

**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 Anisa Kessery-DOJ Representative
Adv Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Ms A Thakor – The Calata Group
Mr Sipho Tlhaole – The Calata Group
Adv Bridgette Nthambeleni (for Adv Jiba)

20 JULY 2026

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PROCEEDINGS ON 20 JULY 2026

CHAIRPERSON: Good morning to you all and Mr Semenya.

ADV SEMENYA: Good morning to you chair, and the commissioners as well. We have Adv Ledwaba for cross-examination this morning.

CHAIRPERSON: Yes. Adv Ledwaba, you are reminded that you are still under your former oath.

ADV LEDWABA: I confirm that, commissioner.

CHAIRPERSON: Thank you.

ADV NALANE: Morning chair and the commissioners.

10 CHAIRPERSON: Yes, Mr Nalane.

ADV NALANE: Mr Ledwaba has deposed to a supplementary affidavit, which was only obtained yesterday. It has been circulated to everyone. I am just going to take him through the supplementary affidavit before he gets cross-examined because the matters that he deals with are pertinent to some of the matters that the cross-examination would revolve on, chair, with your permission.

CHAIRPERSON: Yes.

MALALA GEOPHREY LEDWABA (still under oath)

20 EXAMINATION BY ADV NALANE: Mr Ledwaba, you would recall that you have previously testified before this Commission, correct?

ADV LEDWABA: Correct.

ADV NALANE: And on the 14 April 2026 you deposed to an affidavit.

ADV LEDWABA: Correct.

ADV NALANE: If you look at the bundle before you, on page 13, red 13 and black is 1696.

ADV LEDWABA: I am there, chair.

ADV NALANE: And if you turn to page 39, 1722.

CHAIRPERSON: One?

ADV NALANE: 1722. Are you there, Mr Ledwaba?

ADV LEDWABA: Correct.

ADV NALANE: This is your signature and the affidavit which you deposited to on the 14 April 2026, correct?

ADV LEDWABA: I confirm.

10 ADV NALANE: You have now deposited an additional affidavit, a supplementary affidavit, is that correct?

ADV LEDWABA: That is correct.

ADV NALANE: The affidavit appears at the end of the bundle before you. Do you see that?

ADV LEDWABA: After page 385 of the bundle.

ADV NALANE: Yes, there is a tab called "Supplementary Affidavit: Mr G Ledwaba". Have you got that?

ADV LEDWABA: Correct.

ADV NALANE: The affidavit is not paginated, but it is numbered at the top of the page. Do you see that?

20 ADV LEDWABA: I do.

ADV NALANE: If you go to the next page of the affidavit, page 9 of the affidavit, numbered 9.

CHAIRPERSON: Thank you, Mr Nalane, now I am on the same page with you.

ADV NALANE: Thank you, thank you, chair. There is a signature on page 9. Is that your signature?

ADV LEDWABA: That is my signature, correct.

ADV NALANE: And this affidavit, do you confirm it as being your affidavit?

ADV LEDWABA: I do.

ADV NALANE: And you confirm it as being correct?

ADV LEDWABA: I do.

ADV NALANE: Now, before we delve into the content of the affidavit,
10 can you tell the Commission why you had to depose a supplementary affidavit?

ADV LEDWABA: I think on the 26th, when I testified, and more particularly during clarification, there was questions regarding the proper reference to section 7 as I had it in my affidavit and in my oral testimony, coupled with the questions relevantly asked by Commissioner Gabriel as to the definition of "specified offences" in the context of the National Director interpreting it one way, and the DSO interpreting it probably more another way.

ADV NALANE: Now if you go to your affidavit, paragraph 3, you
20 explain what your first affidavit stated.

ADV LEDWABA: Correct.

ADV NALANE: Just read that into the record. Page 2, paragraph 3 of the supplemental affidavit.

ADV LEDWABA: I am saying in paragraph 3:

"In my previous sworn affidavit filed with the

Commission, more particularly paragraph 36 thereto, I made mention that the provision of section 7 of the NPA Act, Act 61 of 2000 provided as follows:

'1A There is hereby established in the Office of the National Director an investigating directorate to be known as the Directorate of Special Operations to investigate and carry out any functions incidental to investigations.

10

(a) Relating to serious high profile or complex corruption, commercial financial crime and organised crime cases:

(i) Referred to the investigating director by the National Director (Those words are repeated) in terms of section 28(1)(b); or

20

(ii) Referred to the investigating director in terms of section 28(1)(a) or 28(13).

(b) Relating to additional

statutory offences or categories of
statutory offences, including the
contraventions of:

(i) The Prevention
and Combating of Corrupt
Activities Act, Act 12 of
2004;

(ii) The Prevention
of Organised Crime Act,
Act 121 of 1998."

10

ADV NALANE: So that is how you stated the section to be reading?

ADV LEDWABA: Correct.

ADV NALANE: In paragraph 5 you then stated that in your evidence-in-chief you repeated that that is how section 7 reads.

ADV LEDWABA: Correct.

ADV NALANE: And then you asked certain clarificatory questions, correct?

ADV LEDWABA: Correct.

20

ADV NALANE: And you say... Maybe you can read paragraph 4, the second sentence: "I indicated that"?

ADV LEDWABA:

"I indicated that my view was based on my reading of the copy of an old NPA Act that I still possessed at my home. This was an error. I have now established the proper position."

ADV NALANE: So you confirm that section 7, as you have stated in paragraph 3, and as you stated in your affidavit and evidence, is incorrect?

ADV LEDWABA: I agree.

ADV NALANE: And then in paragraph 5 you deal with a document called "Circular 1/2000". You are explaining why you made the error that you did, correct?

ADV LEDWABA: Correct.

ADV NALANE: Just read that into the record and explain in your own
10 words?

ADV LEDWABA: Paragraph 5:

"What I was recollecting was in fact a DSO
Circular 1/2000, which did not list TRC cases as
cases to be investigated by the DSO. Whilst I
have not been able to obtain a copy of Circular
1/2000, a reference indicating its existence can
be found in the Khampepe report, and the article
by a security studies expert, Ms Jean Redpath. I
have attached the relevant sections of the report
20 as Annexure G1, and Redpath's article as
Annexure G2."

ADV NALANE: And if you turn to page – there is an annexure to the affidavit, it is G1. Are you there?

ADV LEDWABA: Correct.

ADV NALANE: When you refer to the Khampepe report, what are you referring to exactly?

ADV LEDWABA: I think sometime in 2006, if I remember, a commission of inquiry was established, and that was chaired by none other than Justice Khampepe. And a final report of that Commission was then compiled, I think, on the 3 February 2006, which was titled in paragraph 11 as the:

10 "Final Report February 2006 – Khampepe
 Commission of Inquiry in the Mandate and
 Location of the Directorate of Special
 Operations."

ADV NALANE: So that was the subject matter of that Commission?

ADV LEDWABA: Correct.

ADV NALANE: Location of the DSO.

ADV LEDWABA: Correct.

ADV NALANE: Now, you also refer to paragraph 48 of that report. Why are you referring to this report in your evidence?

20 ADV LEDWABA: When I started to reflect and decided to look for
 Circular 1, I requested assistance of the evidence leaders to
 approach the NPA to see if they can help us with a copy of this
 circular, which has not been forthcoming since.

 And in an effort to get some outside reliance of existence of
 Circular 1, I came across the report through talking to some of our
 ex-colleagues, or some of my ex-colleagues, that we came across the
 reference of Circular 1 in these two documents, the Khampepe report,

where it is even listed that the Circular 1 was even attached to the report, but when you go into the report, it is not there.

And the other reference is the monograph by Mrs Redpath of the ICC. She specifically mentions the existence and the contents of Circular 1 in terms of the mandate, operations and locations. She even identifies the officials at the relevant time in that monograph.

ADV NALANE: So you are saying when you deposed your affidavit then, you had in mind this DSO Circular 1?

ADV LEDWABA: Correct.

10 ADV NALANE: Then what was the purpose of Circular 1?

ADV LEDWABA: My understanding is, section 7 of 2000 simply gave a mandate of the DSO. If I can quickly read it?

ADV NALANE: If you look at paragraph 8 of your supplementary, you quote from that section 7 as you have read there.

ADV LEDWABA: Paragraph?

ADV NALANE: Paragraph 8.

ADV LEDWABA: Thank you. It spells out the mandate, and more appropriately under section 7(1)(a)(AA), identifying which type of offences falls within that mandate, and it reads as follows:

20 "Offences or criminal or unlawful activities
committed in an organised fashion."

And the second one, which is not really relevant to us, is under (bb):

"Such other offences or categories of offences as
determined by the president in the Government

Gazette."

So we go to (b), subsection (b) then defines the word "organised fashion", which was the mandate of the DSO ...[intervenes]

ADV NALANE: You are reading at page 4 of your affidavit?

ADV LEDWABA: Correct, the last paragraph in paragraph 8, and it says under (b):

10 "For the purpose of subparagraph (a), organised fashions includes the planned, ongoing, continuous or repeated participation, involvement or engagement in at least two incidents of criminal or unlawful conduct that has the same or similar intents, results, accomplices, victims or methods of commission, or otherwise are related by the distinguishing characteristics."

So that is the first leg of the mandate, organised fashion. Then you move to the second definition of, taking it to section 28(1)(a) or 28(1)(b) that says:

"Those must then be specified offences."

20 ADV NALANE: Now before you deal with that, just explain your understanding of Circular 1 in relation to section 7 of Act 2000, as you have just read it, how do you correlate the two?

ADV LEDWABA: I am leading it to there.

ADV NALANE: Okay, thank you.

ADV LEDWABA: So I am saying you take it to 21(a) that says all this must then be specified offences, only those that can be done by, within that context of 28(1)(a) and 28(1)(b), both refers to specified offences. Then for specified offences you go back to the Act. In section 1 of the definitions, "specified offences" defined in section 1, the second last description, it says:

10 "It means any matter which in the opinion of the
 head of the investigating directorate falls within
 the range of matters, as contemplated in section
 7(1), and any reference to the commission of a
 specified offence has a corresponding meaning."

So to my understanding, it is as vague as it is. And for the DSO to implement this, that is how they decided to break it down. It gives the mandate to the head of that directorate, the head to define what is "specified offence". And that is how Circular 1 came into being, to define exactly in a piecemeal fashion what are those that are regarded to fall within the mandate, and it identified those four core criteria of cases.

