

**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)

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ADV SEMENYA: Chair, we note the time, but have engaged the next witness whether he would be willing that we take what we believe to be a short evidence from him today. And he has indicated he is more than willing to do so. With your permission, we would then call the witness.

CHAIRPERSON: Thank you.

ADV SEMENYA: Mr Soni will deal with the witness.

ADV SONI: Chairperson, Commissioners, may I have leave to call Mr Daniel Rathebe.

10 CHAIRPERSON: Yes, you may, Mr Soni.

ADV SEMENYA: I do not think you are synchronised with your microphones. Thank you.

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

CHAIRPERSON: Thank you. Mr Rathebe, let me start by thanking you for having us read that we should receive your evidence at this late hour, we really appreciate it. Will you be giving your evidence under oath or affirmation?

MR RATHEBE: I will affirm. I will affirm.

20 CHAIRPERSON: Yes. Do you affirm that the evidence you will give will be the truth, the whole truth?

MR RATHEBE: Should I stand?

CHAIRPERSON: No.

MR RATHEBE: Okay. I so affirm.

CHAIRPERSON: Thank you.

ADV SONI: Mr Rathebe, for the purposes of giving evidence today,

you've prepared a short statement, am I correct?

MR RATHEBE: Yes, I have, with the assistance of the evidence leaders.

ADV SONI: Yes, of course. Can I ask you to look at the small file in front of you which contains your statement? It starts at page 2019 and goes up to 2021.

MR RATHEBE: Correct.

ADV SONI: That reflects that it is your statement and there is a signature at the top of page 2021. Is that your signature?

10 MR RATHEBE: It is indeed my signature. Yes, it is.

ADV SONI: Now, the contents of this affidavit, do you affirm that they are true and correct?

MR RATHEBE: Yes, I do so affirm.

ADV SONI: Now, attached to your statement is a document which is called a Notice in terms of rule 3.3 of the Commission's rules. Do you see that?

MR RATHEBE: Yes, I do.

ADV SONI: I am going to start off with your statement first of all. You worked for government at different levels and you reflect that at
20 paragraph 4 of your statement. Is that correct?

MR RATHEBE: That is correct.

ADV SONI: All right. Would you tell the Chairperson and Commissioners the duties you performed for government?

MR RATHEBE: Yes. I must say, before I went to the Department of Defence, I worked for the Gauteng Provincial Legislature, which was,

I think, from 1994 to 1996, when I transferred to the Department of Defence. I was sort of like an assistant legal advisor at the Gauteng Provincial Legislature. And then I moved to the Department of Defence, where I later assumed the role of Director of Legal and Policy Advice until 2005.

ADV SONI: That is as reflected in 4.1 of your statement.

MR RATHEBE: Correct

ADV SONI: And then, what role did you perform thereafter?

MR RATHEBE: Thereafter, I went to the Presidency. I belonged to a
10 unit called the Policy Coordination and Advisory Services. So, our work was to, inter alia, to assist in the coordination of the cluster work. Government's work was in clusters, so I focused on the international peace and security cluster from 2005 until 2010.

ADV SONI: And that is as reflected in 4.2 of your statement.

MR RATHEBE: Yes. Now, you did that, you performed those functions on behalf of the Presidency.

MR RATHEBE: The presidency, yes.

ADV SONI: Yes.

MR RATHEBE: I may just add that to 4.2.

20 ADV SONI: Yes.

MR RATHEBE: Later, I think, around 2007, I also assumed responsibility for another cluster called the JCPS, Justice, Crime Prevention, and Security cluster. And this was after the departure of Mr. Loiso Jaftha.

ADV SONI: I see.

MR RATHEBE: So, I had two clusters that I was dealing with.

ADV SONI: Right. Now, you have been asked to give evidence on the basis of what is set out in the rule 3.3 notice. Can I ask you, please, to look at that notice or go to that notice and, in particular, to look at page 399 on the top right-hand side? Have you got that?

MR RATHEBE: I am there.

ADV SONI: And you'll see that there is a paragraph at the bottom of that page called Particulars of Implication.

MR RATHEBE: Yes.

10 ADV SONI: And what this is intended to do is to tell you the issues in respect of which you will be called to testify. And you will see there that from page 399 to the end of that document, on the left-hand side are a number of paragraphs, paragraph numbers, starting with paragraph 148. Do you see that?

MR RATHEBE: Yes.

