

**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
Ms Lamiah Casoo-The Calata Group
Adv Nwabisa Ntshizana (for Ex-NDPP's Officials)
Adv Yanela Ntloko- NPA representative
Adv Vivian Rikhotso (for Adv Menzi Simelane)

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PROCEEDINGS ON 16 JANUARY 2026

CHAIRPERSON: Good morning to you all. Mr Semenya?

ADV SEMENYA: Good morning, Chair, and to the Commissioners as well. Today we have Dr Maduna to help us with the task of the Commission.

CHAIRPERSON: Thank you. Dr Maduna, are you going to take an oath or affirmation?

DR MADUNA: At the last count, the difference did not matter, but I will take an oath.

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

PENUELL MADUNA: duly sworn states

CHAIRPERSON: Thank you.

ADV SEMENYA: Doctor, again good morning to you.

DR MADUNA: Morning, morning.

EXAMINATION BY ADV SEMENYA: You have a very colourful, decorated history with this country, Doctor, am I right? You accept that?

20 DR MADUNA: Until, of course, you start with my days at the crash, that history is incomplete.

ADV SEMENYA: Ja, but most significant, and for the purposes of your evidence today, you served government in various portfolios.

DR MADUNA: Yes, yes.

ADV SEMENYA: And relevant to the workings of this Commission,

you served at one period as the Minister of Justice.

DR MADUNA: Yes.

ADV SEMENYA: And that would have been a period of 1999 to 2004.

DR MADUNA: To 2004, yes.

ADV SEMENYA: But I want to go with you by way of background with how we come here, just as a preliminary excursion with you. And I propose to do it with facts that are not denied, not refuted and perhaps even irrefutable. You would have had a background coming
10 into the new South African democratic order of government.

DR MADUNA: Yes.

ADV SEMENYA: But to that end, you would have been aware, being where you were, about the creation of the Truth and Reconciliation Commission, right?

DR MADUNA: Yes, I was.

ADV SEMENYA: And that process was intended to cover questions of amnesty relating to crimes of the past.

DR MADUNA: Yes.

ADV SEMENYA: And the formula, I am just saying it at the high
20 level, the formula was that those who would have been guilty of those crimes would apply to the Truth and Reconciliation Commission.

DR MADUNA: Yes.

ADV SEMENYA: They would, if making full disclosure about what crimes they committed, and meeting various criteria that are set down in the act, would then be granted amnesty.

DR MADUNA: Yes.

ADV SEMENYA: That commission took its course over the years to finally write its report in 2003 and placed it before the then president.

DR MADUNA: Thabo Mbeki, yes.

ADV SEMENYA: Yes. You have a recollection of all of that?

DR MADUNA: I would not claim an absolute recollection, but I have sufficient recollection.

ADV SEMENYA: Yes. And two things, if we read from the president's speech, former president's speech at the time to the joint
10 sitting of Parliament, you have recollection about that too?

DR MADUNA: Yes, I do.

ADV SEMENYA: And this would have been in 2003?

DR MADUNA: Yes.

ADV SEMENYA: And one of the things that seemed to have concerned the government at the time is that the process of the TRC did not yield to the outcomes that were expected.

DR MADUNA: Yes and no. Yes, because maybe our expectations were too high. I have said to you on an earlier occasion that maybe we were naive when we started the process of talks about talks. We
20 thought human beings would suddenly cease being human beings. I have said to you, Evidence Leader, that some of us were completely surprised that this country saw more violence after the release of Nelson Mandela; the so-called black-on-black violence. So we had to understand human beings totally from scratch. We thought that all of us from either side of the struggle against apartheid would behave

totally differently.

ADV SEMENYA: And we know that one area of concern was a group of people who would have been advised not to take part with the TRC process, right?

DR MADUNA: In fact, it was not only that advice. A major party then had decided not to participate in the elections themselves on 27 April 1994 until, well, we have read some historians who say this, I do not know whether it is right; that God in his wisdom sent Prof Okumu, Washington Okumu, to see Buthelezi. And Buthelezi changed his
10 mind and the name of Inkatha and his photo were pasted on the ballot, this thing, papers, right at the bottom; so, all that was wrong advice.

Part of that wrong advice also was the notion that you could keep the basic structures of apartheid as they were; the TBVC, Transkei, Bophuthatswana, Venda and Ciskei with their own armies and whatever. In other words, you would retain the balkanized country; so that if I ran my own Mahikeng, Mmabatho, I would be boss there, right. So all that was changing and you had to get all political players to agree that the days of the reserves of Sir
20 Theophilus Shepstone on the foundation of which the Bantustans were built, were gone. We all had to accept that. That from a certain date, we were talking about building a new country.

ADV SEMENYA: And to that mix, there was also a category of people who, for one or other reason, thought they would not be caught with regard to the crimes they had committed. Is that right?

DR MADUNA: That is right. I suppose all people who play in the crime industry never imagine themselves being caught until someone spills the beans at the Madlanga Commission and suddenly the whole cat is standing in front of us and many others, of course. So there is that tendency to believe that you are not only untouchable, but you will not even be noticed, found, *et cetera*.

ADV SEMENYA: And we know also that the Truth and Reconciliation Commission report then recommended that there should be prosecution of those whose amnesty applications were
10 refused, one category; the other being those who did not apply at all.

DR MADUNA: Yes.

ADV SEMENYA: And I suggest to us that that was a trigger explaining the terms of reference of this Commission. You would know by proclamation, 29 May 2025 we have a proclamation establishing this Commission.

DR MADUNA: Yes, I do.

ADV SEMENYA: Its primary purpose, you would be familiar with its terms of reference, at least if I put them at a helicopter level again, would be to enquire into attempts to stop the investigation of those
20 matters that needed investigation and the prosecution of those matters where evidence was available to be prosecuted. That is why we are here.

DR MADUNA: Yes.