20 ADV NALANE: If you go to G2, this is an extract from the monograph
 of the author, Jean Redpath.

ADV LEDWABA: I confirm.

ADV NALANE: The numbered page 32 at the bottom you will see there is a paragraph at the top of the page that says:

"However, agreement between SAPS and DSO".

Do you see that?

ADV LEDWABA: I do.

ADV NALANE: And after that paragraph, then it deals with Circular 1.

Let us read that first paragraph, and then explain the context of how she explains Circular 1?

ADV LEDWABA: I think maybe if we take it on the last sentence of that paragraph, starting with "however".

ADV NALANE: Yes.

ADV LEDWABA: She says:

"The ministerial committee never said..."

10 That is not the MCC ...(intervenes)

ADV NALANE: I think start it from "however".

ADV LEDWABA: Okay, that is on page 32. It says:

"However, acrimony between the SAPS and the DSO arose after the launch of the organisation with the appointment in 2000 of Jackie Selebi Selebi..."

I am reading it as it is, but it is:

20 "Mr Jackie Selebi, as SAPS National Commissioner, a man who was keen to defend the reputation of the police and who clashed with the National Director.

A negotiated mandate became unlikely. The ministerial committee never sat, as a result, the DSO was forced to carry out an internal case review in which it considered whether the matters

it had already taken on were appropriate or not.

In doing so, the DSO came up with its own operational mandate, more in the nature of internal terms of reference, which outlines the requirements a case must meet before being taken on. This was dubbed Circular 1."

ADV NALANE: You can explain that.

ADV LEDWABA: The next paragraph:

10 "In terms of Circular 1, the first criterion is that the matter concerned must fall within the strategic focus areas of the DSO. These have been refined to include drug trafficking, organised violence (including taxi violence, urban terror, and street gangs), precious metal smuggling, human trafficking, vehicle theft and hijacking syndicates, serious and complex financial crime and organised public corruption.

20 There are a further 14 general criteria or factors that must be considered, covering such questions as: 'Is the criminality activity involved complex, and does it comprise at least five persons?'

There are also financial thresholds that must be met, for example, a corruption matter has a threshold of R500 000, while serious economic offence must involve actual loss of R5-million to

meet the threshold requirements."

ADV NALANE: And that paragraph, "All of these requirements".

ADV LEDWABA:

"All these requirements must be met, and
consideration canvassed before the head of the
DSO, who will authorise an investigation."

I think it had to be the head of the operation, not the head of
the DSO, as he could not authorise investigations:

10 "...or declare a matter in terms of section 28. Prior to such
an authorisation, no DSO members are designated to a
case, and DSO members do not, until designation, enjoy the
DSO's special powers of investigation, which include
somewhat expanded powers of search and seizure."

ADV NALANE: In simple terms, can you explain what all this means?

ADV LEDWABA: In simple terms, for a case to qualify under the
intake criteria, it must meet all these, first the four core crime mandate
of organised crime, corruption, financial crimes, and the fourth one
which cuts across is racketeering and poker. So that is the first
assignment or the first consideration. Then the second part we go to
20 the threshold. If it is corruption of R2-million, we give it to the SAPS,
we are starting at R5-million upwards.

ADV NALANE: But the point is, those criteria were developed in
terms of Circular 1.

ADV LEDWABA: Again aligning it to the definition of section 1, which gives the head of the DSO to define what will be the core mandate of the DSO ...(intervenes)

ADV NALANE: But what...

ADV LEDWABA: It is not defined in the Act, it is passed back to the head of the DSO to define what are those.

ADV NALANE: And what was the rationale for the circular?

ADV LEDWABA: To assist the investigators and prosecutors in the regions, and even head office how to assess at that level a case to be
10 considered even before they bring it to head office. So when it comes to head office, it must fall strictly within the Circular 1 for consideration.

ADV NALANE: If I understand you correctly, not every criminal case would be referred to the DSO?

ADV LEDWABA: I confirm. I relate it to a typical fraud example, let us take corruption. If it is a corruption and we found that it is for R2-million, it does not meet the threshold, it goes to SAPS. That is how the high echelon of the crimes was pitched.

ADV NALANE: And then if you go back to your supplementary
20 affidavit, you go to 7, you say:

"The evidence leaders and I agree that I will then have to address issues by filing a supplementary affidavit in these proceedings."

Which you are now doing, correct?

ADV LEDWABA: Correct. I think we need to say immediately after, in paragraph 6 we say:

"Immediately after my testimony, we conversed with the evidence leaders and re-looked at taking the questions raised by Commissioner Gabriel SC, and looking at the Act, it was obvious that I was mistaken, section 7 was not as I indicated."

And that is when we said I must go and look at it, and that is how paragraph 7 comes into the picture.

10 ADV NALANE: And you now deal with the correct citation of, rendition of section 7 in paragraph 8 of your affidavit.

ADV LEDWABA: After our agreement, I then decided to follow it up, and when I came across the Act, I established that the correct section 7 read as we have it under paragraph 7, as it is in that Act 61 of 2000, and it reads as follows, 1(a)(i): "Investigate". Now that is the DSO has to investigate:

20 "Investigate and carry out any functions incidental to investigation, gather, keep and analyse information, and where appropriate, institute criminal proceedings and carry out any necessary functions incidental to instituting criminal proceedings relating to..."

And that is now the mandate again, Roman figure, sorry, (AA) ...(intervenes)

ADV NALANE: That is fine, you have read it ...(intervenes)

ADV LEDWABA:

"Offences or any criminal or unlawful activities
committed in an organised fashion..." (intervenes)

ADV NALANE: But if you may pause there, the operative word there
in (AA) is "organised fashion".

ADV LEDWABA: Correct.

ADV NALANE: Yes, you may proceed.

ADV LEDWABA: And (BB) is really not relevant, but it is here, I will
read it, it is not relevant for this purposes, but it says:

10 "Such other offences or categories of offences as
determined by the President by proclamation in
the Gazette."

ADV NALANE: And then (b) defines what "organised fashion" means,
correct?

ADV LEDWABA: Correct.

ADV NALANE: Now, if you go to 9, what do you say in 9?

ADV LEDWABA: I will read it:

"I still remember that the DSO strongly relied in
interpreting its mandate as being strictly for:

- 20 (1) Serious and complex financial and
commercial cases;
(2) Serious and commercial corruption cases;
(3) Serious and organised crime cases; and
(4) Serious and complex cases relating to
racketeering and poker;

and approved investigations within these four parameters."

ADV NALANE: In paragraph 10 you have already testified that after your testimony a colleague of yours alerted you that you may have been confusing matters.

ADV LEDWABA: I confirm, and pointed out that I was probably referring to not the correct section 7 as I had cited, but more relevantly to Circular 1/2000.

10 ADV NALANE: Then in paragraph 11, you have already testified about the extract which we have from the Khampepe Commission of Inquiry.

ADV LEDWABA: Correct.

ADV NALANE: Into the many locations of the (indistinct) operations.

ADV LEDWABA: Correct.

ADV NALANE: As well as the monograph from the author, Redpath.

ADV LEDWABA: Correct, and we say in that paragraph 11 that:

20 "Full copies of the Khampepe report and the monograph of Redpath are too voluminous to attach here. But I know I have been told that the evidence leaders have made it easily accessible online."

ADV NALANE: Yes. And then just to make the point about the Khampepe report, just to go back to, or the circular, as you understood it, and as was referred to in that report would say and do. If you go to G1, Annexure G1.

ADV LEDWABA: I am there.

ADV NALANE: Paragraph 49. Read that aloud and explain it?

ADV LEDWABA: Sorry, say that again?

ADV NALANE: Paragraph 49.

ADV LEDWABA: Must I read it out?

ADV NALANE: Read it and explain it, yes?

ADV LEDWABA: Paragraph 49. We took out and made a copy of this from the report, the Khampepe report itself, and it reads as follows:

10 "The circular (Circular 1) divides the work of the
DSO into various areas of focus. It establishes
four operational management desks. The circular
also deals with the criteria for the selection and
initiation of investigation, and the procedural
requirements relating to these processes,
including the reporting responsibilities of the
regional heads. It also deals with the referral of
monitoring and interception application and
request in terms of section 252A of the Criminal
20 Procedure Act that is dealing with the
entrapments."

ADV NALANE: All right, we may now go back to your supplementary affidavit. In other words, you are saying the report, as you have read it, deals with the Circular 1 which you had in mind when you were doing your first affidavit.

ADV LEDWABA: Correct.

ADV NALANE: Now go back to paragraph 13 on page 5 of your supplementary affidavit.

ADV LEDWABA: One, three?

ADV NALANE: One, three, yes.

ADV LEDWABA: I continue to read it:

10 "I now confirm that my continued reference to the
DSO mandate then, being to investigate specified
offences of, (1), serious and complex financial
and commercial cases, (2), serious and complex
corruption cases, (3), serious and complex
organised crime cases, and (4), serious and
complex cases of racketeering and involving
poker, was in relation to how the DSO interpret
the legislative mandate within Circular 1, and
used this criteria to assess and approve
investigations."

ADV NALANE: And then you also deal with, you further elaborate on that on paragraph 14.

20 ADV LEDWABA: Paragraph 14:

"From my understanding, as I remember, the
DSO developed its own criteria for intake of cases
and refine its operational implementation of the
mandate by introducing a so-called 'Circular 1'..."

And this is now the title as it is in the circular:

"Circular 1 (The office of the head of Operation, DSO Circular 1)', which became operational on 8 November 2001, and approved by Adv LF McCarthy."

So if I can take the commission back to the definition in section 1 of "specified offence", one will see that after that there is an insertion that says:

"The definition of 'specified offence' was inserted by section 2D of Act 261 of 2000, with effect from 12 January 2001."

10 So between then and until November, the DSO was then developing exactly how to define "specified offence", and only in November the work was finalised and the policy was then approved.

ADV NALANE: So when you talk about, "To refine its operational implementation", paragraph 14, what exactly do you mean?

ADV LEDWABA: My understanding is that the definition as it is, is too wide. Anything could have probably fell under "specified offence" if we really... If I can take it to the new Act that replaced the DSO, I see it even refers to any offence involving dishonesty. So I am saying if one follows the new Act, if I am stopped by a traffic cop and I am
20 giving him a dishonest name, so the DSO would have then investigated that. So our understanding was to high pitch the intake criteria only to a high level type of cases, and that is how the four core intake case criteria came up.

