been prioritised. And I see that in the letter, one of the letters, they would respond to

20 the LRC. I see that these matters would be prioritised once the investigation is finalised. But if these matters had come to my attention, obviously I would have also done my best to prioritise them in the manner that they require attention.

ADV SONI: Now, one of the ...[intervenes]

COMMISSIONER GABRIEL: Mr Soni?

ADV SONI: Sorry, yes.

COMMISSIONER GABRIEL: Please refresh my memory. During the time that you were there, was it Adv Shaun Abrahams who was the head of the PCLU?

MR NXASANA: Yes.

COMMISSIONER GABRIEL: Okay, thank you.

ADV SONI: Was he the head or the acting head?

MR NXASANA: He was the acting head. Shaun Abrahams was, until I left NPA, he held the position of a senior state, senior advocate  
10 at NPA. But at the time when I arrived, as a senior advocate, he had been appointed to act as the special director of PCLU. That was before my time. And he occupied that position until I wrote a letter to the Minister of Justice then because of the concerns that were raised by the CEO that there is a time limit within which a person can act. And Adv Shaun Abrahams had exited, and in fact had far exited that acting stint.

COMMISSIONER GABRIEL: Okay, thank you.

MR NXASANA: Thank you.

ADV SONI: And you, as we will deal with in your evidence, you  
20 rectified that position, and you will tell us how you did that.

MR NXASANA: That is correct.

ADV SONI: All right. Now, one of the things you say, and it is reflected in paragraph 9 of your affidavit, is you have indicated in your evidence here that all of these things appear strange, but in paragraph 9 you say that in order to understand what was going on in

the NPA at the time, one needed to have insight into the, what you call the climate existing within the NPA at that time. Now, I am asking the question. Is that the proposition you make in paragraph 9? Mr Nxasana, I know this is a traumatic issue for you, so take your time, and we will go through it in stages. But is that what you ask the commissioners to take into account, Mr Nxasana?

MR NXASANA: Yes, Chair.

ADV SONI: Now, in paragraph 11 of your affidavit, you indicate the challenges and you put it in a particular way. You say your tenure as  
10 the NDPP was very brief and marred by controversy and traumatic events. You say this trauma persists to this day. 'My participation in this process before the Commission', I take it, 'evokes painful memories'. Is that still the position?

MR NXASANA: That is correct, Chair.

ADV SONI: Mr Nxasana, I think there is sufficient knowledge generally about your career path at the NDPP. It must be effectively taken into account. But if you could just deal with the position at the NDPP; and you can start at paragraph 15 of your affidavit.

MR NXASANA: Thank you, Chair. Chair, I say it is public  
20 knowledge that my journey within the NPA was not an easy one. I was neither received with welcoming arms, nor did I enjoy fair treatment during my tenure. When I got to the NPA, many things had already happened. People were opposed to my appointment, arguing that I was not qualified for the position.

ADV SONI: Sorry, before you go on, can I just ask you; how is it that

you came to be appointed as the NDPP?

MR NXASANA: Chair, I was happily operating my practise in KZN in Durban and I was approached by colleagues who then referred me to the former legal advisor for the former President Zuma, which was Mr Hulley, and we had a meeting with Mr Hulley and which then culminated to a meeting with the president and his legal team in Pretoria. And subsequent to that, after that interview, then I was appointed as the NDPP. The point I am making, which really breaks me, is that I never applied for this position and...

10 ADV SONI: Now, in terms of section 12, I think it is, of the NPA Act, the period of tenure of the NDPP is 10 years. Did you expect that that would be the period for which you would serve as the NDPP?

MR NXASANA: Chair, in fact, I expected to remain at the NPA even for a period of 12 years, beyond 10 years, because at the time the NPA Act provided for, it empowered the president to extend the period of the NDPP to more than two years. I mean, that is how I was eager to work, to discharge my functions, but I am mindful of the fact that the tenure is 10 years.

ADV SONI: Now, if you go on with what you were saying at  
20 paragraph 15, you say:

“There were people who were opposed to my  
appointment, arguing that I was not qualified for  
the position.”

If you carry on there, Mr Nxasana.

MR NXASANA:

“They had never seen me, did not know me and wanted someone else to occupy the NDPP position. Many officials had doubt about whether I could do that job and they planted the seed of doubt in former President Zuma's mind. There was an apparent smear campaign, the sorts of which I could and still cannot identify with certainty. Newspaper outlets and the media in general began circulating false allegations and stories about me. They were digging up information aimed at discrediting me. I had to deal with several side issues, which greatly impeded my functioning. I received no handover or handover report from the Acting National Director of Public Prosecutions, Adv Nomgcobo Jiba. These were the conditions under which I had to operate. I tried my best to concentrate on my work, but it was difficult. Politics and infighting within the NPA got in the way.”

20 ADV SONI: Okay, can we just stop here now? Now, Adv Jiba, as I understand it, had been acting as NDPP for a period of almost two years, am I correct?

MR NXASANA: That is my understanding as well, Chair.