ADV SEMENYA: Now, it also tells us, amongst other things, that we should look and enquire into this problem and uses a temporal period

of since 2003. You are familiar with that?

DR MADUNA: Yes.

ADV SEMENYA: Now, I say that 2003, because at that time, as we go back, you would have been the Minister of Justice.

DR MADUNA: Yes.

ADV SEMENYA: Okay. And *qua* Minister, you had legislation and the Constitution circumscribing the area of responsibility you would hold as a minister.

DR MADUNA: Yes.

- 10 ADV SEMENYA: Might I just take you to the Constitution? Without reading every section of it, it would tell us that as a Minister of Justice under the Constitution, you would have responsibility even in areas where the NPA was seated. It was one of those over whom you held responsibility and authority. Am I right?

DR MADUNA: Yes. It was limited to political responsibility.

ADV SEMENYA: Yes, and I want us to make the distinction there. Please explain.

- 20 DR MADUNA: The Constitution deliberately does not say the minister is part of the system of deciding whether and who to prosecute for anything. That, under section 179, I think subsection 6 of the Constitution, is resting solely in the hands of the National Director of Public Prosecutions. The two positions were not interchangeable.

ADV SEMENYA: And that clearly, I will go through these provisions, which too in themselves ultimately rests with the Commission as to

what their legal meaning is. But let us go through it, and to the extent you are familiar with what I am saying, you would comment. As you say, 179 had to guarantee the independence of the prosecution authority.

DR MADUNA: Yes.

ADV SEMENYA: And it would have placed the NDPP as head of the NPA, answerable differently to what the Minister of Justice would do.

DR MADUNA: Precisely.

10 ADV SEMENYA: But you say political responsibility rested with the minister.

DR MADUNA: Yes, and it was very limited, answering questions in broad terms in the National Assembly as well as at the NCOP, which did not give you any control of the institution. The question relating to the institution was asked. The minister would go to the institution and say: please help me provide the answer to this question.

ADV SEMENYA: Even getting involved in operational matters of the NPA would have exposed even the minister to a criminal offence.

DR MADUNA: No, in fact, it was a no-go zone for any minister.

20 ADV SEMENYA: All right. Now, but it also placed certain responsibilities, which I may share with you, and tell me if you think differently. 179 would then tell the reader, under subparagraph 4, that:

“National legislation must ensure that the prosecuting authority exercises its function without fear, favour, or prejudice.”

That is the independence that we were talking about.

DR MADUNA: Ja, ja.

ADV SEMENYA: And it would say, under 5, 179(5):

“The National Director of Public Prosecution;

(a) Must determine where the concurrence of the cabinet member responsible for the administration of justice, and after consulting the Directors of Public Prosecutions, a prosecuting policy, which must be observed in the prosecution process.”

10

You are familiar with that environment?

DR MADUNA: I certainly am, yes.

ADV SEMENYA: And you would have concurred to the prosecution policy that was prevailing at the time?

DR MADUNA: In fact, concurrence is not even defined. A simple nod would have been sufficient.

ADV SEMENYA: Yes.

DR MADUNA: Unless I was unhappy with certain elements and I would ask questions, right.

20 ADV SEMENYA: And we know, under 179(6), the Constitution reads:

“The cabinet member responsible for the administration of justice must exercise final responsibility over the prosecuting authority.”

That is what you call the political responsibility.

DR MADUNA: That is the political responsibility, yes.

ADV SEMENYA: Which would include being informed as a minister in respect of specified matters, is that right?

DR MADUNA: Yes.

ADV SEMENYA: Now, I go and read out what is 179(7), which would say:

“All other matters concerning the Prosecuting Authority must be determined by national legislation.”

10 DR MADUNA: Yes.

ADV SEMENYA: And that national legislation we know became the NPA Act.

DR MADUNA: Yes.

ADV SEMENYA: You would exercise those powers correspondingly with what appears under National Prosecuting Authority as responsibilities of the minister. I am making these leading questions, because I do not expect any objection. I will be rebuked.

DR MADUNA: No, I do not object, yes.

20 ADV SEMENYA: Yes, okay. Then if you go to the NPA Act, you will see there is a dovetailing between the Constitution and the powers and provisions of the NPA Act.

DR MADUNA: Yes.

ADV SEMENYA: I want us to go there. You will see there is section 21(1) of the NPA Act. Can I just quickly go there and read it out to you?

DR MADUNA: Please.

ADV SEMENYA: It talks about powers, duties and functions. No. It talks about powers, duties and functions of national director. And in subparagraph 2, it reads:

“Thus, in accordance with section 179 of the Constitution, the national director – (a) must determine prosecuting policy and issue policy directives as contemplated in section 21.”

You are familiar with that environment?

10 DR MADUNA: Yes, I am, yes.

ADV SEMENYA: And that is how the prosecution policy was settled?

DR MADUNA: That is it.

ADV SEMENYA: Again, it is a dovetail of what we found in the Constitution.

DR MADUNA: 179(6), yes.

ADV SEMENYA: Yes, and the legislation in terms of which further powers of the prosecuting authority would be determined, we go to the NPA Act, right, to do that?

20 DR MADUNA: Yes.

ADV SEMENYA: And I invite you also to look at what 33(1) would tell us of the NPA Act. It would say minister's final responsibility over prosecuting authority.

DR MADUNA: Yes.

ADV SEMENYA: And it would read, 33(1):

“The minister shall, for purposes of section 179 of the Constitution, this Act or any other law concerning the prosecuting authority, exercise final responsibility over the prosecuting authority in accordance with the provisions of this Act.”

And it would say:

10 “To enable the minister to exercise his or her final responsibility over the prosecuting authority, as contemplated in section 179 of the Constitution, the national director shall, at the request of the minister:

(a) Furnish the minister with information or a report with regard to any case, matter, or subject dealt with by the national director or a director in the exercise of their powers, the carrying out of the duties and the performance of their function.”