ADV NALANE: And you elaborate that on paragraph 15 of your affidavit on page 6.

ADV LEDWABA: Paragraph?

ADV NALANE: Fifteen, one, five, correct?

ADV LEDWABA: Yes, it says:

"I was made to believe that the Circular 1 came into being as an attempt by the DSO to interpret the legislative mandate, and dealt with the identification of types of cases falling within its mandate and criteria for the selection and initiation of investigations."

10 ADV NALANE: Okay, we have dealt with the extract from the monograph of Ms Redpath, which you have dealt with in paragraph 16. So we do not need to deal with that unless you...

ADV LEDWABA: No, no. I confirm.

ADV NALANE: Ja, thank you.

ADV LEDWABA: She confirms the existence of Circular 1, she confirms the four operational management desks that are linked to these four intake criteria of the cases that I testified about on the 22 of April, and which are now in Circular 1.

ADV NALANE: And then what do you say in paragraph 17?

20 ADV LEDWABA: I am saying:

"I now confirm that the legislative mandate of the DSO was provided for in section 7 in 2000 and was to investigate organised crime."

ADV NALANE: And then, although you have dealt with it, if you can just refer to it briefly, paragraph 18?

ADV LEDWABA: We take it to ...(intervenes)

ADV NALANE: Organised fashion.

ADV LEDWABA: 227(1)(b), where the word "organised fashion", which is established in (a), is now defined, and I have already read that relevant section from the Act.

ADV NALANE: Yes. Then at 19 you are still dealing with the definition of "specified offence", which you have dealt with.

ADV LEDWABA: Correct.

ADV NALANE: But maybe just to emphasise, you say:

10 "Is in turn defined as 'any matter which in the
 opinion of the head of the Investigative
 Directorate falls in the range of matters contained
 in section 7(1)(a) information in terms of section
 7(1)(a)(BB) or (1)(a) of the Act'."

 We have dealt with that.

ADV LEDWABA: I have done so, but I think just to highlight, to say
 the legislator did not, for whatever reason decided not to define
 "specified offences", and threw it back to the head of the Investigating
 Directorate, who was then Mr Sohn. But I see Mr McCarthy signed
20 and approved that Circular 1, so that is how the "specified offences"
 then had to be defined, specifically in line with the mandate in
 section 7, pitched at organised crime, organised fashion.

ADV NALANE: But again in order to refine the mandate of the DSO.

ADV LEDWABA: Correct.

ADV NALANE: Then in paragraph 20 you deal with an extract from the Khampepe report.

ADV LEDWABA: Correct. We refer to, and if I can first read it:

"The Khampepe report mentions in paragraph 11.19 of the report that the Foundation of the Human Rights (FHR) expressed the view that the provisions of the Act, which dealt with the mandate of the DSO, provided very little direction to the organisation."

10 And I say there I agree with the expressed view, and I noted from the report, chair, that Mr Varney is the one who made this submission on behalf of the FHR then in that Khampepe proceedings.

ADV NALANE: Thank you.

ADV LEDWABA: So basically we are saying the Act does not define what is "specified offences", and it gave, it threw it back to the head of the organisation, and that is how Circular 1 came into being.

ADV NALANE: Then 21?

ADV LEDWABA:

20 "21. The Khampepe report highlights that the implementation of the legal mandate then became an issue when it came to operationalisation of projects that were to be regarded to fall within the mandate.

22. I believe which is essentially what Ms Redpath also says, that the failure of

the Ministerial Coordinating Committee in addressing the issue of the DSO mandate resulted, amongst others, in the DSO being creative and brought to life Circular 1/2001, which was aimed at defining and streamlining the mandate of the DSO."

ADV NALANE: And then 23?

ADV LEDWABA:

10 "The circular provided in the main that the investigating director, which is the head of operations, may investigate any matter which in his opinion involves a specified offence, one which is related to organised crime or any other categories determined by the president."

ADV NALANE: Paragraph 23, it just simply emphasis that for a matter to come to the DSO, it had to fall within the four emphasis areas.

ADV LEDWABA: The first point is always "specified offence", what is
20 that? Then to break it down we came up with those four. And in paragraph 24 we say:

"In deciding whether to declare an investigation in terms of Circular 1 regarding the DSO mandate, the first criterion was that the matter concerned must fall within the strategic focus area of the

DSO, which was then defined to mean, (1) serious and complex financial and commercial crimes, (2), serious and complex corruptions crimes, (3), serious and complex organised crimes, and (4), serious and complex crimes relating to racketeering and poker. This was the cornerstone of Circular 1 insofar as the mandate of the DSO was applied."

ADV NALANE: And then in 25 you deal with 14, you mentioned that
10 there were 14 general criteria, factors to be taken into account.

ADV LEDWABA: Correct, and I think this also assisted in dealing with the tension between SAPS, that the DSO, not necessarily cherry picking cases, but it has a threshold. And paragraph 21 says:

"There were further 14 general criteria or factors that had to be taken into account, namely:

1. The scope of offences to be investigated, organised fashion, syndicate, impact, international or transnational, at least five or more people involved.
- 20 2. There was in addition threshold amounts to be considered on each investigation in terms of those:
 - 2.1 R500 000, being the minimum set for corruption cases;
 - 2.2 Minimum actual loss of

R5-million for financial and
commercial crimes; and

2.3 Value of R1-million for
organised crime cases and R5-
million for drug syndicates."

So this was to put a bar to say ...(intervenes)

ADV NALANE: That not every case ...(intervenes)

ADV LEDWABA: Not every case of corruption will come to SAPS.
So the SAPS will not say we are taking every run-of-the-mill cases,
10 even if it is a corruption of R100 000, of R2-million. So that is why we
said for corruption the minimum was R500 000, and for financial
crimes, R5-million, and drug syndicates, R5-million.

ADV NALANE: And you concluded paragraph 26. What do you say
in paragraph 26?

ADV LEDWABA:

"I confirm that the correct legislative mandate of
the DSO was to investigate organised crime, as
intended in section 7. My reference and reliance
to the language that was used in Circular 1 was
20 an error on my part."

ADV NALANE: Thank you. Chair, those are the questions for
Mr Ledwaba.

COMMISSIONER GABRIEL: Mr Ledwaba, can I take you back to
paragraph 3 of your supplementary affidavit, where you quote the

provisions as you understood it of section 7 of the NPA Act. Are you with me?

ADV LEDWABA: I am, commissioner.

COMMISSIONER GABRIEL: What were you looking at when you drafted this?

ADV LEDWABA: To the best of my recollection, it was an old NPA Act, which unfortunately I have been unable to get a copy of. I do not know whether that one was probably in the proclamation before it was enacted, or I just cannot remember whether it is the wording of the
10 Circular 1 I had in one of my notes. I still had some few documents from this DSO then.

COMMISSIONER GABRIEL: But you were quite clear ...(intervenes)

ADV LEDWABA: I was quite clear...

COMMISSIONER GABRIEL: That you were relying on your old version of the NPA Act?

ADV LEDWABA: I confirm that.

COMMISSIONER GABRIEL: And now you cannot find it?

ADV LEDWABA: No.

COMMISSIONER GABRIEL: Thank you.

20 ADV LEDWABA: And even if one reads the current section 7, it does not read close to this.

COMMISSIONER GABRIEL: Thank you.

CHAIRPERSON: Thank you. Ms Moroka, following upon the supplementation of the evidence by Mr Ledwaba, any clarificatory questions?

ADV MOROKA: None, chair, thank you.

CHAIRPERSON: Thank you. Ms Nthambeleni?

ADV NTHAMBELENI: Thank you, chair, no questions.

CHAIRPERSON: Thank you. I think this will be an appropriate time to adjourn for tea, Mr Varney, before you conduct your cross-examination.

ADV VARNEY: As the commission pleases.

CHAIRPERSON: Yes, we will adjourn for tea until quarter past 11.

INQUIRY ADJOURNS

10 INQUIRY RESUMES

ADV NALANE: Okay before Mr Varney starts, we are told that there is Ms Lukhele ...[intervenes]

COMMISSIONER KGOMO: Just switch on your one microphone.

ADV NALANE: Chair before we start, we are told there is a Mr Lukhele for the NPA team who is on MS Teams. He is on.

CHAIRPERSON: Okay, yes. Mr Lukhele? Mr Lukhele? Can you hear us, Mr Lukhele? We do not have Mr Lukhele.

ADV NALANE: That should be in order.

CHAIRPERSON: Ja. Mr Varney?

20 CROSS-EXAMINATION BY ADV VARNEY(CONTINUED): As the Chairperson pleases. With the leave of the Commission I will commence my cross-examination. Firstly Mr Ledwaba, thank you for taking the time to come back and be with us today and to assist the Commission, it is appreciated.

ADV LEDWABA: Thank you, thank you counsel.

ADV VARNEY: To assist you, we also set out virtually all of our questions in the application to cross, there are not going to be any surprises today.

ADV LEDWABA: Yes, I was supplied with that affidavit where the questions are set out and I have went through them.

ADV VARNEY: Thank you. So we will try not to keep you for too long and just assist you to navigate this morning's session, we are going to kick off on page 2 of that, that application. There is a heading titled, "The Special National Projects Unit dealing with the
10 TRC cases", it is at paragraph 7.

ADV LEDWABA: If I may be assisted with the page number in the bundle?

ADV VARNEY: Page 2, red 2.

ADV LEDWABA: I am there. Thank you, I am there.

ADV VARNEY: Good. So at paragraphs 50 to 51 of your first statement, you made reference to the fact that the Special National Projects Unit, the SNPU within the DSO, had been dealing with 14 cases and you set them out and we have also reproduced them on page 2. And actually going through those cases, I should indicate
20 that I am representing the families in at least four of them, that is COSAS 4, CRADOCK 4, PEPCO 3 and Timol.

We will return to these cases and at a later stage, but I will just indicate that just to bring you into the latest position in respect of at least those cases, in COSAS 4 a prosecution was opened in 2021, in CRADOCK 4 we opened an inquest as proceeding this year, in

PEPCO 3 an inquest will take place in October of this year and in Timol there was a reopened inquest in 2017.