ADV SONI: I think that is the period from 2000-and... this is just before you came on, 2012 to 2013.

MR NXASANA: That is correct.

ADV SONI: Now, when you say you received no handover report from her, in regard to the support structure around you, what was it like? In other words, you go into, you had not worked in the NPA before. What support was given to you to get you flowing in the job?

MR NXASANA: Chair, to be honest, the corporate services in the form of the CEO and the deputy CEO – that was Adv Karen van Rensburg as the CEO at the time, and Madam Beryl Sisulu, who was the Deputy CEO.

10           They did their best to get me on speed with what was happening at NPA, such that they took it upon themselves when, upon hearing that I was appointed and before I could take office, and they made an appointment and flew all the way down to Durban to meet with me. We had a session where they took me through and it did not end there. They were supportive throughout.

          And also the other deputy national directors and also other directors, they were also very supportive, like Dr Ramaite was very supportive. Mr Willie Hofmeyr was very also, very much supportive, and Adv Mokhatla to a certain extent, obviously.

20   ADV SONI: Now, just dealing with, you have dealt with paragraph 17 of your affidavit where you say that, well, the president had indicated that he was going to suspend you and you have dealt with that. Let us just get back to your dealing with the TRC cases, and you deal with that from paragraphs 18 of your affidavit onwards.

MR NXASANA: Yes.

ADV SONI: If you could, Mr Nxasana.

MR NXASANA: Okay.

“Insofar as handling of the TRC cases by the NPA during my tenure is concerned, I did not deal with any TRC cases during my tenure, nor did I receive any report on the TRC cases. I also did not request any report.”

ADV SONI: Well, just on that point that you did not request any report; is there any reason for that?

10 MR NXASANA: Because I was not aware of the TRC matters. They were never brought to my attention.

ADV SONI: Either by the PCLU or ...[intervenes]

MR NXASANA: Or my predecessor.

ADV SONI: Or by your predecessor.

MR NXASANA: Yes.

ADV SONI: Or at the EXCO meetings that you used to have.

MR NXASANA: Ja, but the people that would have brought this to my attention would have been Mr Mrwebi, who was the special director. I think at the time the PCLU was reporting to him at the  
20 time. I think Shaun Abrahams was reporting to him and ...[intervenes]

ADV SONI: And did he attend meetings, Mr Mrwebi?

MR NXASANA: Yes, EXCO meetings he did attend.

ADV SONI: And the TRC cases never featured in the EXCO meetings?

MR NXASANA: Not at all, no.

ADV SONI: And in the reports that were sent by the PCLU or by Mr Mrwebi to you, TRC cases were never mentioned?

MR NXASANA: No. The only matters that I could recall were the matters dealing with the Missing Persons Task Team. I think, ja, but the name of Ms..

ADV SONI: Fullard.

MR NXASANA: Ms Fullard, I think, who was the anthropologist, who was assisting with that, was helping the PCLU in finding those  
10 persons who were missing.

ADV SONI: She was in charge of the Missing Persons Task Team?

MR NXASANA: Task team, yes.

ADV SONI: Now, did she come and make reports at any of your EXCO meetings?

MR NXASANA: I cannot remember meeting him and making a report to me. I cannot remember.

ADV SONI: Okay.

MR NXASANA: But I was saying that the persons that would have reported to me about the TRC matters would have been Mrwebi, Jiba  
20 and Adv Abrahams.

ADV SONI: Okay. And they did not.

MR NXASANA: No, they did not.

ADV SONI: Then let us just look at ...[intervenes]

CHAIRPERSON: If I may interrupt, Mr Soni.

ADV SONI: Yes.

CHAIRPERSON: At that stage did you know of the fact that the NPA was dealing with TRC matters?

MR NXASANA: No, I did not.

CHAIRPERSON: You never knew of that?

MR NXASANA: Did you say at that stage?

CHAIRPERSON: Yes.

MR NXASANA: No.

ADV SONI: So, if I could just follow up on that question, Mr Nxasana. Then the issue is this. We know the TRC process ran its  
10 full course, and then the TRC had recommended that perpetrators of human rights abuses or perpetrators of violence during the period 1964 to 2004, that they were to be prosecuted if they had not been granted amnesty or had not applied for amnesty. Were you aware of that?

MR NXASANA: No.

ADV SONI: So, can I just understand your state of mind? When you were, during the period you were NDPP, it was not within your contemplation that I should ask about TRC cases.

MR NXASANA: Yes, it was not.

20 ADV SONI: And that is because you were not aware that there was a duty on the NPA to pursue these matters.

MR NXASANA: That is correct.

ADV SONI: And that was never brought to your attention by any of the personnel charged with dealing with TRC matters at the NPA.

MR NXASANA: That is so.

ADV SONI: And it was never discussed at EXCO meetings?

MR NXASANA: Yes.

ADV SONI: Now, at paragraph 19 you deal with the TRC cases, and could you tell us what you say there, Mr Nxasana?