You are familiar with that environment.

DR MADUNA: Yes, I am.

20 ADV SEMENYA: It continues to tell us under subparagraph (b):

“Provide the minister with reasons for any decisions taken by a director in the exercise of his or her powers, the carrying out of his or her duties, or the performance of his or her functions.”

You are familiar with that. Am I right?

DR MADUNA: Yes, I am.

ADV SEMENYA: It goes under paragraph (c) to say:

“Furnish the minister with information with regard
to the prosecution policy referred to in section
21(1)(a).”

You are also familiar with that?

DR MADUNA: Yes, I am.

ADV SEMENYA: And you would be furnished with information as a
10 minister with regard to the policy directives referred to in section
21(1)(b). Am I right?

DR MADUNA: Yes.

ADV SEMENYA: Submit reports contemplated in section 34 to the
minister in terms of (e).

DR MADUNA: Yes.

ADV SEMENYA: And it then continues under (f) to say:

“Arrange meetings with the minister and members
of the prosecuting authority.”

Am I right?

20 DR MADUNA: Yes, yes.

ADV SEMENYA: Then there are responsibilities, for instance, to file
reports with Parliament for your portfolio.

DR MADUNA: Yes.

ADV SEMENYA: Now, coming closer here, we have to look as to...

DR MADUNA: Can I just comment?

ADV SEMENYA: Yes.

DR MADUNA: None of that gave the minister, because it is not about the president, it is about the minister, any right to cross that thin line that the Constitution itself prescribes. You would be wrong, therefore, as a minister to cross it. It does not allow you to venture over it at all. It was carefully crafted.

Those of us who grew up much earlier will remember that the ministers would just pick up a phone and call the Attorney General of some province about a matter and whatever decision would be made.

- 10 You had section 6 of the Terrorism Act of 1967, which said no judge can adjudicate on any matter, right, involving decisions taken under this Act or words to that effect. So you had to carefully make sure that no politician should be given as awesome a power as was given in the past. It was done deliberately.

ADV SEMENYA: Yes. And to assist the Commission, you then filed a statement with the Commission.

DR MADUNA: Yes.

ADV SEMENYA: Is it a document with the heading “Penuell Maduna” in front of you?

- 20 DR MADUNA: Yes, yes.

ADV SEMENYA: If you go, you will find to it at page... let me get there; 929 at the top of the page, and in particular you will see...

DR MADUNA: 929, yes.

ADV SEMENYA: Ja.

DR MADUNA: Yes, I do.

ADV SEMENYA: You do?

DR MADUNA: Yes.

ADV SEMENYA: And you would see there is a signature above the name Penuell Maduna?

DR MADUNA: Yes.

ADV SEMENYA: Do you recognise that signature?

DR MADUNA: Certainly.

ADV SEMENYA: Whose signature is that?

DR MADUNA: It is mine, unless the contrary is proved.

10 ADV SEMENYA: Ja, I am sure even that is an immutable fact.

DR MADUNA: Ja.

ADV SEMENYA: All right. When you go to paragraph 5, you confirm there the status you occupied during the period 1999 to 2004.

DR MADUNA: Yes.

ADV SEMENYA: Please read it out for the Commission.

DR MADUNA:

20 “I was the Minister of Justice and Constitutional
Development (Minister) from 1999 to 2004. I
have been invited by the Commission to comment
and provide my knowledge in respect of the
issues raised in paragraph 4 above *qua* my
tenure as a minister.”

ADV SEMENYA: You then continue to make ...[intervenes]

COMMISSIONER KGOMO: Sorry. Dr Maduna, good morning. Yes.
2004, that date you were minister until 2004.

DR MADUNA: Yes.

COMMISSIONER KGOMO: Can you give us a date, because it is going to become important until which date in 2004 were you a minister,

DR MADUNA: I cannot remember the date exactly, but after the 2004 elections, I only had to wait as minister until the appointment of the cabinet that replaced ours. So I cannot remember the exact date. It could have been sometime in May 2004.

COMMISSIONER KGOMO: I would think so. Okay, thank you.

10 Thank you, Counsel.

ADV SEMENYA: Commissioner, I will verify that my distant recollection is April, but I will come back with the exact date of appointment and the last date of office.

COMMISSIONER KGOMO: Thank you very much.

ADV SEMENYA: Then you give us a background under paragraph 6, if you were to read it.

DR MADUNA:

20 "As a general remark, I have no knowledge of any collusion, influence or pressure on members of the South African Police Service or the National Prosecuting Authority to stop investigating or prosecuting TRC cases, nor do I know of any collusion in that respect."

ADV SEMENYA: So just hold there. This is a response to the question that was put in terms of the terms of reference of the

Commission. Am I right? That is what you are responding to.

DR MADUNA: Yes, it is.

ADV SEMENYA: Okay, you may proceed.

DR MADUNA: Yes.

“I have also never devised or enforced, nor enforced any moratorium to the investigation or...”

It should be “or prosecution”

“...of any TRC cases.”

10 ADV SEMENYA: And you continue to say?

DR MADUNA:

“As I understand it, the moratorium that is alleged to have been put in place against the prosecution of TRC cases was not an official documented moratorium, but a practical stance adopted until such time the Prosecution Policy amendment was finalised. For the record, I restate that I have never inferred or pressured anyone to investigate or prosecute the TRC cases because of this so-called moratorium.”

20

ADV SEMENYA: And that is during the term of your office as minister?

DR MADUNA: During the term of my office.

ADV SEMENYA: Of course, then you deal further in paragraph 7, if you are to read it to us.

DR MADUNA:

“Further, I have not been implicated in such malfeasance. In preparation to respond to the Commission's request, I had discussions with Adv Bulelani Ngcuka and Adv Vusumzi Pikoli, who were the Director General in my department and the National Director of Public Prosecutions, respectively, during my tenure as minister. They confirmed that I never interfered with their work in
10 relation to TRC cases.”