I am not representing the family of Steve Biko, but I am aware that there will also be a reopened inquest in that matter either later this year or next year. But turning back to your listing of these cases as matters that the SNPU was seized with, can I ask under what legal authority did the SNPU which was part of the DSO at that time, on what legal authority did the DSO take on those cases?

ADV LEDWABA: The simple answer is none.

10 ADV VARNEY: Then how did those cases get to the DSO?

ADV LEDWABA: We take it maybe two steps back, all the TRC cases were initially at the SAPS and DPP offices after the TRC. Mr Ngcuka as the National Director, decided to bring them in his office, in the National Office but in his office and that is where the SNPU was developed and started operating in his office with the whole range of 400 or 41, I cannot even remember, but that is how it landed in the DSO.

20 Mid 2002 if I am correct or early 2003, Mr Ngcuka with management decided to move the SNPU out of his office and just dump it in the DSO with the purpose of the SNPU dealing to DSO related national projects, but they brought along Mr Macadam, Mr Leask and a few others together with what they were doing there. They continued working with them even though they were now in the DSO, but those projects or those investigations were never declared in terms of either 28(1)(a) then or 28(1)(b), so it was just a carry case

that they brought along and they continued working on them, that is why I said no legal authority.

ADV VARNEY: But nonetheless those cases were regarded as serious cases, serious enough for the DSO to be seized with?

ADV LEDWABA: When you say they were regarded, you mean by whom?

ADV VARNEY: Well the, presumably Adv Ngcuka and the DSO.

ADV LEDWABA: I think we are missing each other, he just brought, removed the unit as it, continued carrying, working on them but now
10 located within the DSO with the main aim of now dealing with DSO national projects together with what you are bringing along, so they were never DSO cases.

ADV VARNEY: But to get onto the same page, not any old case would be just handed over to the DSO. The point I am putting to you is that these were serious enough cases, dealing with organised political crime that warranted the attention of the DSO.

ADV LEDWABA: Not to my understanding.

ADV VARNEY: Okay.

ADV LEDWABA: I therefore differ with you.

20 ADV VARNEY: We have to agree to disagree on that point. Now you mentioned in your statement, that is in paragraph 50, an audit of all the matters that had been dealt with by the SNPU, was carried out. When approximately was that audit?

ADV LEDWABA: This was around 2003, I cannot try to even estimate, I cannot remember.

ADV VARNEY: But you said ...[intervenes]

ADV LEDWABA: But one identifying the 14 cases, would have been approximately when we decided to comply with the NPA Policy of now regarding TRC cases as priority crimes within the PCLU and for us to compile a list of what are we now transferring to them for them to carry on. It should be around that period.

ADV VARNEY: And around that time, aside from the 14 cases, was the SNPU dealing with any other TRC cases?

ADV LEDWABA: Ja, if you remember in my testimony Chair and
10 Commissioners, I stated in, even in the memo of, directed to Mr Leask dated 15 July, that after this 14 are now transferred to PCLU, only two cases will be remaining in the SNPU just for finalisation on the request or direction of Mr Ngcuka, being the Black Cats if you go to page read 41, paginated red 41.

The annexure of the memo identifies in Roman figure (i) the Black Cats and the Winnie Mandela cases. Those are the only two that remained not as DSO projects or DSO authorised investigations, but they carry on that they brought and when they leave them, they must return those two for completion by July 2003.

20 ADV VARNEY: All right, we will return to that but the reason I asked whether there are any other TRC cases on the books, this is because of what we set out in paragraph 9 of the application, paginated red number 3 and let me just put to you these assertions because it does seem to us that you know, there might have been more than just 14 cases on the books of the SNPU. So for example if you look at 9.2:

“Around September 2000, the TRC provided a list of approximately 226 TRC cases to the Human Rights Investigation Unit, the HRIU.”

And then we know that and you have also indicated this, that Adv Ngcuka stated that after the HRIU assist the TRC cases between 1999 and 2000, he decided to transfer all the TRC cases in possession of the HRIU to the SNPU. And then lastly we can make reference to the statement of the former Head of the SNPU, Adv Chris Macadam who indicated in his own statement that by about
10 10 February 2003, the SNPU had identified 41 TRC cases for investigation and possible prosecution.

So it does seem as if the SNPU probably have many more TRC cases on its books at that time. Would you agree?

ADV LEDWABA: From my understanding, remember I said the SNPU started in if you look at what Mr Ngcuka saying, he brought along you said around 200 which were then in his office. That is when the SNPU started operating and I suppose when Mr Macadam refers to the 41 being with SNPU then, that it was the time, it was still located in the NDPP, Mr Ngcuka's office.

20 When they came to the DSO, they officially were then put on our records, only the 16, let us say the 16 cases, that is why on the Project Management Office, their audit only picked and identified the 16 and not 41, but Mr Macadam has been carrying the SNPU, one, in the NDPP, two, in the DSO and three, when he moved to the PSLU. So he will have a complete list of all those that he regarded as ready

for investigation and possible prosecution, but these never DSO authorised investigations.

ADV VARNEY: Let us turn to what you have referred to as a turf war between SAPS and the DSO. And you indicate, this is actually in your evidence-in-chief, your oral evidence, that everything started after the final TRC Report were sent to Parliament in March 2003 and following President Mbeki's speech to Parliament on 15 April 2003. And am I right in saying that the turf war you are referring to is, is the same conflict between SAPS, the DSO that Jean Redpath refers to in
10 her article, the one that you attached to your supplementary affidavit where she refers to SAPS being unhappy with DSO allegedly cherry-picking the best cases and the like?

ADV LEDWABA: Correct and also as dealt with in the Khampepe Report, there is a topic dealing with that tension between the two institutions.

ADV VARNEY: So this turf and correct me if I am wrong, was not about the two organisations trying to nab TRC cases?

ADV LEDWABA: No, no, never, in TRC not at all.

ADV VARNEY: Indeed, as we know there was an attempt to you
20 know, offload the TRC cases ...[intervenes]

ADV LEDWABA: No, pass the buck within.

ADV VARNEY: They both have passed the buck, exactly.

ADV LEDWABA: Ja.

ADV VARNEY: Ja.

ADV LEDWABA: But the tension itself, I will probably agree with the

Khampepe that it started more on a personal level of the two heads of those organisations there and filtered to, down where most of the investigators from DSO come from SAPS and some brought their informers and decided to continue with the investigation that they were carrying, but those were not high enough to fall within the mandate.

And that is where they, SAPS started accusing DSO to cherry-pick without having regard to what was said in Circular 1. It was not more of a cherry-picking but streamlined intake that was
10 agreed upon and used. The only mistake maybe is, that Circular 1 should have been properly been addressed between the two, not done by the DSO alone.

ADV VARNEY: So this turf war, did it impact the work on the TRC cases and if so, how did it impact them?

ADV LEDWABA: My best understanding, it had no impact directly because it was more on operation of the type of investigation the DSO could authorise and did authorise which did not include TRC cases, but then it became relevant when PCLU took over the mandate of TRC matters and they went to SAPS to say help and we
20 know what happened. SAPS pushed it back to say, 'Mm-mm, take it back to the DSO, Mr President says NPA and we believe NPA is the DSO', so that it is how it affected.

ADV VARNEY: So okay, so in some respects what happened there was something of an extension perhaps of that tension between the two organisations.

ADV LEDWABA: We insofar as TRC cases, we never had tensions with SAPS. We firmly held the view that now they are within PCLU, they will deal with them with SAPS.

ADV VARNEY: Yes, okay ...[intervenes]

ADV LEDWABA: And SAPS refused ...[intervenes]

ADV VARNEY: We will get to that claim shortly.

ADV LEDWABA: Insofar as the tension between, it was not more on, between the two units, it did not touch the TRC cases.

10 ADV VARNEY: So you just put up the turf war for contextual purposes?

ADV LEDWABA: Correct.

ADV VARNEY: All right, let us turn to the interpretation that you have offered of sections 28(1)(a) and (b) of the NPA Act and you have now put up a supplementary affidavit in which you have attempted to explain what took place. Now I try not to repeat too much of what you have alluded to this morning, but it is now apparent that the quote that you offered of section 7 of the NPA Act or at least the old Act is incorrect.

ADV LEDWABA: I agree.

20 ADV VARNEY: But as far as we can tell, we have also looked for it, we have not, you have not been able to produce that old Act, is it not?

ADV LEDWABA: I confirm.

ADV VARNEY: We also cannot find it. You have made reference to the fact that you really meant to refer to Circular 1, and although you

have referred to references and the Redpath articular on the Khampepe Report, you have not been able to produce Circular 1.

ADV LEDWABA: Well in the affidavit we show all the attempts we have... I think I have requested the evidence leaders I think twice and a follow-up to the NPA. Ja, I do not think counsel is expecting that after 20 something years I will still have a copy of the Circular 1, but neither the NPA seems to be having a copy of Circular 1 and that is why we sought to get supporting information that Circular 1 was in fact existing and we found two reliable sources in a sense of the
10 monograph of Ms Redpath and the Honourable Judge Khampepe in her report of 2007.

ADV VARNEY: Yes, now we did not expect you to have your own copy after all these years and thank you for confirming the attempts that you have set out. You have made reference to the NPA Amendment Act 61 of 2000 which sets out section 7. You have gone through it but just for completeness sake and we have also reproduced it at paragraph 13 on red paginated number 5 ...[intervenes]

ADV LEDWABA: I am in agreement.

20 ADV VARNEY: Ja, so it essentially talks about offences of any criminal or unlawful activities committed in an organised fashion. We will not dwell on BB because it does not really apply to us in this instance and then 7(1)(b) sets out what organised fashion means, including a planned ongoing, continuous or repeated participation involving at least two incidents.

So we want to put it to you that the DSO mandate is what is set out section 7(1), namely to investigate and prosecute offences of any criminal or unlawful activities committed in an organised fashion. It does not speak of serious high profile or complex corruption, commercial or financial crime and organised crime cases. This is simply what is set out in Circular 1.

ADV LEDWABA: I agree.

ADV VARNEY: So as I understand your central proposition that you set out in your supplementary affidavit, it, you are essentially saying
10 that those four categories although you accept that those are not in the NPA Act, they are based on the internal Circular 1, would you agree with me that that Circular guides the DSO in terms of priorities and case selection but it could not amend the statutory mandate or removed jurisdiction conferred by section 7 and 28 of the NPA Act?