MR NXASANA:

10                   “When I was appointed as the NDPP, Adv Shaun Abrahams was the Head of the PCLU and Adv Chris Macadam was reporting to him. This caused a lot of tension between Adv Abrahams and Adv Macadam. Adv Macadam had a lot of experience within the NPA and felt aggrieved to be reporting to somebody junior to him. Adv Abrahams was a junior to Adv Chris Macadam by far.”

ADV SONI: Before you go on, can I just ask you this? You say here that Adv Abrahams was the head, but you have pointed out already that it was in an acting capacity.

MR NXASANA: That is correct.

20                   ADV SONI: And then you got that change, and we will deal with that in a minute, but how did you know that Adv Macadam was not pleased with having to report to Adv Abrahams?

MR NXASANA: Adv Macadam would come to me and report about the matters that he was dealing with, and not the TRC matters, the OECD matters that I remember.

ADV SONI: What are OECD matters?

MR NXASANA: That is the Organisation for Economic Cooperation and Development.

ADV SONI: That is at paragraph 20 of your...

MR NXASANA: 20, yes. Then whenever he would see me, then he would then express his unhappiness about the manner in which he was treated and he would lament the fact that he was very senior to Adv Shaun Abrahams. Adv Macadam was a deputy director and with vast knowledge of what was happening in that unit.

ADV SONI: In the PCLU?

10 MR NXASANA: In the PCLU, yes. And I think he has testified here about his extensive knowledge and the work that he had done there in the PCLU. But then it boggled my mind how then it happened that a junior was appointed to act when there were people like Macadam. Then ultimately I took a decision, because there was pressure also about the matters of the OECD. And then I decided to move to appoint Adv Macadam to deal with the matters of the OECD, because they were posing a risk not only, to South Africa.

ADV SONI: But you say that, in paragraph 20 you say you have read Adv Macadam's affidavit where he complains that you removed  
20 him from TRC cases and assigned him to matters concerning the OECD. That would suggest that you were aware of TRC matters or is it just coming across like that in the affidavit?

MR NXASANA: No, no, no. I think this is a mistake. It was the PCLU matters. I removed him from the matters that he was dealing with at PCLU and appointed him to deal with the OECD matters.

ADV SONI: Was the PCLU not dealing with OECD matters?

MR NXASANA: They were dealing with OECD matters, but I wanted him specifically to be the head to deal with those.

ADV SONI: Perhaps I should put my query in this fashion then. Did Adv Macadam ever complain to you or even discuss with you TRC cases?

MR NXASANA: I cannot recall, I cannot recall him discussing with me TRC matters. I cannot recall. I cannot recall. That is why I say at least if I can even, if I would have the benefit of even recalling one  
10 matter dealing with TRC; that is why I do not even recall even one matter of the TRC that was ever discussed with me.

ADV SONI: Adv Macadam's complaint to you though regarding his having to report to Adv Abrahams was that he is more experienced than Adv Abrahams and he felt professionally slighted by having to report to a junior person or a person junior to him.

MR NXASANA: Yes.

ADV SONI: Is that how you understood his complaint to you?

MR NXASANA: Yes. That is how I understood his complaint. But let me explain this paragraph 20, why I responded like this in  
20 paragraph 20. When I received the correspondence from the TRC and ...[intervenes]

ADV SONI: You mean from the Commission?

MR NXASANA: From the Commission, sorry, from this Commission and it then drew my attention to the affidavit of Adv Chris Macadam. It painted a picture that Adv Chris Macadam was complaining that the

reason he left the TRC matters is because I removed him from the TRC matters. But upon my reading of his affidavit, it became clear to me that it was not a complaint. He was explaining that he, I moved him, I appointed him to deal with the OECD matters. Hence I used that, that I removed him from the TRC matters. I was responding to that, to that correspondence.

ADV SONI: So you understood his affidavit to be saying; look, the reason he was not dealing with TRC matters is because you asked him to focus on the OECD matters.

10 MR NXASANA: That is correct.

ADV SONI: That is how you understood.

MR NXASANA: That is how I understood. I understood it that Commission, when it drew my attention to his affidavit, it was like saying he is blaming me for him not dealing with the TRC matters, because I removed him from the TRC matters. I was responding to that; that no, I moved him, I appointed him to deal with the OECD matters, because they were posing a risk and that was going to solve even the problem that was existing between him and Shaun Abrahams.

20 ADV SONI: Now, during that period, the time you moved Adv Macadam and asked him to focus on the OECD and you removed or you got Adv Abrahams removed as the Acting Head of the PCLU. You made other structural changes to the senior personnel at the NPA.

MR NXASANA: Okay, all right, it was not the structural changes as

such, because once we say it is the structural changes, it then deals with the fact that if you want to change the structure, you have to consult the minister and you must do that in consultation with the minister or after consulting with the minister.

What I did there was to me a rotation. I rotated especially the deputy NDPPs, who are the unit heads, because I wanted them to understand everything that was happening at NPA and not be straitjacketed and be focused because you are not appointed. When appointed as the Deputy National Director of Public Prosecutions by  
10 the sitting president, you are not appointed as the deputy national director to deal with the national prosecution services matters only.