ADV SEMENYA: The Commission also heard evidence that following the address of Parliament by the former president, the DG Justice collected a number of people to form what was later known as the Amnesty Task Team.

DR MADUNA: Yes.

ADV SEMENYA: Do you have any information on that?

DR MADUNA: Not in a personal sense of the word, because I was not involved in the activities of the... what was it called, the DG's...

ADV SEMENYA: Forum.

20 DR MADUNA: Forum. I was not involved in those, because I was never a DG.

ADV SEMENYA: Correct.

DR MADUNA: Ja. So, but I would get briefings. They would tell me what was happening, right, and I accepted what I was told.

ADV SEMENYA: Is there anything beyond that information by your

DG relating to prosecution and/or investigations relevant to TRC cases?

DR MADUNA: No. They were talking about forming a structure and sourcing resources for that structure to be able to start its work. That is what we were talking about and nothing else. In any event, at that point, Adv Pikoli was not the NDPP.

ADV SEMENYA: Correct.

DR MADUNA: So he had no authority to prosecute anyone. So he would not have told me about prosecutions and whatever else. He
10 would discuss with me their needs and what was happening, *et cetera*, right.

ADV SEMENYA: And you say under paragraph 8 of your statement:

“By way of background context to the TRC amnesty issues, I represented the African National Congress in the Convention for a Democratic South Africa. This was a negotiating forum established in 1991 to end apartheid and transition South Africa to a multiracial democracy.”

20 DR MADUNA: That is true.

ADV SEMENYA: That you say by way of background.

DR MADUNA: Ja, that is true.

ADV SEMENYA: You also mention under paragraph 9:

“The Indemnity Act, 35 of 1990, which Act sought to regulate similar subject matter to the impugned

‘Prosecuting Policy and Directives relating to the Prosecution of Offences emanating from Conflicts of the Past and which were committed on or before 11 May’ policy, came about as a result of those negotiations.”

DR MADUNA: Yes.

ADV SEMENYA: That was the extent to which you became involved in any discussions and conduct relating to apartheid crimes.

DR MADUNA: Yes.

10 ADV SEMENYA:

“This Act has since been repealed by the Promotion of National Unity and Reconciliation Act of 95.”

DR MADUNA: Yes.

ADV SEMENYA: Do you want to tell us a little bit more about that? Please, if you can embellish it, tell us.

DR MADUNA: Never give anybody who was destined to be a priest carte blanche to speak. I came back into the country on 21 March 1990 after the late Nelson Mandela and the late FW de Klerk had
20 agreed that members of the ANC leadership based outside would have to come back into the country to kick-start what we called Talks about Talks.

For all my sins, I was selected by the National Executive Committee under Tambo then to join the team. The first two, I am not going to mention or say anything about those who were assisting the

team, were Jacob Zuma and me. So we landed on 21 March 1990 and we were picked up by General Sebastiaan Basie Smit and many of his people at the then Jan Smuts Airport in the evening and taken to a place in East Pretoria where we would stay for a short while.

It soon became very clear that mischievous elements, who had known us in the past, may do a whole host of wrong things to us. So we needed what we would call an umbrella, a statutory umbrella to protect us. We negotiated with the apartheid parliament eventually the enactment of the 1990 Act without which the Talks about Talks
10 would never have started. After the enactment of this Act, the likes of Alfred Nzo, Joe Slovo, Joe Modise, Thabo Mbeki, *et cetera*, came back into the country. They were covered by the provisions of this Act.

ADV SEMENYA: Ja, I suspect that would be a long story to tell.

DR MADUNA: Yes.

ADV SEMENYA: But you engaged with allegations made in the Calata papers. Of course you would have been out of office by this time.

DR MADUNA: And much older.

20 ADV SEMENYA: And much older, yes. There you react to paragraph 392 of the affidavit, which you are advised is the basis of the Commission's terms of reference, because there was high court proceedings which Sayato gave birth to this Commission ultimately.

DR MADUNA: Yes.

ADV SEMENYA: Mr Charles Ngqakula, who was Minister of Police

at the time, and you met with a delegation of the South African Defence Force generals led by Mr Geldenhuys as you tell us. This was in Cape Town on 17 February 2003, right?

DR MADUNA: I see that.

ADV SEMENYA: And please proceed to read paragraph 11 of your statement.

DR MADUNA:

10 “From the context of the relevant paragraphs in that affidavit, some of which I will refer to in a moment; this delegation would have been generals that served under the apartheid regime.”

ADV SEMENYA: And please continue.

DR MADUNA:

 “12. It is claimed that this delegation petitioned for post-TRC legislation granting new blanket amnesty with no disclosure of crimes committed during apartheid being made. It is suggested that we seemed to insist on a policy of amnesty following full disclosure.”

20 ADV SEMENYA: And to that you say what under paragraph 13?

DR MADUNA:

 “13. I confirm that I met with various stakeholders in Cape Town by virtue of my office, and I would have discussed matters later there too. I also confirm that I had such

discussions at various times, though I cannot confirm the date that I had with them with this particular delegation. I do, however, confirm that that is indeed the position that the government adopted, and I have always insisted that all amnesty be granted following full disclosure as the law required.”

ADV SEMENYA: And then you choose to digress a little.

DR MADUNA: I beg yours?

10 ADV SEMENYA: Then you choose to digress a little.

DR MADUNA:

“14. To digress momentarily, the claimed request by this SADF delegation is consistent with the non-accountability position adopted by the erstwhile apartheid president, Mr PW Botha, who stated that he would not apologise for any apartheid crimes, because he was fighting for my people.”

20 ADV SEMENYA: Paragraph 393 and 394, you respond to it under paragraph 15. Please read it out to us.

DR MADUNA:

“Paragraphs 393 and 394 of the same affidavit note that there was no resolution between government and those generals. This is consistent with my claim that I have always

insisted on principle and application of the law
without fear or favour.”