ADV LEDWABA: Interpretation is a wide consent, you have to go to section 1. Unfortunately according to me that defines as we said, section 1 defines what is a specified offence in the context of the DSO. It is not being given anywhere, so the DSO, it says a specified offence means any matter within the opinion of the Head of the DSO,
20 falls within the range of matters that they deem fit and for that purpose, the DSO management or DSO Head came for the four intake, whether that one can accused them of widening or narrowing the mandate is subject to debate.

ADV VARNEY: But you do agree that as a matter of law, an internal DSO Circular cannot supersede or amend the NPA Act?

ADV LEDWABA: Literally I agree, but again if you follow what the definition of specified offence ...[intervenes]

COMMISSIONER KGOMO: How can there be a “but”?

ADV LEDWABA: Sorry Commissioner?

COMMISSIONER KGOMO: It is an internal Circular, it cannot trump national legislation. There is no but about it.

ADV LEDWABA: That, that is why I said literally agree, but operationally ones has to give meaning to the definition in the Act of sorry, specified offence which comes back to section 7, what is a
10 specified offence? Section 7, the definition in section 1 makes it plainly a table of the Head of the DSO to define those specified offences and that is why I am saying literally agree, you cannot trump the Act.

COMMISSIONER KGOMO: Mr Varney.

ADV VARNEY: Thank you, Commissioner. So would you also agree that the fact that the internal Circular does not specifically refer to TRC cases, it does not mean by itself that the TRC cases are excluded?

ADV LEDWABA: Ja, if that is what counsel’s view is, I will accept it
20 but that is not my view or the DSO then.

ADV VARNEY: Well perhaps you need to tell us what your view was.

ADV LEDWABA: Our view was that the Scorpions or the DSO was created to deal with organised crime and that is the intention of the legislator.

ADV VARNEY: Well let us turn to organised crime and as we have just, we have just looked at section 7 and that definition, section 7 covers offences, unlawful activities committed in an organised fashion. An organised fashion was as mentioned, defined by reference to planned ongoing continued or repeated conduct involving at least two incidents with common features. So the question is, surely the TRC cases squarely fits into the definition of serious crimes committed in an organised fashion, does it not?

10 ADV LEDWABA: Well it depends on who is saying it. I would, my interpretation if we were to follow the exact wording, DSO can as well investigate everything as it reads here, two people ongoing. We do not have to look what is it, it falls within this, we take it. So then TRC cases can share, theft of syndicate of Woolworths can fall within the DSO and I do not think that was how the DSO was intended.

ADV VARNEY: Let us not be glib about this, because we are referring specifically to the TRC cases and we know that these were planned, orchestrated, kidnappings, killings, disappearances often organised by a central chain of command, often involving the same perpetrators and I hardly need to say that there were more than two
20 of these offences, so just as a matter of plain reading the TRC cases fall squarely within the definition of organised fashion of section 7.

ADV LEDWABA: Your position will obviously follow that way, mine will be different and to justify, the National Director even then saw it fit that they do not fall this and pitched them differently as priority crimes and created a proclamation to accommodate them. If it was his view

then that they fell within this, he would not have moved them out of the DSO and classify them as priority crimes and remove them out of the DSO, created a unit to deal with them. So it is not only my position, but the whole NPA.

ADV VARNEY: We certainly ...[intervenes]

ADV LEDWABA: Whether we were correct, sorry, whether we were correct or not or whether Mr Varney is correct or not, that is another debate but that is how we operated.

ADV VARNEY: Well we, in due course we are going to be disputing
10 the claim that the National Director moved the cases out of the DSO. There is no evidence, there is no whisper of evidence suggesting that, but we will come to that. But even in Circular 1 there is a reference to organised crime and even on the Circular 1 we suggest to you read with section 7, that these TRC cases involving murders, kidnappings, disappearances and the like, clearly fit the definition and the way they were executed as being carried out in an organised fashion.

ADV LEDWABA: That is the beauty of the law. I will interpret it differently, he will interpret and the counsel will interpret differently
20 and that is how it worked in 2002 and 2003. If anybody is to say we were wrong, that is a question the Commission can ask or a judge in dispute between the two can then decide, but that is how we interpreted it and that is how we worked.

ADV VARNEY: Now I want to deal with your interpretation of section 28(1)(b). I want to refer you to something you said in your evidence-

in-chief. It is at page 352, paginated red page of the bundle.

COMMISSIONER KGOMO: Page number?

ADV VARNEY: 352. Have you found it?

ADV LEDWABA: Correct, I am there.

ADV VARNEY: So I just want to quote to you one line for your comment:

“However, the National Director is given superpowers in terms of that subsection [that is 28(1)(b)] to go beyond the mandate of the DSO.”

10 Are you still persisting with that view?

ADV LEDWABA: I think to contextualise what I meant is both 21(a) deals with specified offences which has to be defined and we then decided to say it is A, B, C, D, the four. 28(1)(b) refers to the same specified offence, so there should be a difference and that is where I meant that the National Director is given superpowers, but in practice it essentially means the National Director is given power that according to our understanding or my understanding at least, if a matter is brought to the DSO, it is a corruption of R100 or a 100 000.

20 The investigator, the Director who was myself then, feels that it does not meet the other 14 criteria and especially the three threshold or the importance of the matter, I declined to authorise it. The people involved feel aggrieved and they take it to the National Director to review, so even though it does not fall within, according to a Circular 1 in our understanding, he has the powers to authorise it even though he would agree that it does not follow within, strictly

within but on his consideration he decides to the word “shall”, once he says the DSO must, then we do it.

We do not consider anymore whether it is within the mandate, as long as it comes from him we do not question, that is how when I said superpowers.

ADV VARNEY: So do I understand you correctly to say that you are still persisting with the claim that because the National Director has the superpowers, he may go beyond the mandate of the DSO?

10 ADV LEDWABA: I think maybe the word superpowers is problematic, let us just say 28(1)(b) gives him a power to declare certain matters at his own discretion back to the DSO and it does not define for him what is specified offence, whether he interprets it like this in terms of the Act, I cannot answer for him but as long as feels satisfied that whatever is on his table fall within that specified offence in 21(b), I am happy to comply with his instruction. So I cannot answer for him as to what he regarded as specified offences.

ADV VARNEY: So are you suggesting that the section allowed him complete carte blanche, he could pick any offence under the sun and say you know this, this now must be investigated?

20 ADV LEDWABA: If we want to be simply state it, yes, he can take a theft of Woolworths by a prosecutor to be investigated by the DSO.

ADV VARNEY: No, I must put it to you Mr Ledwaba, but that as a proposition of law that is just manifestly wrong and cannot be.

ADV LEDWABA: That is why we are saying one had to pitch a standard to say we stop here, the rest goes to SAPS, above come to

DSO. It would not have worked out if one were to follow the literal meaning of the definition in 2008 in 7(1)(b).

ADV VARNEY: Now you have pointed out that above 28(1)(a) and (b) referred to specified offences. Are you suggesting that 28(1)(b) had a separate or wider definition of specified offences would gave the National Director an approach to go beyond what was anticipated in section 7?

ADV LEDWABA: I would not say I really ever bothered myself in trying to define the specified offences under 2(1)(b), otherwise it
10 would have made me to be at odds with my boss, Mr Ngcuka. That was his definition. I am more on 28(1)(a) which gives me the powers.

ADV VARNEY: All right, but let me just put the following to you, specified offences in those two subsections have the same statutory meaning, section (1)(b) did not contain a separate wider definition, nothing in subsection 28(1)(b) permitted the NDPP to turn an offence outside section 7 into a specified offence merely by referring to it. The difference was principally who initiated the investigation and whether the investigation was discretionary or mandatory. Your comment?

20 ADV LEDWABA: I differ a little in that the definition of specified offences in the Act talks about the Head of the Investigating Directorate who must decide what are the offences, not the National Director. So if one were to do a literal interpretation, specified offences as defined in the Act, missed 21(b), 28(1)(b) because if the National Director is doing specified offences that are to be decided by

the Investigating Head of the DSO, it creates an imbalance.

Whether he felt that the specified offence under 21(1)(b) are what is covered under specified offences in section 1, I cannot answer for him but that is my understanding. The problem is the wording of the definition of specified offences in section 1, it limits it only to the Head of the Investigating Directorate who is below Mr Ngcuka, so I do not think he can bind the Head of the organisation as to how he defines specified offences.

10 Obviously he must be bound by the Act but the interpretation is unfortunately a little complicated when you read how the legislation is formulated.

ADV VARNEY: Well we want to suggest that your interpretation has no textual basis in the Act and so your suggestion and I want to refer you now to page 382, this is part of the transcript of your evidence-in-chief. We are going to quote to you the example that you put up at 9.18:

“I always argue that even a theft of Pick n Pay could have just used 28(1)(b), it is a specified offence, go and do it.”

20 Now I want to put it to you that your example that the NDPP could turn an ordinary Pick n Pay into a specified offence merely by referring to it, is manifestly incorrect.

ADV LEDWABA: Again I differ. If one looks at the definition in 7(b), it says if there are two more people, a syndicate, if it is a syndicate of two people dealing with Pick n Pay, targeting Pick n Pay, it can still

fall within this as it is. So it is a matter of interpretation, we highlighted as they say, according to them TRC cases are continuing organised, Pick n Pay syndicates are continuing syndicates, organised. What is the difference?

ADV VARNEY: Yes, although I did say you were not referring to a syndicate in that line, but be that as it may. Just to wrap up this section, I want to put it to you that if a matter genuinely fell outside the definition of specified offence, section 28(1)(b) could not bring it inside, conversely if it was a specified offence for paragraph (b), it
10 was capable of being investigated under paragraph (a).

ADV LEDWABA: We are talking across each other. Again it goes to the definition. I will define (b) differently from you and who is correct, it is subject to High Court, SCA, ConCourt. I am citing an example of a syndicate of five people targeting Pick n Pay, Pick n Pay for theft, R40, R50, every day. Why are they... There is no difference, it is a continuous targeting syndicate of people. Can it really be dealt with by the DSO? No, it does not mean we were correct or we were wrong, it depends on who is listening or who is talking.

ADV VARNEY: Now this issue was raised with you by
20 Commissioner Gabriel in your evidence-in-chief and she put it to you, but if the NDPP could form the view that the TRC matters were specified offences for purposes of 28(1)(b), it was not clear why you did not form the same view for purposes of section 28(1)(a). And in your evidence-in-chief you said, well this is how the DSO interpreted its mandate at the time.