Then I wanted them to rotate. I moved Adv Jiba from the NPS, which is the National Prosecution Services, which deals with all the prosecutions in the country. I moved her to the civil litigation unit that was previously headed by Adv Mokgatle. I then moved Adv Mokgatle to PCLU. I then moved, is it Mokgatle, Ramaite and then I entrusted him with the NPS, and Mr Willie Hofmeyr he remained in the Asset Forfeiture Unit.

ADV SONI: Chair, I see it is five past 11. I intend being another 10,  
20 15 minutes.

CHAIRPERSON: Yes, I think you may proceed.

ADV SONI: As you please, Chairperson. Now, one of the persons that you seek out for special mention is contained in paragraph 23 of your affidavit is Adv Jiba. Now, from what I gather, you believe she played a negative role at the NPA. Could you tell the Commission

why you say that?

MR NXASANA: Yes, and Chair, just to add on what I have just mentioned about rotating them; firstly to capacitate them with what was happening in other units as well. But also I had, to be honest with you, I was very much concerned and it was happening from the time I arrived there, that as the Head of the NPS, Adv Jiba was using that platform whenever she were to meet with the Director of Public Prosecutions in the provinces, the chief prosecutors and everyone. She would use that platform to influence them to undermine me and  
10 my authority; and that is also one of the reasons I had to move her from, to make that rotation.

ADV SONI: Now, you also refer to, in paragraph 23, to a docket relating to former President Zuma. What was that about?

MR NXASANA: Chair, this one, it really, it hurts me the most, because I believe that this was used; this was the final nail in the coffin. It was used to persuade President Zuma to institute that inquiry into my fitness to hold office, which I felt embarrassed and humiliated, not only me and my family and everyone, because Jiba, knowing very well that she has never made a handover to me,  
20 knowing very well that she was sitting with the docket that involves President Zuma and not suggesting that I was not going to prosecute him if it was referred to me, but knowing very well that she is sitting with it. She is not giving it to me. She goes out and tells everybody, including President Zuma and everybody that I am intending to prosecute Zuma; on what basis, when I have not seen the docket?

ADV SONI: Let me ask you; the prosecution you are talking about is the prosecution that he is now facing.

MR NXASANA: That is correct, Chair.

ADV SONI: Now, if I understand you properly, you are saying that the reason or your view is the reason that former President Zuma removed you from office is because he was afraid you would be prosecuting him, reviving that prosecution that had been set aside that Adv Mpshe had stopped.

MR NXASANA: No doubt, Chair. That was the reason. And I was  
10 called names when that talk was circulated. I was called a boy. 'That boy is going to prosecute you, to prosecute the president.' And wherever I went, even people that... my friends they know me. They were telling me the same story. 'But ja, we have heard that you want to prosecute the president.' That is the narrative that was circulated all over; and I say it was Adv Jiba who was responsible for that. It was her. She did not only do that, I mean, it is public knowledge. I have said it at the Commission, at the State Capture Commission of Inquiry.

They started digging even before I even arrived at NPA,  
20 because you will recall that the announcement for my appointment was made in August by the president, but he said he has appointed me with effective from 1 October. Then the whole of September, they started, she started unleashing her people. They were going all over – Umlazi, where I come from, and I was getting calls left, right and centre. The vehicles were running around asking about me. Police

stations, they are going to the police station to try and find anything against me.

At some point, they even went to the Road Accident Fund, because my wife is an admitted attorney and she once worked for the RAF. And they thought in their minds that perhaps there were some dodgy dealings that my wife was doing for me at RAF. They went as far as to investigate if they could not find anything that could link me to any corruption involving the RAF matters. Unfortunately, I am one person who do not deal with the RAF matters, and they found  
10 nothing.

ADV SONI: Now, at the end of the day though, none of these we found based on what you said in your application to challenge the decision to remove you as, or the intention to remove you as the NDPP. And there was then a settlement between you and the government relating to you vacating your office.

MR NXASANA: Chair, nothing was found against me. In fact, the matter went all the way to the Constitutional Court where the Chair was also amongst the justices. She was the senior judge.

COMMISSIONER KGOMO: Ja, your voice has dropped, sir.

20 MR NXASANA: Oh, sorry. I said nothing was found against me. The inquiry did not sit, because we reached a mutual settlement with the president, although I say 'mutual' in inverted commas. Ja, and the matter went all the way and my challenge also to challenge my suspension, it did not. It was never finalised, because the president did not proceed with suspending me.

Ultimately, I then tendered that resignation and the matter went all... then I think the Freedom Under Law, it took the matter all the way to the Constitutional Court where it was decided that it became very clear. And there were not only oral evidence; I mean, there was documentary evidence that was very clear that I was pushed to resign; and the Court so found. That is my view as well. Ja, but to answer your question, nothing was found against me.

ADV SONI: Just coming back to the fact that you were pushed or forced to resign, however one puts it, the fact of the matter is  
10 effectively you were forced out of office.

MR NXASANA: That is correct.

ADV SONI: 20 months after you were appointed.

MR NXASANA: Yes.