ADV SONI: And it goes on right up to paragraph 163.3. Oh, no. Sorry.

MR RATHEBE: 326?

ADV SONI: 172 at the end of that document.

20 MR RATHEBE: I see one. It continues, but I see 172.

ADV SONI: Yes. Okay.

ADV SONI: I only want to refer you to three of those paragraphs, just given the contents of your affidavit. I first want you to look at paragraph 148.

MR RATHEBE: Yes.

ADV SONI: And this reflects that a Director General's Forum, which was chaired by Advocate Pikoli, who was then the Director General of the Department of Justice, had met on 23 February 2004 to consider how to give effect to the objectives of President Mbeki as set out in his speech to Parliament in April 2013. You see that that is reflected there.

MR RATHEBE: I see that.

ADV SONI: Firstly, let me ask you, do you know Advocate Pikoli?

MR RATHEBE: Yes, I know him.

10 ADV SONI: And you knew him at that time?

MR RATHEBE: Yes, I did know him at that time, yes.

ADV SONI: All right. Now, this continues, paragraph 148 continues, that that forum appointed a task team to report on a mechanism to give effect to President Mbeki's objectives, and the task team was known as the Amnesty Task Team. I am just reflecting to you what is contained in here.

MR RATHEBE: Yes.

ADV SONI: And can I ask you to look at paragraph 150, which says that the original terms of reference of the Amnesty Task Team were
20 to consider and report on a number of matters. Okay?

MR RATHEBE: Yes.

MR RATHEBE: And the one that I want you to particularly...
(intervenes)

ADV SEMENYA: Mr. Soni?

ADV SONI: Yes.

ADV SEMENYA: Speaking for myself, I am willing that we will plead by ear, but my file does not contain that. I do not know about the Chair and others, but I am prepared, It does not contain the 3.3 notice. Due to the lateness of the hour, as long as you refer specifically to certain pages so that afterwards we could... (intervenes)

ADV SONI: Yes. We will get them attached to your files.

ADV SEMENYA: Yes.

ADV SONI: I am sorry about that. I thought that... it seems that there
10 is one copy of this. Can I make it available?

CHAIRPERSON: That is fine. We can proceed.

ADV SONI: And there is just one more paragraph that I want to refer the witness to, Chairperson. Mr Rathebe, paragraph 152 says the ATT comprised of the following members, and it lists seven members. The last member who is listed at paragraph 152.7 is yourself, Joy Rathebe, as representing the Department of Defence.

MR RATHEBE: Yes.

ADV SONI: Okay.

MR RATHEBE: Now, I am saying yes, I can see that.

20 ADV SONI: No, no, I understand that.

MR RATHEBE: Yes.

ADV SONI: Can I ask you, are you aware or were you aware of the existence of what has been referred to as the Amnesty Task Team?

MR RATHEBE: Chairperson, the very first time I got to hear about this ATT was last year in October when I was called by the Evidence

Leaders. I had never heard of it. And I met with them and we had a discussion about it. I do not remember being part of the task team. There may have been an intention to make me a member thereof, but I do not think anyone took the trouble to inform me and even to invite me to their meetings.

ADV SONI: All right. At paragraph 153 of Mr Calata's affidavit, it is said that the ATT met on 26 February 2004 and then again on 1 March 2004. Can you recall attending, I know you say you have not heard of it. Can you remember attending any meeting of the ATT?

10 MR RATHEBE: No, Chairperson, I do not recall attending any of these meetings, including the meeting that was supposedly chaired by Mr Pikoli.

ADV SONI: Yes. Now, I do not think he says that you were present at that meeting. He says it is that meeting that established this Amnesty Task Team.

MR RATHEBE: Okay.

ADV SONI: I want to ask you... (intervenes)

ADV SEMENYA: He says he cannot recall, but in fact the thrust of his answer is that he was not aware of that meeting and he goes even
20 further than not recalling.

[talking together]

ADV SONI: Yes. That is the purpose of leading this witness, Commissioner. You will see from his affidavit, he says he knows nothing about this. But I just want to make sure, because that is what his affidavit says, but we were asked to call him as a witness.

ADV SEMENYA: Yes.

ADV SONI: Can I ask you, there is another file next to you and...

MR RATHEBE: Sorry, sorry Mr Soni. Just in relation to the task team itself.

ADV SONI: Yes.

MR RATHEBE: I have seen the names of the people who constituted that team.