So my question to you is, do you accept that section 28(1)(b) did not dispense with the requirement that a matter referred by the NDPP must relate to a specified offence?

ADV LEDWABA: We have already dealt with that. How he defines specified offence, I do not know. How we define specified offences within the Act, so even if we operate on the premises that he was wrong, therefore we should have followed the wrong procedure, I do not agree or he was right, we were wrong, that is how we worked.

ADV VARNEY: I want to put it to you Mr Ledwaba, that your
10 explanation on these sections are not only illogical, but putting them up to turn down the investigation of the TRC cases at that time frustrated the investigations of the TRC cases.

ADV LEDWABA: I will dispute the illogical insofar as I am relying strictly on the definition in the Act of specified offences. Mr Varney has not given us how he interprets section, the definition of specified offences which can lead him to say well, TRC cases should ideally be regarded as a specified offence as defined in this section 1.

And that we caused the derailment, that is definitely incorrect because TRC cases move from Mr Ngcuka's office by Mr Macadam
20 and he left with them to PCLU, we gave all the support in terms of researchers, storeroom and everything and even employed Mr Leask and his team to assist the SAPS to make sure that the handover is smooth and they can continue. How that can be regarded as derailment, beats me.

COMMISSIONER GABRIEL: Mr Varney, can I interrupt?

ADV VARNEY: Please do.

COMMISSIONER GABRIEL: Do you accept that if your interpretation of the law was incorrect, that this impeded the investigation of the TRC cases?

ADV LEDWABA: I do not see how Commissioner, in the sense that in May not the DSO, Mr Ngcuka took a decision obviously after consulting and with NPA to move them out of the DSO to somewhere else.

COMMISSIONER GABRIEL: I am referring specifically to when you
10 had the disagreement with the prosecutors.

ADV LEDWABA: But that was after May, so already the decision has been taken by NPA management that they are no longer DSO cases, they are somewhere outside of the DSO. They go to SAPS, SAPS also gives them a dead haul, then they decide to come back to the DSO after Mr Ngcuka taken them out of the DSO, it defeats the purpose of taking them out of the DSO, coming through a backdoor again to the DSO.

So that fault should not be attributed to the DSO, but the steps that were taken to move them out of the DSO to somewhere
20 else for them to be attended as priority crimes.

COMMISSIONER GABRIEL: Thank you.

ADV VARNEY: I do not want to repeat ground that we have already covered, but you know, you have asked you know, where is my view on specified cases. I just want to remind you that we have had quite an extensive exchange on section 7 and the reference to these

crimes being committed in an organised fashion as well as the reference to organised crime in Circular 1 and I put it to you that quite plainly the TRC cases would have fallen within both section 7 as per crimes committed in an organised fashion and organised crime as mentioned in Circular 1.

ADV LEDWABA: That is counsel's view, I hold a different view, but what I want to emphasise Commissioners, is that we must remember that the DSO had these cases for a spin of three, four months, beginning of 2003 until May, May they are gone. Can we say in
10 those four months anything could have been done that the DSO failed to prosecute or investigating them? After May they were officially transferred out of the DSO, so we must always have that in mind.

ADV VARNEY: Now let us deal head on with this interesting claim that you make, that Adv Ngcuka decided to remove the TRC cases from the DSO to the PCLU. Am I right in saying that you rely on the presidential proclamation which is in the bundle at red page 240?

And that is the presidential proclamation that is dated the 24 March 2003. It created the PCLU and it appointed Adv Anton Rossouw Ackermann SC as a Special Director to head up the PCLU.
20 Is that your authority for the removal of the cases?

ADV LEDWABA: No, it is not.

ADV VARNEY: Please remind what your authority is.

ADV LEDWABA: Reading of this proclamation makes it quite clear, TRC cases are not covered here. Mr Ngcuka himself testified to the effect that he decided to move or to decide to identify TRC cases as

priority crimes and transferred them to PCLU. Mr Macadam testified in his statement that I read and his evidence, that when the NPA decided to regard TRC cases as priority crimes, he then moved along with that definition to the correct PCLU Unit where they were to deal.

Mr Ackermann also testified similarly, so that is my authority. Insofar as the NPA is concerned, we can say it was Mr Ngcuka's decision but obviously he had to discuss it with people, he took some time and he only implemented it in May whereas the proclamation came out I think in March.

10 So in March they were not but he says in May he implemented with the NPA that decision to regard TRC cases as priority crimes and moved them. I was told yesterday that there is another proclamation that actually covered the aspect of TRC cases within that PCLU. I have never seen it.

ADV VARNEY: But the nub of the matter Mr Ledwaba is, is whether the declaring of the TRC cases priority crimes by Adv Ngcuka meant that the PCLU would now itself carry out investigations and that this would no longer be the responsibility of the DSO.

ADV LEDWABA: Maybe I did not get your question.

20 ADV VARNEY: Okay, am I correct in saying that your interpretation of the declaration by Adv Ngcuka that the TRC cases were not priority crimes and that you know, they would be the responsibility of the PCLU, did that mean that the DSO was now freed up of the actual investigations of those crimes?

ADV LEDWABA: To start with, the DSO was not even initially

dealing with TRC cases, before they were moved there was never one declaration or investigation initiated in terms of the NPA Act. I said they were brought along from the National Office into the SNPU, so the SNP1 in Mr Ngcuka's office, worked on them without a mandate. They brought them in the DSO, worked on them without a mandate and then taken them to the PCLU where they are now regarded ...[intervenes]

ADV VARNEY: Well let us deal with the 14 cases that were with the SNPU/DSO without a mandate. Let us not quibble for the moment as
10 to what legal authority they were, that the SNPU received with at that time. The fact is that they were with the SNPU/DSO. Did the declaration that these crimes were not priority crimes mean that the DSO no longer had to investigate those cases?

ADV LEDWABA: Again I said even though they brought them along and worked on them, they were never declared as DSO authorised investigations in terms of 28(1)(a) by the Head of Operation or 28(1)(b) by the National Director. It was a carry on that they brought along and moved with it.

ADV VARNEY: Yes, let us move beyond the legal provisions which
20 we dealt with *ad nauseum*. The fact is that they were with the DSO. If they were not with the DSO, there would be no need to transfer them back to the PCLU or to the NPA. I do not wish us to quibble about it, but I am simply putting it to you that those cases were with the DSO at that time.

ADV LEDWABA: In the SNP Unit ...[intervenes]

ADV VARNEY: In the SNP Unit, yes.

ADV LEDWABA: Yes, but they were not DSO authorised investigations in terms of that the Head of DSO or the Head of Operations were ever accountable on those.

ADV VARNEY: Well that may be, but as matters stand they were being investigated by the SNPU at that time. There is evidence to that effect.

ADV LEDWABA: Yes, with the powers that they brought them with the National Director. It was only those three or four policemen that
10 worked on them, but not as designated DSO investigators, they were never designated under the NPA Act to work on TRC cases, they were carrying on on their own powers that they brought along.

ADV VARNEY: Now does the PCLU have any powers to investigate?

ADV LEDWABA: That is what the proclamation says. It says quite exactly that their mandate is to investigate and if I may read out what it says, they direct investigations and prosecution, so they are doing both. It is not only like a DPP prosecutor that is only assigned to prosecute and SAPS is investigating, here they are given both.

20 ADV VARNEY: Well that is simply not the case because a plain reading and that was repeated in particular to the Head and this is at paragraph (a) in particular to head the PCLU, and here is the nub, "And to manage and direct the investigation and prosecution of crimes". Manage and direct, not do the investigations, it is managed and direct. It is what prosecutors do all the time, they do not do the

investigations themselves, surely that is plain to see.

ADV LEDWABA: A normal definition of a prosecution does not say they must manage the investigation, never. You can even check in the Act, it talks about managing the prosecution. The investigation is left under SAPS Act, but this one more like the DSO, it gives the combined, investigation and prosecution is combined on the DSO and the PCLU. I am not the author of this, it is here, the PCLU is given the powers to deal, manage and direct investigation. There is nowhere a prosecutor in the PCLU can manage an investigation that falls outside their mandate.

COMMISSIONER GABRIEL: Mr Varney.

ADV VARNEY: Yes, please.

COMMISSIONER GABRIEL: So are you saying that the President of the Republic of South Africa did not know what he was doing?

ADV LEDWABA: I am saying a reading of the Act is plain that they gave them both powers to investigate and prosecute and the fault was that there were no investigators, so the intention is quite clear, they are doing both but the implementation was somewhat different, they forgot to appoint or they decided not to appoint investigators for them on somebody's understanding that Mr Ngcuka's said his understanding was that SAPS will carry out the constitutional mandate, SAPS on the other hands says the President says TRC case are now NPA, they believe this entailed DSO.

COMMISSIONER GABRIEL: Okay.

ADV LEDWABA: That is what the problem is.

COMMISSIONER GABRIEL: So what did you understand and you are referring us to it now, what do you understand ...[intervenes]

ADV LEDWABA: That the PC ...[intervenes]

COMMISSIONER GABRIEL: By manage and direct?

ADV LEDWABA: That the PCLU has been managing and directing investigation in conjunctions with SAPS, with all these identified cases in this paragraph and they worked with SAPS, no DSO involvement at all. So when the TRC cases are now regarded as priority crimes, they must similarly follow that route and be dealt with

10 SAPS. That is how I interpreted it.

COMMISSIONER GABRIEL: And that was your view then?

ADV LEDWABA: Well with my boss, Mr McCarthy when we took that decision, even Dr Ramaite. I am not so sure whether Mr Bulelani Ngcuka was also with us, but he knows, he was aware of the decisions we took, that we are transferring and complying with policy, transferring them to TRC and to PCLU. It was not a one man decision.

COMMISSIONER GABRIEL: Thank you.

ADV VARNEY: Thank you, Commissioner. Mr Ledwaba, under the
20 law and the Constitution is the NPA allowed to carry out its own investigations?

ADV LEDWABA: NPA has branches, right now there is ...[intervenes]

ADV VARNEY: Aside from the Investigating Directorates and the DSO at that time, can the NPA carry out its own investigations?