ADV SONI: I just want to ask you, sorry, yes.

MR NXASANA: No, no, I said yes.

ADV SONI: I just wanted to ask you something. You have obviously, after your resignation, looked at the term of office of each of the NDPPs or acting NDPPs. If I could just ask you to consider the following, and I have just drawn up a list; the first NDPP was Adv  
20 Bulelani Ngcuka, is that correct?

MR NXASANA: That is correct.

ADV SONI: He served from 1998 to 2004.

MR NXASANA: Yes.

ADV SONI: It is a period of six years.

MR NXASANA: Yes.

ADV SONI: He left office.

MR NXASANA: Yes.

ADV SONI: Then Adv Pikoli is appointed in 2005 and he is suspended in 2007, a period of two years.

MR NXASANA: Yes.

ADV SONI: Then Adv Mpshe is appointed as acting NDPP for a period of some two years, 2007 to 2009.

MR NXASANA: Yes.

10 ADV SONI: Then Adv Simelane is appointed in 2009 and serves for a period of three years until 2012.

MR NXASANA: Yes.

ADV SONI: Then you are appointed in 2013 and 20 months later you are forced to leave office.

MR NXASANA: Yes.

ADV SONI: I see you nod your head.

MR NXASANA: Yes, yes.

ADV SONI: Then Adv Abrahams is appointed in 2015 and he is forced to leave office in 2018.

MR NXASANA: Yes.

20 ADV SONI: Then Adv Batohi is appointed in 2019 and serves until her retirement age in 2026.

MR NXASANA: Yes.

ADV SONI: And now Adv Mothobi is appointed in 2026.

CHAIRPERSON: Mothibi.

MR NXASANA: Mothibi.

ADV SONI: Mothibi, sorry.

MR NXASANA: Yes.

ADV SONI: The question I want to ask is; except for Adv Batohi, no NDPP has served the full term of office.

MR NXASANA: Yes.

ADV SONI: What effect do you think that has had on the efficacy of the NDPP to fulfil its massive functions in a country where crime is a serious national issue?

MR NXASANA: Chair, my view is that whilst it is the president's  
10 prerogative to appoint the NDPPs and also to institute the Commission of Inquiries against them, I am not sure how the presidents can, in a way, exercise those powers in a very responsible manner, because it really creates the unnecessary instability at the institution that is so critical in our country, like the NPA, without prejudging the issues and the outcome of the matters, especially the matter that has recently served before Justice Nkabinde, involving the DPP of the South Gauteng, Adv Chauke. We have all seen what has happened there. He was suspended by the president. We all expected, at the request of the then sitting NDPP, we all expected  
20 that they should come up with the evidence that will really prove that the DPP is not fit and proper to hold that office for the transgressions that they are referring to.

COMMISSIONER KGOMO: Ja, maybe you should not go into it, because understandably the report was handed to the president yesterday. I just mean you should be careful not to go deep into that.

Maybe you have given examples, but maybe you have set out your views.

MR NXASANA: Thank you.

COMMISSIONER GABRIEL: And to just add; I do not believe that such matters fall within the questions that this Commission has to answer.

MR NXASANA: No, I understand the point I was making, but I take the point from Commissioner Kgomo. I was just making a point about the powers of the president. That is all.

10 ADV SONI: That, Chairperson, is the evidence from this witness.

CHAIRPERSON: Thank you.

COMMISSIONER KGOMO: Mr Nxasana, you know one troubling aspect that is usually downplayed or even trivialised is the handing over report. So you received no written handing over report, because, you know, I cannot quote chapter and verse, but it is a policy and it is helpful. You did not receive from Adv Jiba any written report, nor did she... I almost said sit you down or consult with you on the work of the NPA.

20 MR NXASANA: No, Chair. I did not receive any written handover reports. We did not sit down. Chair, I must mention that; instead what happened is: before I assumed office, when I met with the CEO and the deputy CEO in Durban, as I was in the meeting with them, I received a call, a message from Adv Jiba. I had not met her. I did not know her. Then she requested to meet me as well, such that when I finished that meeting at uMhlanga with the CEO and the

deputy CEO, I had to go then to Elangani Hotel in Durban to meet with Jiba.

In her presence was... what was her name, who became the lady who became the DPP of KZN, Moipone Noko, Adv Noko, and there was this Colonel Mhlongo also who was in the presence, but I cannot tell you what was the meeting about. I cannot even recall what is it that we discussed. But what I later learnt was that the CEO and the deputy CEO were rapped under the knuckles by Jiba, who then criticised them for having come to meet with me. That is the  
10 report that I was given by them. Then, in short, I cannot remember sitting with Jiba where she was taking me through the workings of the NPA.

COMMISSIONER KGOMO: Yes. No, no. I am also just speaking from experience, because I headed institutions and I had to prepare handing over reports and to sit with my successor. And we know that it is a matter of public record also what happened during the time that Adv Thuli Madonsela left. It is a vacuum when there is no handing over report and it speaks of certain attitudes. It does speak of certain attitudes. Thank you. Thank you, Chair.