ADV SONI: Oh, okay. Yes. Yes.

MR RATHEBE: At the time that it was shown to me, there were only
10 two people that I knew there. And that was Mr Ray Lalla, who I met
around 2007, 2008. Before then, I did not know him.

ADV SONI: So that is before?

MR RATHEBE: It was after.

ADV SONI: Sorry, after the task team meeting.

MR RATHEBE: In 2004, I didn't know Ray Lalla.

ADV SONI: Okay.

MR RATHEBE: I knew Yvonne Mabule.

ADV SONI: Yes.

MR RATHEBE: I knew her, around that time, I knew her. 2004, yes.
20 The others, I did not know. I did not know the gentleman who just
left. I just saw him for the first time today.

ADV SONI: Now, one of the things you say when you served with
this notice is – and if you look at your affidavit, you say that at
paragraph 6, it says, after receipt of the 3.3 notice, you made certain
enquiries.

MR RATHEBE: Yes, I did.

ADV SONI: Can you tell the Commission about those enquiries?

MR RATHEBE: Yes. One of the first people that I telephoned was Mr Pikoli or Advocate Pikoli. And I mentioned to him that I have seen a report or I have been told that my name is in a task team, anti-amnesty task team. No, sorry, amnesty task team. So he laughed. And his response was, I do not recall seeing you in those meetings.

ADV SONI: Yes.

MR RATHEBE: That was his response. I then phoned Mr Lalla. He
10 also did not remember seeing me in those meetings.

ADV SONI: Oh. Can I ask you, sorry, carry on.

MR RATHEBE: Yes, and then I wanted to speak to Rudman and I think Gerhard Nel. Actually, sorry, it was Gerrie Nel, the other one who is known as the Pitbull.

ADV SONI: Yes.

MR RATHEBE: I did not know. I then contacted somebody at the NPA, Mr Bradley Smith. He gave me Gerhard Nel's telephone contact details. I called him. He did not know who I was. But also he
20 did not want to talk about this task team because he said he did not remember.

ADV SONI: Now, you were sitting in the audience after lunch.

MR RATHEBE: Yes.

ADV SONI: You heard Mr Rudman's evidence.

MR RATHEBE: I did.

ADV SONI: You saw Mr Rudman.

MR RATHEBE: I saw Mr Rudman.

ADV SONI: When was the first time you saw Mr Rudman?

MR RATHEBE: I saw him this morning when I arrived here. We actually introduced.

ADV SONI: So you had never seen him before?

MR RATHEBE: He also did not seem to remember me.

ADV SONI: Okay. Well, just again for confirmation's sake, I would like you to look at the second file in front of you. And you will see there are two stickers there, pinkish stickers. Do you see them, sir?

10 MR RATHEBE: Yes, I do.

ADV SONI: Chair, I am going to ask the witness to look at the two amnesty task team reports that were attached to the cross-examination or that are contained in the cross-examination documents relating to Advocate Rudman.

CHAIRPERSON: Yes.

ADV SONI: We have just had that now. And you will see, Chair, at page 2 of that document is the first report of the amnesty task team. If you look at page 2 on the top right-hand side, red two, Mr Rathebe.

MR RATHEBE: Yes, I see a red 2, yes.

20 ADV SONI: Yes. And you will see that that is called the report of the amnesty task team.

MR RATHEBE: Yes.

ADV SONI: Have you seen this document before?

MR RATHEBE: I think when I met with the Evidence Leaders in October, they did show me one report. I cannot remember whether it

is this one or the other one.

ADV SONI: Okay.

MR RATHEBE: And they just quickly scanned it. Then I told them I was seeing this for the first time.

ADV SONI: So that was when you were called in by the Evidence Leaders?

MR RATHEBE: Correct.

ADV SONI: All right. And then if you look at page 16 of that file, you will see that that is called the amnesty task team further report.

10 MR RATHEBE: Yes.

ADV SONI: Have you seen this report before it may have been shown to you by the Evidence Leaders.

MR RATHEBE: I do not recall seeing it. I saw a report. I did not know there were two reports. I saw one report on the day that I met them.

ADV SONI: But that is here at the Commission?.

MR RATHEBE: Ja, here at the Commission. I came here today. They asked because I was going to meet with them.

ADV SONI: So prior to that, you had not?

20 MR RATHEBE: Prior to that, I had not.

ADV SONI: Okay. Go back to your affidavit. You say in paragraph 7, I have no recollection whatsoever of attending any meeting of the ATT. Do you confirm that?