ADV SEMENYA: And you continue under paragraph 16.

DR MADUNA:

10 “I confirm that there has never been a decision
made by me or in my presence to afford any
amnesty outside the legal prescripts, regardless
of whether such person fought for or against the
apartheid regime. This is despite some
contending that we intervened by providing
blanket amnesty to our comrades without them
making full disclosure of the crimes that they may
have committed. The law simply did not provide
for this. We had advised some of our comrades
to go through the TRC Commission amnesty
route, but some chose to approach courts
instead.”

20 ADV SEMENYA: And you say this is the extent of your knowledge
regarding the terms of reference referred to in paragraph 4 above,
which are the terms of reference of this Commission.

DR MADUNA: Yes.

ADV SEMENYA: Your statement adds there, but Chair,
Commissioners with your permission, we are alive to the fact that
there has been an application to cross-examine the witness. The
application only came yesterday afternoon; and the intimation is once

that application is granted, we would have to have the doctor come back, but also having dealt with those documents which are annexed to the application for cross-examination. For that reason, Chair, we do not propose to address that area. If permission is granted, we would have to deal with that in re-examination of the witness.

CHAIRPERSON: Yes.

ADV SEMENYA: In respect of clarificatory questions, I am advised that on teams would be Adv Gwala SC for the NPA. It would be Adv Rikhotso for Adv Simelane. And I am being advised that Ms Ntloko
10 will speak on behalf of the NPA if there are any questions, Chair.

CHAIRPERSON: Is it Adv Gwala or Ms Ntloko, because they represent both parties?

ADV SEMENYA: That is the note I have. Maybe we will find out from Adv Gwala if there will be further questions. I do not know.

CHAIRPERSON: Yes. That is your evidence-in-chief, is not it, Mr Semenya?

ADV SEMENYA: Correct, Chair.

CHAIRPERSON: Yes. You may proceed.

COMMISSIONER GABRIEL: Good day, Doctor.

20 ADV SEMENYA: Just for the record again, Commissioner Kgomo, I have the dates as 17 June 1999 to 28 April 2004.

COMMISSIONER KGOMO: Thank you very much.

COMMISSIONER GABRIEL: Dr Maduna, good morning.

DR MADUNA: Good morning, good morning.

COMMISSIONER GABRIEL: I have a few questions for you. Now,

you have confined your statement to your role as the Minister of Justice between 1994 and 2004.

DR MADUNA: No, between 1999 and 2004.

COMMISSIONER GABRIEL: Pardon me, pardon me. You are quite correct. Now, in that time, you would have been a member of cabinet.

DR MADUNA: Yes.

COMMISSIONER GABRIEL: So you would have been aware of government policy.

10 DR MADUNA: Yes.

COMMISSIONER GABRIEL: Regarding the TRC report and the TRC cases.

DR MADUNA: There was no cabinet position about that. The report itself pointed the way out, and it came much later than the date of the establishment of the TRC.

COMMISSIONER GABRIEL: So you say there was no official cabinet policy dealing with what was to happen with the report of the TRC.

20 DR MADUNA: No, because we had not even seen the report, but what certainly was discussed was that there would be no general amnesty. This was in the law itself. I think the year of the law was 1995. We had sought to persuade a whole lot of people that that was the right way to go. I said to Mr Semanya on a much earlier occasion, there were so many things that had been happening in the country that there was no way you could persuade members of

Mandela's NEC, let alone the public at large, that we should declare general amnesty. People had suffered at the hands of the regime.

I am smiling as I am about to say this. On 27 June 1990, a couple of months after we had come back, I was shot in Soweto and left for dead. There was no way I could say, you are right, give them general amnesty for attempting to kill me and for whatever other things they had done to me. In case you do not know who the Maduna, in *S v Maduna* 1978, volumes (1) and (2) is. He is sitting right in front of the Commission.

- 10 COMMISSIONER GABRIEL: I am sorry about your unfortunate experience.

DR MADUNA: So there was no way I could agree with anybody that we would be right in granting a general amnesty. In any event, I remember we asked De Klerk: De Klerk, you are still the boss. Why do not you just declare a general amnesty yourself?

COMMISSIONER GABRIEL: What I am really focussing on is the cabinet position. Are you saying that these TRC cases were never discussed at cabinet level?

DR MADUNA: There was no TRC report before cabinet.

- 20 COMMISSIONER GABRIEL: Okay, it came out in 2003.

DR MADUNA: 2003, yes. So there was no way we could have discussed TRC cases as cabinet. We would in fact be wrong in discussing cases unknown to us. The TRC identified the people who could be pursued for purposes of prosecution. Before then, there was no memorandum before cabinet telling us these are the people

to be pursued. In any event, the cabinet would have been wrong to discuss that question at all, because according to the Constitution, relevant parts of which have been read into the record, that function, that discussion, that decision vested solely in the NPA.

COMMISSIONER GABRIEL: Do you accept that there cannot be prosecutions without investigations?

DR MADUNA: Absolutely.

COMMISSIONER GABRIEL: So who was it envisaged at a policy level would do the investigations so that there could be prosecutions?

10 DR MADUNA: Well, in a normal situation, the police would have to do that. We had since established what is called SAPS, as opposed to Zulu police, Transkei, Xhosa police, Bophuthatswana police and whatever. But I think it must be accepted that you would need something that would ensure that that process was not interfered with by the forces that ran law and justice in the 10 Bantustans and the apartheid Pretoria State. If you said to them go and investigate yourselves, they would not do that for God's sake.

COMMISSIONER GABRIEL: Are you talking about the NPA?

DR MADUNA: No, this was before the NPA was formed, because
20 the NPA was established by the new government led by Mandela. The act that was referred to is the 1998 Act. Before then, there were attorneys general all over.