20 MR NXASANA: And just, Chair, to add; perhaps what the Commission, I am not really here pleading for the Commission to sympathise with me, but I am just stating the facts as they are. These are the difficulties that I have outlined. I mean the challenges that I came across when I was appointed at NPA and given the short period of time I was at the NPA, which was riddled with me having to,

I had to concentrate on my work on the one hand. On the other hand, I had also to fight for my integrity at the NPA, hardly four months after I was appointed.

I was threatened with the suspension and the Commission of Inquiry. And all the things that I had to deal with, the journalists having to phone me, coming up with very disturbing stories, some of which did not exist, but all of which was very humiliating to me, to a point that my eldest sister in the family had to call me at one stage and said to me: 'we have had enough as a family. Why do not you  
10 resign?' But at that stage I said to her I cannot resign when all these things have been levelled against me. I have to clear my name, because the integrity is so important for the profession that I am in, because there is life after the NPA. I had to go back to practise, which is the reason why I soldiered on. Thank you.

COMMISSIONER KGOMO: Thank you, Chair.

CHAIRPERSON: Thank you. Ms Moroka, any clarificatory questions?

ADV MOROKA: Maybe just one or two, Chair.

CHAIRPERSON: Yes, Ms Moroka.

20 ADV MOROKA: Thank you. If I may, Chair, probably place it on record that I was not involved in one of these inquiries that he mentioned, Mr Nxasana; the Jiba one.

MR NXASANA: Oh, yes.

ADV MOROKA: And good afternoon.

MR NXASANA: Good afternoon.

ADV MOROKA: Or good morning.

MR NXASANA: Good morning.

ADV MOROKA: Can I, it is about a sequence of timelines I am just trying to understand. You say paragraph 12, no, paragraph 21; that in an effort to rotate the members of staff, you move them around. Do you recall what year or what month it was? It was 2023, I am assuming, but which month before you left that you did the reshuffle?

MR NXASANA: I cannot recall, but ...[intervenes]

ADV MOROKA: Sorry, 2013.

10 MR NXASANA: 2014, I think. It was 2014.

ADV MOROKA: 2014, but you cannot be exact about the dates. You cannot recall.

MR NXASANA: I cannot recall the dates.

ADV MOROKA: And then the reporting lines, it would be the PCLU reporting to a member of one of the deputy national directors.

MR NXASANA: That is correct.

ADV MOROKA: So during your tenure, at a point in time the PCLU would be reporting to Dr Ramaite?

MR NXASANA: Mrwebi. I think it was Mrwebi.

20 ADV MOROKA: Because from the evidence that we have, he never moved from that capacity until, as according to your evidence, you moved him, because I have nothing on record, unless I am mistaken, Chair, where Mrwebi is the head to whom the PCLU reports to. And by the way, for the record, I was also involved in the Mrwebi inquiry, so I have to put that on record.

MR NXASANA: Inquiry. Perhaps I may have confused the... now that I have not been in the NPA for a long time. PCLU, maybe I am confusing it.

ADV MOROKA: And maybe I am mistaken too, I was just trying to understand, because it was my understanding that Dr Ramaite was always involved as the head to whom the PCLU reported to until you removed him. I might be mistaken. It does not matter, we will have to try and establish it.

MR NXASANA: Ja, we will try and find. Ja, but I think because  
10 Mrwebi, Mrwebi's unit is the Specialised Commercial Crimes Unit, and I think there was also another unit that was reporting to him as the deputy national director. Then Ramaite...

ADV MOROKA: You removed him and made him responsible, I think, for NPS ...[intervenes]

MR NXASANA: For the NPS, yes.

ADV MOROKA: But before that...

MR NXASANA: Before that, he was the head of the PCLU.

ADV MOROKA: No, the PCLU reported to him.

MR NXASANA: The PCLU, but there must be a structure that he  
20 was heading. Now I have forgotten the name of the...

ADV MOROKA: Fair enough. Thank you. Thank you, Chair.

CHAIRPERSON: Thanks, Ms Moroka. Do we have any clarificatory questions online?

ADV SONI: Yes, Chairperson; if I can give you one by one, Adv Gwala.

CHAIRPERSON: Yes, Adv Gwala? Adv Gwala? Adv Gwala, are you with us? Adv Gwala is not with us, Mr Soni. The next one?

ADV SONI: Is Adv Rantho.

CHAIRPERSON: Ms Rantho?

ADV RANTHO: Chair, I am with you. I have no question from the SAPS. Thank you very much.

CHAIRPERSON: Thank you.

ADV SONI: Then there is Adv Varney, Chairperson.

CHAIRPERSON: Mr Varney?

10 ADV VARNEY: Yes, Chairperson, I do have a few clarificatory questions.

CHAIRPERSON: Yes, you may proceed.