MR RATHEBE: I do confirm this.

ADV SONI: And then you point out that you made those enquiries.

MR RATHEBE: Yes, I did.

ADV SONI: Then you say at paragraph 8, I've not seen any minutes or documents of the ATT. Now, I've shown you two documents relating to the ATT.

MR RATHEBE: Yes.

ADV SONI: Is there any other document of the ATT that you may have seen?

MR RATHEBE: I have not seen any. In fact, what I asked the Evidence Leaders is that it would be helpful if they could secure, I do
10 not know from whom, usually these meetings, when you attend, they keep attendance registers. If they could secure attendance registers and then check if my name appears on the attendance. And I was almost certain that they would not find my name there. So I do not know if that effort has been made.

ADV SONI: I can just say to you that the manner in which these documents have been made available is as a result of an affidavit produced by seemingly Advocate McAdam in a different matter. And these two documents I have shown you were attached to his affidavit. So those are the only ATT documents.

20 MR RATHEBE: Was he also part of the trustee? No, no, no.

MR RATHEBE: Okay.

ADV SONI: So I am just trying to tell you that is why our knowledge of these matters is limited. These are the only two documents from the ATT that certainly the Evidence Leaders are aware of or certainly in possession of. Now, in regard to TRC cases, do you have any

knowledge of them?

MR RATHEBE: No knowledge at all. I have never dealt with any of the TRC cases.

ADV SONI: And you have never attended any meeting dealing with TRC cases?

MR RATHEBE: No, I have not.

ADV SONI: Okay. And then I think as a matter of caution in paragraph 10... (intervenes)

MR RATHEBE: Even when I was in the Presidency, I never dealt with
10 TRC cases.

ADV SONI: Okay. As a matter of caution, I say that in paragraph 10, if you could read that out relating to the possibility of your being involved in any attempt to stop TRC investigations or prosecutions, perhaps you should just read that into the record.

MR RATHEBE:

I have never been involved in any attempts or efforts to stop the investigation and/or prosecution of TRC cases.

ADV SONI: Chairperson, the evidence is limited, but that is on
20 account of the alleged involvement of the witness in the ATT. But that is the evidence we wish to read in relation to Mr Rathebe.

CHAIRPERSON: Thank you. Thank you. Ms Moroka, any questions arising from this evidence?

ADV MOROKA: No questions, Chair.

CHAIRPERSON: Do we still have Mr Gwala? Do we still have

Ms Ranto? Ms Mtshizana?

MS MTSHIZANA: Nothing from my side, Chair, thank you.

CHAIRPERSON: Ms. Nthambeleni? Mr Lukele?

MR LUKHELE: Nothing from our side, Chair. Thank you. Like I indicated earlier, I am with Mr Gwala.

CHAIRPERSON: Thank you. Mr Varney?

ADV VARNEY: No questions, Chairperson.

CHAIRPERSON: Thank you. I dare say there is no re-examination, Mr Soni.

10 ADV SONI: Obviously, no.

NO FURTHER QUESTIONS

CHAIRPERSON: Thank you. Mr Rathebe?

MR RATHEBE: I am sorry I could not help.

CHAIRPERSON: Mr Rathebe, we thank you for having come to give this evidence before this Commission. Your assistance is greatly appreciated. You are now excused as a witness.

MR RATHEBE: Thank you very much, Chair. Thank you to the other Commissioners.

20 CHAIRPERSON: We thank you for your indulgence as well. These proceedings are adjourned until tomorrow at 10 o'clock.

ADV SONI: As you please Chairperson.

ADV VARNEY: Chairperson, may I seek your indulgence? May I be excused from tomorrow? Sorry to interrupt, Chair. I just seek the Chairperson's indulgence. I have a family matter to attend to tomorrow, so I would like to be excused. But my junior counsel will

be available.

CHAIRPERSON: Thank you, Mr Varney. You are excused for tomorrow. Ms. Pillay will be available.

ADV VARNEY: Yes, indeed. Much appreciated.

CHAIRPERSON: Thank you. We are adjourned.

INQUIRY ADJOURNS UNTIL 03 JULY 2026

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that **as far as it is audible**, the foregoing is a true and correct transcript of the digitally recorded proceedings in the matter of:

JUDICIAL COMMISSION OF INQUIRY INTO TRC

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