ADV LEDWABA: If one reads the proclamation of the PCLU, it is there, yes. I think there was a unit of SOCA, I cannot remember whether they had their own proclamation, but I think they were also doing investigations in conjunction with SAPS.

ADV VARNEY: So let me put it to you again, well let me just cut to the chase and put this proposition to you, aside from the Investigating Directorates and of course the DSO which existed at that time, I put it to you that under the NPA Act and under the Constitution it is well known as a matter of law, it is trite that the NPA has no power to
10 investigate its own cases.

ADV LEDWABA: I agree, that is precisely why the DSO has created and given a special power as trite principle to do investigations themselves within the NPA. So the Constitution gave two powers, one to SAPS to investigate, one to NPA to prosecute, then in 2000 some people decided rather let us merge a unit in the NPA that can deal with the two together so that it is streamlined and that is how the DSO came into being.

Now it is IDAC and there was also another proclamation on PCLU, so if it was just to be accepted that prosecutors will do a
20 prosecution, police will do investigation, this proclamation was unnecessary.

ADV VARNEY: And I want to put it to you further that a presidential proclamation cannot overrule a statute or the Constitution.

ADV LEDWABA: I agree.

ADV VARNEY: So now that you have agreed on those points, I take

you back to the proclamation that managing and directing the investigation of cases does not mean actually doing the investigations, that is simply managing and directing them as prosecutors do on a daily basis around the country.

ADV LEDWABA: That is the counsel's definition, I have a different definition. We will never agree on the definition, that is the beauty of the law.

ADV VARNEY: Well it is not a question of the beauty of the law, this is entirely ...[intervenes]

10 COMMISSIONER KGOMO: Mr Varney, where are we going to? I mean in circles here. This aspect can be addressed, it can be argued because all aspects of it had been put to the witness.

ADV VARNEY: Yes, yes Commissioner and I do intend to move on, I just wanted to put it to the witness that he was being unnecessarily evasive on this simple matter, a simple question of law.

COMMISSIONER KGOMO: All right.

ADV VARNEY: Mr Ledwaba, as I have just mentioned, I am putting it to you that we will assert that you are being unnecessarily evasive on a simple question of law, but I am going to move on. Now you are
20 aware at the time that the PCLU did not have investigative capacity?

ADV LEDWABA: I was aware. They actually even asked, identified six after the police rebuffed them, came back to the National Director, asked that six investigators that they identified I think Mr Leask, Mr Van Der Merwe, I cannot remember all of them, be according to them, temporarily assigned to them. They did not say we believe

they must just come and work in terms of this, they must be temporarily assigned. The National Director, not Ledwaba, not McCarthy, the National Director in a meeting declined their request.

So it is not a simple matter that the DSO did this, this. No, it was dealt properly by the National Director as Mr, Adv Macadam says in his affidavit, in his testimony that he specifically directed the memo to the National Director after the De Beer letter, requesting identified six DSO investigator be temporarily assigned to them. So there was an anomaly situation there. The National Director himself declined
10 that request.

ADV VARNEY: And this ...[intervenes]

ADV LEDWABA: And sorry to say, I do not believe that I am being evasive. Whether we were correct in interpreting it as... I am sticking to that and it cannot be evasive, but I am saying that is how we interpreted it then.

ADV VARNEY: Sorry, I think I might have just missed your evidence in relation. Did you say that that National Director rejected an offer of some support or some investigators? Can you just repeat that evidence, please?

20 ADV LEDWABA: I am saying if you look my first affidavit, if we go to it, the one of 14 April.

ADV VARNEY: Are you perhaps referring to paginated page 25?

ADV LEDWABA: Of the red 25?

ADV VARNEY: Yes.

ADV LEDWABA: Correct and more particularly page, paragraph. if

the Commission will allow me a sec just to refer to the relevant...

ADV VARNEY: Would it be 44 and 45?

ADV LEDWABA: No, where I was dealing with the contacts and communication between the, myself and Adv Ackermann and Mr Macadam, Adv Macadam.

ADV NALANE: If I may assist Commission, I think at paragraph 88, page red 38?

ADV LEDWABA: Yes.

ADV NALANE: Paragraph 88.

- 10 ADV LEDWABA: On page red 38, paragraph 88. I am saying Mr Macadam in his statement, I am not, I cannot remember even if he confirms it in his testimony, averse to his memo that he directed to Mr Ngcuka and NPA senior management where he asked that six investigators... He even identified them, be, the word he himself, be seconded to the unit. He also believed that those are not supposed to work with them, but they can at least be seconded to them to assist in driving the TRC cases. That is what I am saying in paragraph 88.

- 20 I am aware that the PCLU applied to the NDPP and NPA senior management that seeks DSO investigators be seconded to their unit. These six were all the people that Mr Macadam worked with in the SNPU and he identified them and I am saying I am also aware that this request was not acceded to by Mr Ngcuka himself with the two bosses of the two units, Dr Ramaite for PCLU and Adv McCarthy for DSO, not Ledwaba, but the two.

So if one were to say oh well, DSO investigators were as a

must supposed to do TRC cases, firstly you cannot apply that they be seconded. Secondly, the NDPP and his team would not have refused.

ADV VARNEY: So we have a situation with these cases are handed back to the, are handed to the PCLU. A request is made for the secondment of six investigators. That request is denied, so as matters stood the PCLU at that time did not have investigators for those cases. Now in paragraph 45 of your statement, you mentioned that this was discussed in the NPA EXCO Management meetings
10 where Dr Ramatse was in attendance, that investigations of PCLU cases would be conducted by SAPS in accordance with the mandate.

Now we have not been able to find any evidence of that meeting or those meetings where that was discussed. Did you make any attempt to find such records?

ADV LEDWABA: No, I did not.

ADV VARNEY: Have you, did you ask the evidence leaders whether they could perhaps make enquiries?

ADV LEDWABA: No, I did not. If I may touch back the topic of Mr Macadam in page 188 of his statement, red 188 where he himself
20 deal with this request that he made that in paragraph 30.3 of his statement, page red 188 and black 1402, he says there:

“Mr Ngcuka directed that I continue working on TRC cases. I had handled the DSO, not that they were authorised, firstly he just handled them but now it is at the PCLU. They say he must continue, then he

submitted a request that six DSO investigators be seconded to PCLU and his request was not approved.”

It is not only what I am saying but he says in his affidavit that Mr Ngcuka made it clear that the investigation should be conducted by DSO members. Mr Ngcuka when he testified, he did not at that time agreed to this. He says he held the belief that the constitutional mandate of investigations was with SAPS.

Later he heard of the interaction between DSO, SAPS and PCLU in 2003 and only in 2004 26 Jan or 26, 24 Feb and 26 Feb he
10 decided to use 21(b) to authorise that they can be investigated by DSO. So all along we were working on the... Even Mr Macadam himself, he says, ‘May you please second, just second to me the DSO investigators to assist me?’ Not that they must, it is their mandate. He says, ‘Second them to us to assist us’. So it was his view as well.

ADV VARNEY: All right, my learned colleagues are busy checking the evidence of Adv Ngcuka in that regard. We might come back to you. But let us turn to the directives issued by NDPP and Ngcuka in terms of section 28(1)(b) and we deal with this paginated page 7 from
20 paragraph 23.

You make reference to both declarations dated 8 December 2003 dealing with those four matters, now the PEPCO 3 matter, Brian Ngqulunga, a mother of four in the Chikane matter, and then the further directive in 24 February 2004 in relation to St James and Heidelberg Tavern matters. So we want to put it to you that in all

these matters it does not seem as if any progress was achieved.

So and as mentioned previously, of those six cases we were only aware of the Chikane matter proceeding and that is largely because that matter had been previously investigated. In fact, they were already able to, or they wished to go ahead in 2004 before that matter was halted following the intervention of the Minister of Justice. But we do know that a plea and sentence agreement was struck in 2007.

10 The PEPCO 3 matter is a sorry saga because even though there was an indictment issued in 2004, that never proceeded and an inquest is only scheduled to take place in October of this year and all suspects but one have died. In relation to the Brian Ngqulunga matter, we know from a presentation given by the DPCI to the Justice Portfolio Committee in May 2025, that this matter was only up and by the DPCI in May 2021.

And in relation to Motherwell, that case was actually resolved in the mid-1990s although we do think that it was referred because of the roll of form police General Nic van Rensburg who ordered the killings. But we can find no evidence that that matter
20 proceeded or indeed it was investigated. And lastly in relation to the Heidelberg Tavern and St James Church massacres, we do not see any progress on those cases either. We referred to the Macadam email in December 2008 to Dr Ramaite reporting that SAPS are still yet to conduct a series of investigations.

So would you accept that in all cases there is little or no

evidence that these matters were investigated at that time?

ADV LEDWABA: From my understanding after these four were 28(1)(b) authorised and given to Mr Ackermann, I never had anything to do, except what I am not catching up with the developments of what happened after I left the NPA and it is a sad story of affairs, that I have to concede. But just on, as counsel was reading in paragraph 23, I am being misquoted to say that in paragraph 78 and 81 I would have said Mr Ngcuka authorised 28(1)(b) on 8 December.

I have never said that. My paragraph 78 and to 81 says,
10 'See authorised the four on the 24 Feb and the other two on the 26th',
so that statement to impute 203 was definitely not coming from myself.

ADV VARNEY: So if we can turn to the question of you getting reports, progress reports on investigations, given that these were DSO investigations, given that you were the Head of Operations and the Investigating Director of the DSO, why were you not getting reports on these matters?

ADV LEDWABA: I can answer it to say Mr Ackermann was my level, we were both at investigative or special direct, Special Director level.
20 I was the Investigating Director but Special Director in the DSO equivalent to a DPP. I was reporting to McCarthy. He was at that level. There would have been definitely no way at that level he will report to me, but we know he was reporting to Dr Ramaite.

So even on the projects that he ran within the PCLU, he was bound to report to Dr Ramaite. Just on the procedure but even on

personalities, I would put 50c on the table that he would not, never have agreed to report to me.

ADV VARNEY: But it is not a question of Adv Ackermann reporting to you, it is a question of your own DSO investigators keeping you apprised as to what was happening with those cased.

ADV LEDWABA: Unfortunately the policy as it was, once it is given to PCLU, they carry on and report, the reporting lines were structured. You can blame us to say you should have actually tried to do that and unfortunately it was not done. We believed it is now the
10 PCLU's baby and the working, they have asked to second investigators, NPA refused, they will deal with that with SAPS.