ADV VARNEY: With your leave, Chair. Thank you, Chair. Firstly, Mr Nxasana, thanks again for coming to this commission and I appreciate that this is a traumatic time for you, having to relive the experiences and I will do my best to curb the emotive issues. The LRC letter, if I could just refer you to it, it is that letter from the LRC addressed to you on 16 January 2014. It is attached as MN2 to your statement. And I also make a disclosure. At that time I was counsel  
20 representing the Simelane family. It was addressed to the acting national director, because you were the NDPP, not the acting NDPP, but I take it you are not suggesting that that is the reason why the letter did not get to you.

MR NXASANA: Not at all. That is not what I am suggesting.

ADV VARNEY: Thank you. Yes, no, I do not think you were. And I

see that that letter was not only addressed to you, but it was copied to Adv Chris Macadam of the PCLU and also Adv Shaun Abrahams, the acting head of the PCLU. That is reflected on page 2017, the last page of that letter. Even though it was copied to both Abrahams and Macadam, it seems that neither of them brought the letter to your attention. What is your comment on that fact that neither of them sought to knock on your door and bring the letter to your attention?

MR NXASANA: Thank you, sir. I really do not know why they did not bring it to my attention. I really do not know why they did not  
10 bring it to my attention.

ADV VARNEY: Yes, and given that you have said that you think the letter does disclose a valid complaint. Is there a possibility, do you think that the letter may have been withheld from you?

MR NXASANA: I do not know, but when I see the other letter, the letter by Adv Shaun Abrahams, which you had written where he was responding to your letter of December, he also took it upon himself to deal with the matter without referring it to me. Perhaps that is what he did with this one. I do not know why, but it is clear that the first letter was not referred to me; and the second letter, I say I also did  
20 not, although it is addressed to me, but it did not come to my attention. I do not know why they did not bring it to my attention.

ADV VARNEY: If I can just pick up on the question that Commissioner Kgomo put to you, the fact that your predecessor, the acting NDPP, Adv Jiba, did not give you handover notes and did not sit down with you to brief you on the important questions that she had

been dealing with. Commissioner Kgomo correctly pointed out that, you know, this is standard practise, this is standard policy in all organisations. Well, why did you not insist that both she and the section heads, and in particular Adv Jiba, that she is required, given a direct order. She is required to give you a full handover note and to brief you properly. Why did you not do that?

MR NXASANA: I did insist that she gives me to a point that at some stage I had to appoint justice... what is his name, the retired justice from Durban, also the one who is blind.

10 CHAIRPERSON: Zak Yacoob.

MR NXASANA: Zak, yes, Yacoob, where we, I appointed him to investigate the failure, I think, amongst other things, the failure, that was the failure of Jiba to give me the handover report. I think it was amongst those things that I appointed him. But I insisted that he gave, that he gives me the handover report, which did not come, which was not forthcoming.

ADV VARNEY: According to you, she disobeyed an order. Do you not think she should have been disciplined for that?

20 MR NXASANA: Of course she disobeyed the order; and not only that order, she also disobeyed the order to cooperate with Justice Yacoob.

ADV VARNEY: Let us turn to paragraph 8 of your statement. You say; I will just read it to you.

“Notwithstanding my assertions in the preceding paragraphs, I accept that my role as former

NDPP included ensuring that the TRC cases were prioritised and given the necessary attention.”

And you add this overall responsibility.

“However, it does not take place in a vacuum.”

I should disclose that I am also representing the 25 families in this Commission, including the family of Nokuthula Simelane. So from their perspective they would want to know what did you do during your tenure to prioritise the TRC cases?

- 10 MR NXASANA: Ja, I am saying here I accept the responsibility that the TRC cases, prioritising them, fell squarely within my mandate as the NDPP. But for the shortcomings that I have outlined, I did not get the opportunity to prioritise them, because they were never brought to my attention, in particular this matter of your client.

ADV VARNEY: Yes. And as I understand your evidence-in-chief, not only were the TRC cases not brought to your attention, but you have never heard of them generally and I assume that you had, if you were aware of their existence and the need to pursue them, then you would have taken your own initiative.

- 20 MR NXASANA: I would have taken my own initiative. I mean, the only thing that I knew about the TRC matters, I mean, that there was TRC, not the TRC; that there was TRC Commission of Inquiry, was long ago; that the chairperson was the late Archbishop Tutu. That is all that I knew, but I did not even follow who were involved and what was happening.

ADV VARNEY: Were you aware that the TRC had referred cases to the NPA for prosecution after the TRC closed?

MR NXASANA: I was not aware of that. I was not aware of that. I was not even aware. I do not know whether they were referred to the NPA or to the SAPS, I do not know.

ADV VARNEY: And you have mentioned that when you spoke with Adv Macadam and you asked him to focus on the OECD cases, that he did not raise the TRC cases and the possible neglect they may suffer if he was taking off them.

10 MR NXASANA: No, I cannot recall, yes. I cannot recall him raising the TRC matters with me.

ADV VARNEY: Right, and at that time the TRC cases were with the PCLU and the acting head of the PCLU was Shaun Abrahams. At any point did he raise the TRC cases with you, either in writing or perhaps in a meeting?

MR NXASANA: Not that I remember. I cannot remember him raising them with me, either verbally or in writing. I cannot recall him.