COMMISSIONER GABRIEL: Yes, I am aware of that.

DR MADUNA: Yes, some of whom had actually persecuted us. Now you are a minister and the chap just says: you must be mad. You

investigate Sebastiaan Smit, Viljoen and whoever else and bring them to courts.

COMMISSIONER GABRIEL: So during your time, your DG was Mr Vusi Pikoli.

DR MADUNA: There was an earlier DG whose name escapes me. He was an Afrikaner chap who actually came to me and said he is on his way out, so where to find a replacement? We found that replacement in Vusumzi Patrick Pikoli.

COMMISSIONER GABRIEL: Okay. Now, we have heard from Mr
10 Pikoli that during this time there was an Amnesty Task Team that was formed which produced a secret report.

DR MADUNA: Yes.

COMMISSIONER GABRIEL: What do you know about that?

DR MADUNA: Virtually nothing, because I was not part of any such committee. The committee would obviously produce reports to advisers. One of its two reports says something very interesting. The committee itself was opposed to general amnesty.

COMMISSIONER GABRIEL: But was Cabinet aware of the formation of the Amnesty Task Team?

20 DR MADUNA: Cabinet was made aware. Two things actually happened, if my memory serves me well. One, because I could not give a nod to the formation of a task team, any task team, without reporting to Cabinet. I did report that we shall need a special task team. Eventually, we got approval to have established a committee of directors-general, your top most, top-level officials, who would then

be advising the minister, right? The report was not a secret report as far as the minister was concerned. They would have to come and say this is where things are now, right? And we made sure that at all times we made no concession to the demand for a general amnesty.

COMMISSIONER GABRIEL: But what emerged from that Amnesty Task Team, based on the evidence we have heard, is that amendments were made to the prosecution policy that treated the TRC cases in a specific way. Now, those amendments to the prosecution policy, I think, only came into effect in December 2005,
10 and you would have left in April 2004. Were you aware of the proposed amendments?

DR MADUNA: No, I was not.

COMMISSIONER GABRIEL: You were not?

DR MADUNA: No, no, I was not.

COMMISSIONER GABRIEL: And at Cabinet level, was that discussed, to your recollection?

DR MADUNA: No, because, again, the whole issue of policymaking under the Constitution itself was in the hands of the NDPP, the National Director of Public Prosecutions, who would, with the
20 concurrence of the minister, put the policy out. It did not say with the concurrence of Cabinet.

COMMISSIONER GABRIEL: But as minister, you reported to Cabinet.

DR MADUNA: Oh, yes, certainly. Look, the system would not permit anybody to keep any secret to Cabinet in case questions are asked.

COMMISSIONER GABRIEL: And what was Cabinet's response when you reported on the Amnesty Task Team?

DR MADUNA: No, Cabinet accepted it as right, because we, too, had accepted that you needed a structure of that sort, right, to try and weave together the activities and maybe also the thinking of the directors-general and whoever worked with them. We had a very interesting situation where the National Commissioner of SAPS did not like the Scorpions at all, right?

And much later, I am not going to bother the Commission with
10 the detail, but let me give you a bit of the detail. When we realised that there was a problem, Steve Tshwete took Bulelani Ngcuka and Jackie Selebi to one of your fancy hotels in Sandton to try and work things out between them. I stood between them when they nearly came to blows. Jackie Selebi, my old friend, using any imprintable word to describe Bulelani, saying all sorts of things about Bulelani sleeping with little girls and whatever and impregnating a girl in the Transkei. We dealt with all that. We could see that there was never going to be any rapport between the NDPP and the head of the police.

20 Now, you can imagine what would happen. They would be taking those battles and those fights into the system that was expected to be dealing with TRC cases, right. That would be happening, right? What we did not know was that some people had formed relationships already with the likes of Glenn Agliotti, right? So, and some people in the SAPS had begun identifying people to

capture in the SAPS leadership, in the NPA leadership as well as in the political leadership. We did not know this; that all manner of relationships were forming beyond that point. It was a difficult moment for us.

COMMISSIONER GABRIEL: So, who then was going to assist the NPA with the investigation in TRC cases?

DR MADUNA: Well, ordinarily the police would have to do their work. Find Penuell Maduna in whatever hovel he is, or snake pit or wherever. Just find him.

10 COMMISSIONER KGOMO: Sorry, Dr Maduna, sorry. Glenn Agliotti, what part would he have to play? Was it funding and funding what?

DR MADUNA: No, the Glenn Agliotti thing came out in a court case, a particular relationship after the death of Brett Kebble. I cannot remember the detail, but it was a very interesting case. The only person who was jailed not for killing Brett Kebble was Jackie Selebi. That was very interesting. The killers came to court having done plea bargains and said I shot so and so. I killed him.

COMMISSIONER KGOMO: Sorry, I interrupted, but I just wanted to know; Glenn Agliotti, was it for purposes of funding someone or
20 funding a cause or was he a rebel without a cause? Just that, I do not want much detail.

DR MADUNA: He was no rebel at all. He did not rebel against anything. He was a downright thug, a *tsotsi*, right? Bobs and weaves, as young people used to do in the township streets to survive. He was not rebelling against anything. And fortunately for

us, he never even pretended to be rebelling against anything, but if he wanted it and he knew how to get it, he would get it.

COMMISSIONER KGOMO: Thank you.

DR MADUNA: Take someone, buy them a pair of shoes at Mandela Square, and that is it. You have got them on your side.

COMMISSIONER KGOMO: Okay, thank you.

COMMISSIONER GABRIEL: So you have told us about this tension between the DSO and SAPS.

DR MADUNA: Yes.

10 ADV SEMENYA: And it warranted Steve Tshwete going to try and resolve things.

DR MADUNA: And me.

COMMISSIONER GABRIEL: And you.

DR MADUNA: Yes.

COMMISSIONER GABRIEL: Was Cabinet aware of these tensions?