How would I then ask for a report from SAPS within the DSO? It is easy said now, but the practicalities were different then. You are expecting me to ask SAPS to come and report to me if that investigation is dealt by SAPS.

ADV VARNEY: Ja, I think we are at cross purposes here. We are talking about the six cases under which Adv Ngcuka issued directives for the DSO to take up on those cases, so these would not have been SAPS investigators but DSO investigators.

20 ADV LEDWABA: I think if we read his declaration, it simply says I am authorising this, I have decided to refer ...[intervenes]

COMMISSIONER KGOMO: Yes, you must say where you read from, Mr.

ADV LEDWABA: It is para, that, the first of his memo dated 24 Feb.

COMMISSIONER GABRIEL: Page?

ADV LEDWABA: 62, red 62 and black 1745 in this bundle. In this one he was specific to say:

“I have decided in terms of 28(1)(b) of the Act that the following three cases are arising from the TRC be investigated by the DSO.”

In this one he was specific to say it must be investigated by the DSO. So we authorised the investigation, designated investigators and gave it to the PCLU to continue with it. The second one is on the following page 63, red 63, 26 Feb 2004 where he also

10 says:

“Refer the following matter to the DSO for investigation in terms of 28(1)(b).”

And he lists what is supposed to be the specified offence in regard to be investigated. Again investigators are designated in terms of the shell in 21(b) and passed over to PCLU to continue.

ADV VARNEY: So it is abundantly clear that we are talking about DSO investigators, not SAPS investigators.

ADV LEDWABA: If, the wording of his declaration, correct. And we did designate investigators once we have declared the authorisation
20 in terms of 21(b), but they were reporting on these six projects to Mr Macadam and Ackermann. I do not know how they then worked, whether they all reported to Mr Ackermann or jointly to both Ackermann and Macadam. I really did not even get closer to the two then.

ADV VARNEY: Yes, but these were now DSO matters with DSO

investigators. Were you not obliged to keep abreast as to what was happening and whether progress was being made or not?

ADV LEDWABA: I at that stage I hold a different or I held a different view that Mr Ackermann is my rank level, equivalent to my rank. He is reporting to Mr, Dr Ramaite. I have nothing to say to them in terms of that department. I remain in the DSO and SNPU reported to me with DSO authorised investigations under 21(a), 28(1)(a). Only those were remaining within the DSO.

COMMISSIONER KGOMO: You stayed in your lane?

10 ADV LEDWABA: I ...[intervenes]

COMMISSIONER KGOMO: You stayed in your lane?

ADV LEDWABA: Yes, where there was a turf with SAPS, I did not want to create another turf with PCLU.

ADV VARNEY: But it is not a question of you getting out of your lane and let me put it to you, that given that these were DSO cases being investigated by DSO personnel and notwithstanding the fact that the prosecutors in the PCLU were pursuing these cases, you were obliged to follow up and get a sense of what was happening and it is not open to you to say well, I left that in the hands of two other
20 prosecutors.

ADV LEDWABA: If I am shown a statutory imperative that makes it that I am obliged, I will agree but for now there is nothing.

CHAIRPERSON: But these were referrals by the NDPP to you, Mr Ledwaba.

ADV LEDWABA: Correct.

CHAIRPERSON: Yes.

ADV LEDWABA: Simply to ...[intervenes]

CHAIRPERSON: So why did you not make a follow-up on what progress has been made on them?

ADV LEDWABA: My take was once I have complied with the shell of the... If they were to remain investigated and prosecuted within the DSO, I would agree, it would have been, I would have been obliged but now they are out, of they are under somebody's umbrella. I might have defaulted in my understanding that once they are not being led
10 prosecution by DSO people but by PCLU, it is their baby, that is how I regarded it. Mr Ackermann again was at my level. For me to go and supervise him, it is just practically and legally impossible then.

COMMISSIONER GABRIEL: Do you accept that these remained DSO investigators?

ADV LEDWABA: I accept.

ADV VARNEY: I must put it to you ...[intervenes]

ADV MOROKA: Can I interrupt? I am very, very sorry Chair. Was the question investigations or investigators?

COMMISSIONER GABRIEL: Investigators.

20 ADV MOROKA: Thank you.

ADV VARNEY: Mr Ledwaba, I must put it to you that you are again being unnecessarily evasive on this point. It is not a question of you supervising Adv Ackermann, it is a question of you being apprised as to what is happening with DSO investigations pursued by DSO investigators.

ADV LEDWABA: For me it is the same thing. For me to do that, I need to follow up with Mr Ackermann. There is no way I can pass him, going to his unit and ask for reports. But one accepted that at his level he would make sure the investigations continue. Now it is 20 or 15 years later, nothing happened and the buck is now being thrown at some people, not him or his unit.

ADV VARNEY: Because as matters stand, if one looks at these six cases except for the Chikane matter, as we speak here today they remain unresolved more than 20 years later.

10 ADV LEDWABA: I left the NPA in 2006 and we are talking about 20 years later, four, five, six other people got involved. I was as I said, a maximum of March 2003 when I became Head of Operations until I left, but in the following year but we know in between TRC were then given to PCLU.

ADV VARNEY: Yes.

ADV LEDWABA: But the fact that they remained outstanding for so many years, it is a sad story of affairs.

ADV VARNEY: Yes, but I do want to put it to you that even while you were there between the end of 2003 and 2006 when you left,
20 there were still an onus and obligation on you to follow up and see what was happening in those cases and on your own version you did not.

ADV LEDWABA: I agree, whether if I had followed up anything would happened, we are again speculating.

ADV VARNEY: No further questions, Chairperson.

CHAIRPERSON: Thank you, Mr Varney.

COMMISSIONER GABRIEL: Mr Ledwaba, just so I understand your evidence correctly, is it your evidence that the DSO had no business dealing with the TRC cases?

ADV LEDWABA: In terms of how we defined the definition of specified offence and put it in Circular 1, yes. And I am saying to support that, even the National Director himself took a decision of taking them out where they are not supposed to be in that DSO and put them in where he believes they ought to be.

10 COMMISSIONER GABRIEL: So that was your view between 2003 and 2006?

ADV LEDWABA: And 2004.

COMMISSIONER GABRIEL: And 2004?

ADV LEDWABA: Yes.

COMMISSIONER GABRIEL: Thank you.

ADV VARNEY: Chairperson, my colleagues have just brought to my attention one aspect that I neglected to raise with Mr Ledwaba. With your leave may I do so?

CHAIRPERSON: Yes Mr, yes you may proceed, Mr Varney.

20 ADV VARNEY: Mr Ledwaba, you made reference to the Khampepe Commission Report and I just want to find the paragraph where you mentioned that.

ADV LEDWABA: It is in paragraph 11 as well as paragraph ...[intervenes]

ADV VARNEY: But of the supplementary affidavit?

ADV LEDWABA: Correct, yes, ja. 11 as well as I think it is on two instances, 11 and there is another ...[intervenes]

ADV VARNEY: All right, well let us jump to ...[intervenes]

ADV LEDWABA: 5 and 11, sorry, 5 and 11 I think.

ADV VARNEY: So you mentioned at paragraph 20 that the Khampepe Report mentions in paragraph 11.19 that the Foundation of Human Rights expressed the view that the provisions of the Act which dealt with a mandate of the DSO providing very little direction to the organisation and you agree with that expressed view, and you
10 pointed out that I was representing the FHR at that time.

And I will accept that, I made those submissions, but I want to draw your attention to a finding that Judge Khampepe made in her report of February 2006. And we did put copies on your table as well as that of the Commissioners and I apologise if we did not have copies for the parties but I will read it into the record and it reads as follows:

20 "I accept that the legislature intentionally drafted the legal mandate of the DSO to be wide. In my view this was prudent, having regard to the rationale behind the establishment of the DSO and the findings made in relation to this Term of Reference. For instance, it is unarguable that organised crime syndicates are not only pervasive but highly sophisticated and advanced and command huge finance resources. They are therefore able to mount heavyweight legal defences with a view to

resisting prosecutions and/or convictions. An overly prescriptive legal mandate would render itself open to constant jurisdictional attacks and frustrate the objective for which the DSO was established.”

Now after having read that finding of Justice Khampepe in that report, I must say I am persuaded by the conclusion that an overly prescriptive legal mandate would render itself open to constant attack and frustrate the objects for which the DSO was established. Do you have any comment? Would you agree?

10 ADV LEDWABA: I agree but I am again saying theft of Pick n Pay with a syndicate of five people for R50 worth of merchandise will be done by DSO. I do not think that is how we have to interpret it.

ADV VARNEY: Yes, well it clearly would not meet the mandate of the DSO.

ADV LEDWABA: It does if one reads ...[intervenes]

ADV VARNEY: Not even on the amounts, the threshold amounts.

ADV LEDWABA: That is why the thresholds are there, Mr Varney, so that there is a break between SAPS and DSO.

ADV VARNEY: Yes.

20 ADV LEDWABA: But if one were to take the mandate as is, without breaking Circular 1 into the picture with thresholds for criteria, everything goes. As long as it means sub (b), a syndicate of two or five people, organise continue, anything goes.

ADV VARNEY: Thank you, Chairperson.

CHAIRPERSON: Thank you, Mr Varney. Mr Nalane, any re-

examination?

RE-EXAMINATION BY ADV NALANE: No re-examination, Chair.

CHAIRPERSON: Thank you.

ADV NALANE: No re-examination, Chair.

CHAIRPERSON: Thank you. Mr Ledwaba, we thank you for having agreed to come to give evidence before this Commission. Your evidence has become concluded and you are now excused as a witness.

ADV LEDWABA: As the Commissioner pleases.

10

NO FURTHER QUESTIONS

CHAIRPERSON: Mr Semenya?

ADV SEMENYA: Chair, that is the official business of the hearings for today. We stand with your permission, to continue with former Minister Maduna tomorrow.

CHAIRPERSON: These proceedings stand adjourned until tomorrow at 10:00.

INQUIRY ADJOURNS UNTIL 21 JULY 2026

CERTIFICATE OF VERACITY

We, 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

FORUM OF ORIGIN : Inquiry

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TRANSCRIBER'S NOTE:

- Where no information provided, names transcribed phonetically.
- Grammar errors types verbatim.



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