ADV VARNEY: And more generally, I do recall that the TRC cases were receiving coverage in the press. So, for example, Thembi  
20 Simelane, the sister of the late Nokuthula Simelane, she wrote an opinion piece in the City Press in December.

CHAIRPERSON: Mr Varney, is that...?

ADV VARNEY: Yes, Chair?

CHAIRPERSON: Is that a clarificatory question flowing from his evidence?

ADV VARNEY: Well, it potentially is, Chairperson, because he said that he never heard of the TRC cases at all. So I just wanted to know whether he did not see any reported in the media at that time.

CHAIRPERSON: You must be guarded. You are bordering on dangerous ground, Mr Varney.

ADV VARNEY: Okay, Chairperson, let me step back from that ground and I will move on. Mr Nxasana, can I refer you to one of the annexures to your statement? That is the letter from Dr Ramaite to Thembi Nkadimeng.

10 MR NXASANA: Yes.

ADV VARNEY: That is dated 31 January 2013.

MR NXASANA: Yes.

ADV VARNEY: And he is responding to her letter about some of the delays in her sister's case. If I can refer you to paragraph 6 to 10 where Dr Ramaite explains why that case was not investigated between 2003 and 2010. In Paragraph 6 he says the cases were temporarily put on hold pending the formulation of guidelines. And then he puts up other reasons which delayed the investigation, which included litigation on the guidelines, the Ginwala Commission, the  
20 dissolution of the DSO. Did you ever get to hear about these developments, which effectively stopped the investigations and prosecutions going ahead?

MR NXASANA: Sorry, come again?

ADV VARNEY: Did you ever get to hear about these developments that took place before you became NDPP?

MR NXASANA: No.

ADV VARNEY: Thank you.

MR NXASANA: Pertaining to the TRC matters?

ADV VARNEY: Yes.

MR NXASANA: Not pertaining to the TRC matters, but I do know that there was a Ginwala Commission of Inquiry. I do know there was a DSO which was dissolved, but not anything pertaining to the TRC matters.

10 ADV VARNEY: Thank you, Mr Nxasana. No further questions,  
Chairperson.

CHAIRPERSON: Thank you, Mr Varney.

ADV SONI: Chairperson, the next person on ...[intervenes]

CHAIRPERSON: Do you have any re-examination?

ADV SONI: Oh, sorry, Chairperson, there are other people online.

CHAIRPERSON: Oh, there are still other people online?

ADV SONI: Yes.

CHAIRPERSON: Yes.

ADV SONI: It is Adv M Ntshizana.

CHAIRPERSON: Mr?

20 ADV SONI: M Ntshizana.

CHAIRPERSON: Representing who?

ADV SONI: I have just been given the list.

CHAIRPERSON: Mr Zama? Mr Zama, are you there?

ADV NTSHIZANA: Thank you, Chair. I am Adv Ntshizana.

CHAIRPERSON: Ntshizana.

ADV NTSHIZANA: Yes, Chairperson. That is correct.

CHAIRPERSON: Yes.

ADV NTSHIZANA: We have no clarificatory questions so far for the witness. However, we reserve our right to apply for cross-examination. Thank you.

CHAIRPERSON: Thank you.

ADV SONI: Then there is Adv Nthambeleni, Chairperson.

CHAIRPERSON: Ms Nthambeleni?

10 ADV NTHAMBELENI: Thank you, Chair. We have no clarificatory questions. We intend rather to bring an application for cross-examination.

CHAIRPERSON: Thank you.

ADV NTHAMBELENI: Thank you.

CHAIRPERSON: Yes, Mr Soni?

ADV SONI: And finally, Chair there is Ms Bongi Lukhele.

CHAIRPERSON: Ms Lukhele?

ADV GWALA: Good morning, Commissioners. I will take it for Bongi Lukhele, yes, for the NPA. I am Gwala. We do not have questions for this witness.

20 CHAIRPERSON: Thank you, Mr Gwala.

ADV SONI: That is the list, Chairperson.

CHAIRPERSON: Thank you.

ADV SONI: There is no re-examination from us.

CHAIRPERSON: Thank you. Mr Nxasana, we thank you for having availed yourself to give evidence before this Commission. You are

for now excused as a witness, but may be recalled for cross-examination upon receipt of an application to cross-examine you. So when that appears, you will be expected to appear again before this Commission.

MR NXASANA: I understand.

CHAIRPERSON: You are excused for now.

MR NXASANA: Thank you, Chair.

CHAIRPERSON: We will adjourn until five past 12.

INQUIRY ADJOURNS

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|                 |   |                                                                                     |
|-----------------|---|-------------------------------------------------------------------------------------|
| FORUM OF ORIGIN | : | Inquiry                                                                             |
| CASE NUMBER     | : | N/A                                                                                 |
| TRANSCRIBER     | : | M Brits                                                                             |
| DATE COMPLETED  | : | 2026-07-02                                                                          |
| NUMBER OF PAGES | : | 52 (Including front page)                                                           |
| TRANSCRIBER     | : |  |

#### TRANSCRIBER'S NOTE:

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