DR MADUNA: Much later. Well, we had to tell Cabinet that we, as ministers, had this problem, right, where people, for whatever reason, will never work together.

20 COMMISSIONER GABRIEL: You see, the effect of that and some of the evidence that we have heard is that the NPA did not receive investigative assistance for the prosecution of the TRC cases. Now, what was done about that? What was government's policy? Or were there any attempts to resolve that impasse?

DR MADUNA: It did not need a policy. Police had to do their work. It did not need any new policy. You are a police person. Maybe that

is politically right. Yes, you are a police person. Do your job for which you are paid. It is as simple as that. You know, in fact, I am so happy in my old age that eventually Joe Mamasela has been caught, because he is one of the people who did not bother to apply for amnesty at all. About a month or so ago, he was before Court. I am not saying before God, he was before Court, because someone had caught him.

So if they did their work, bearing in mind that police do not prosecute, neither does the president or ministers of cabinet; no, the
10 ministers of cabinet. Just imagine what would have happened. They would have made our lives simpler, right? They know who killed Matthew Goniwe, Ford Calata, *et cetera*.

They knew them. Why did not they just go and do their work? Pick them up. We know or we have evidence that you participated in the commission of this crime. Why do you have to be backed, persuaded, cajoled and whatever? You do your work. But you would not get cooperation from people who would either say I gave the orders, all my orders were followed by X, Y and Z. You have that problem.

20 COMMISSIONER GABRIEL: See, what we are grappling with, Dr Maduna, in this Commission, is we had the Promotion of National Unity and Reconciliation Act.

DR MADUNA: Yes.

COMMISSIONER GABRIEL: We all heard the hearings. That act meant that families gave up their right to sue or to claim damages

from those who had either tortured them or killed their loved ones. That was the price they had to pay. Over years, it seems, that nobody provided investigative support to SAPS, to the NPA, neither the DSO nor SAPS. Now, one of the reasons is why.

DR MADUNA: I did not play in that league, so I would not know why they decided not to do their work. I did not know. You know, in fact, the interesting thing is; there is a section in the TRC Act which says that, you know, once you have been granted amnesty, all your sins, known or unknown, are forgiven. It is there. If I had anything to
10 declare, I would have been among the first ones to appear before them and make full disclosure, right; so that, they say, we grant you amnesty. After that, you could not sue me.

But the interesting thing is; those who did not get amnesty or those who decided not to apply for it may still be vulnerable, right? As far as I am concerned, they may still be vulnerable. You may talk prescription and things like that. Maybe we may quibble over that, but let me just say theirs is not a sound and solid position.

COMMISSIONER GABRIEL: Thank you, Dr Maduna.

DR MADUNA: Thanks, ja.

20 CHAIRPERSON: Ms Moroka, any clarificatory questions?

ADV MOROKA: Yes, Chair, there is. And I take it one of the clarification questions, Chair, is to disclose that the person who kept you alive was somebody we both know.

DR MADUNA: She has got a personal issue with me, Commissioners. I referred, but I referred to the evening when I was

shot and left for dead. On Vundla Drive there was an ESSO garage on the Rockville side and a church on the... Ja, no, both are on Rockville. White City is further up. I was shot by people, it later emerged, who were released to kill me from jail. Cox Mdluli, Chabu Skebemu Zwane, to mention those two. We got to know them eventually, right? So, they were released. They were murderers from my township, Rockville.

So, I am taken by a friend to Baragwanath Hospital and Mandela phones, or before he phoned, we saw some white people at
10 Bara sitting on the benches at the casualty ward; and Madiba phoned and said: take him to Dr Motlana. I have spoken to him. This was late at night. She played the role of my nurse, holding me while her father was removing the bulletics, I mean the bullets without any anaesthetic. I have disclosed the secret. I am sorry, you provoked it.

ADV MOROKA: I did not want us to go that far, Dr Maduna. Can I ask a clarification question arising from what Commissioner Gabriel asked you; and it is really about trying to locate the TRC report? If I am correct, the TRC report comes out in 2003.

DR MADUNA: In 3.

20 ADV MOROKA: And you are a minister there.

DR MADUNA: Yes.

ADV MOROKA: And it gets tabled and accepted by Parliament.

DR MADUNA: By Parliament, yes.

ADV MOROKA: And from there, you do know about the presidential speech of 2003?

DR MADUNA: I do.

ADV MOROKA: So when she asked the question, it would seem you were trying to say you were not involved during that period. You were involved and Parliament did adopt it.

DR MADUNA: Yes, I was involved in Cabinet and in Parliament.

ADV MOROKA: And it also made, the TRC made a number of recommendations, including reparation and other provisions.

DR MADUNA: Yes.

10 ADV MOROKA: Can I also ask, in paragraph 6 of your, not paragraph 6, paragraph... I think it is, my apologies, paragraph 16, where you say that some comrades did not go through the TRC Commission amnesty route, but chose to approach the courts? What kind of approach was this?

DR MADUNA: There was a case by about 37 members of the ANC, including members of the leadership, which came before courts and was dismissed. There was that case. So, you advise people; go and ask for amnesty, but people may know that full disclosure is exactly that. They may have to disclose what they know about me as well, right. So, they got some advice and the tragedy of bad lawyers is
20 that they give wrong advice. No, you can win in court and get what you have not applied for before the Amnesty Committee via a court order, unfortunately. And it will not stop happening, because the element of the bad lawyer is not about to disappear.

ADV MOROKA: Can I confirm that you have got some lawyers here that have represented you and have not given you wrong advice?

DR MADUNA: No, no, no. And I would not take wrong advice, because I was also mimicking them.

ADV MOROKA: So, can I just ask a very small question about the Amnesty Task Team?

DR MADUNA: Yes.

ADV MOROKA: So, your view about that task team was the role vis-à-vis yourself as minister and vis-à-vis members of cabinet was essentially advisory and informing.

DR MADUNA: It had no decision-making powers or authority at all.

10 ADV MOROKA: Thank you, Chair.

CHAIRPERSON: Thank you, Ms Moroka. Is it Ms Ntshizana? Yes, Ms Ntshizana.

ADV NTSHIZANA: Thank you, Chair. I have no questions for the witness.

CHAIRPERSON: Thank you. Mr Gwala, online? Mr Gwala or Ms Ntloko.

ADV NTLOKO: Good morning, Chair. It is Ms Ntloko, not Mr Gwala today.

CHAIRPERSON: Yes.

20 ADV NTLOKO: He is with us of course, but he has given me the platform to ask the questions.

CHAIRPERSON: Yes, Ms Ntloko, you may proceed.

ADV NTLOKO: Thank you, Chair and good morning, Dr Maduna.

DR MADUNA: Good morning. I cannot see you.

ADV NTLOKO: My face should be showing. My camera is on, Dr

Maduna. I have been always informed to show my face when I speak to my elders. Can I just ask IT ...[intervenes]

DR MADUNA: I do not believe in the unknowable or unseeable.

ADV NTLOKO: Well, I think we might debate that, because you did just say you should not give a platform to a priest. We have not seen the Lord, but of course we know of him. So of course, that could be a whole debate, but can I just ask IT then if they can see me, because my camera is indeed on?

DR MADUNA: I can see you now.

10 ADV NTLOKO: Thank you. Thank you so much. Dr Maduna, I act for the NPA in these proceedings and we just have a few questions, three in fact, clarification questions that stem from your current evidence before the Commission right now. You indicated that your role was quite limited and you acted when you were informed of what was needed. So during that, was there any time where the DG or the NDPP informed you of what the needs of the NPA were in relation to TRC matters?

DR MADUNA: Oh, no, on numerous occasions. They could not get money from appropriations in Parliament without the minister
20 pleading their case. They could not.

ADV NTLOKO: But were those the only, was that the only thing that they would actually have discussions with you about the difficulties in relation, I would understand that is a resource difficulty. Were there any other resource difficulties that they were experiencing?

DR MADUNA: They also ...[intervenes]

ADV NTLOKO: Before, sorry, Dr Maduna. Sorry to interrupt you there. Before the Commission, Adv Ngcuka had testified about great difficulties when he took over the office, including human resources and other resources. Were you aware of these as well?

DR MADUNA: I was fully aware of those problems. I remember Bulelani... oh, I am sorry. It is an inappropriate...

CHAIRPERSON: Mr Ngcuka.

DR MADUNA: Space; Mr Ngcuka, yes.

CHAIRPERSON: Yes.

- 10 DR MADUNA: Let me apologise. Let us hope he is not watching this. And I even asked... not the Jo'burg, the Jo'burg Bar, which was then headed by Johan van der Linde to help us in the training of the human resources the institution solely needed. We asked them and they kindly acceded to our request. The intention was to build capacity in the institution, human capacity, human capital.

ADV NTLOKO: Yes, and was that due to what you would have inherited, or was that for a different reason why you do not have enough human capital and enough resources?

DR MADUNA: I beg yours?

- 20 ADV NTLOKO: So you indicated that there was an issue with human capital. Was that because of what you inherited, or were there other reasons that you might want to share with the Commission and the NPA of course?

DR MADUNA: Well, when we came in, we inherited the resources of the previous regime. And I am not going to talk only about the

apartheid regime, but the Bantustans as well, right, and there was no prosecuting authority in the exile, in the then-banned ANC in exile. It was not there. So when you are given this awesome responsibility to establish the institution, you begin to ask yourself; what resources do I have at my disposal? And the answer is basically zero. There were good human beings among them, let me say so, but for purposes of building a new prosecuting authority, some of them were not suitable. And in any event, others were living voluntarily already, right. The good ones were very helpful in the institution's ability to perform its

10 tasks, even those we inherited from this country's ugly past.

ADV NTLOKO: Thank you, Dr Maduna. And in my last question; during these information sessions that you were having with the NDPP, and I would assume also the DG, were you ever informed that they were experiencing or did they ever indicate to you that they were experiencing any difficulties that were political in nature?

DR MADUNA: No, which was unfortunate, because I would have intervened to say to whoever was interfering or intervening, stop it. Look at the Constitution. Look at the law. You cannot do these things.

20 ADV NTLOKO: Thank you so much, Dr Maduna and thank you, Chair. That is all the clarification questions we have.

CHAIRPERSON: Thank you, Ms Ntloko. Ms Rikhotso, Ms Rikhotso online?

ADV RIKHOTSO: Thank you, Chair. I have no clarification questions for [indistinct].

CHAIRPERSON: Thank you. Is Ms Nthambeleni online as well?

Yes, Mr Varney, I take note of the application that has been intimated will be launched to cross-examine Dr Maduna.

ADV VARNEY: That is correct, Chairperson.

CHAIRPERSON: Yes.

COMMISSIONER KGOMO: Yes. No, Chair, just on the Agliotti issue, for the record; Judge Frans Kgomo, who tried him, is Judge Frans Nare Kgomo, not myself; just for the record.

CHAIRPERSON: Yes. Dr Maduna, we thank you for having come to
10 give evidence before this Commission. There is an application for
your cross-examination which is being processed by the Commission.
You will be advised of the date and time of the cross-examination, but
for now you are excused as a witness until the time of cross-
examination is to happen.

DR MADUNA: Thanks, Madam Chair.

CHAIRPERSON: Thank you.

DR MADUNA: Thanks.

CHAIRPERSON: These proceedings are adjourned until tomorrow
at 10 o'clock.

20 ADV SEMENYA: Indeed, Chair.

INQUIRY ADJOURNS UNTIL 22 JULY 2026

CERTIFICATE OF VERACITY

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