

**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 Fana Nalane (SC)
Adv Mfesane Ka-Siboto
Adv Nompumelelo Seme
Ms Baitseng Rangata

REPRESENTATIVES

Adv Matseleng Lekoane (DOJ representative)
Adv Anisa Kessery-DOJ Representative
Adv Varney (SC) – The Calata Group
Ms A Thakor – The Calata Group
Ms Lamiah Casoo-The Calata Group
Adv Nwabisa Ntshizana (for Ex-NDPP's Officials)
Adv Gwala- NPA representative

23 JULY 2026

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PROCEEDINGS ON 23 JULY 2026

CHAIRPERSON: Good morning to you all, Mr Semenya.

ADV SEMENYA: Good morning, Chair and to the Commissioners.

We have Mr Surty for his evidence today.

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

ADV SURTY: Under oath, M'Lady.

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

ADV SURTY: So help me God.

MOHAMED ENVER SURTY: (duly sworn states)

CHAIRPERSON: Thank you. Mr Semenya, your witness.

ADV SEMENYA: Thank you, Chair.

EXAMINATION BY ADV SEMENYA: Mr Surty, I want to propose we handle this this way that I give you what I think is a general background explaining why you are here today, but it is quite some little history, commencing about the time we transitioned as a nation from one of our wicked past to the democracy we have today.
20 Somewhere in that chain, I will deal with you the instruments that happened and are necessary for the work of this Commission. I will go through that with you, if you do not mind.

ADV SURTY: It is fine, thank you.

ADV SEMENYA: All right. I have placed before you just one pager, which is a preamble to the promotion of National Unity and

Reconciliation Act. You have it in front of you.

ADV SURTY: I have it counsel.

ADV SEMENYA: It is a little longish, but I want to read it so that we know what the purpose and intention was at the time of transition.

ADV SURTY: Thank you.

ADV SEMENYA: So it would read, and I quote:

10 "The preamble of the Act is to provide for the investigation and the establishment of as complete a picture as possible of the nature, causes, and extent of gross violations of human rights committed during the period from 1 March 1960 to the current day contemplated in the Constitution, within or without the Republic, emanating from the conflicts of the past and the fate or whereabouts of the victims of such violations, the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective committed in the course of the conflicts

20 of the past during the said period, affording victims an opportunity to relate to the violations they suffered, the taking of measures aimed at granting of reparation to and the rehabilitation and restoration of the human and civil dignity of victims, victims of violations of human rights,

reporting to the nation about such violations and victims, the making of recommendations aimed at preventing of the commission of gross violations of human rights and for the said purpose to provide for the establishment of a truth and reconciliation commission comprising a committee on human rights violations, a committee on amnesty, and a committee on reparations and rehabilitation and to confer
10 certain powers on, assign certain functions to, and impose certain duties upon that commission and these committees and to provide for matters connected with therewith."

You are familiar with the history giving rise and giving birth to this Act, am I right?

ADV SURTY: I am indeed, thank you.

ADV SEMENYA: Yes, and we know it was birthed by the Interim Constitution of 1993.

ADV SURTY: That is correct, sir.

20 ADV SEMENYA: And its broad purpose was to create a platform, was it not, that would usher a new democratic South Africa with those conflicts of the past that had happened, am I right?

ADV SURTY: That is correct.

ADV SEMENYA: And it is common cause that the TRC was established and it went through its mandate, yes?

ADV SURTY: Indeed.

ADV SEMENYA: And in particular, it sought to say to everybody who is guilty of crimes of the past, those human rights violations, that as a nation we can reconcile if we go through the TRC process.

ADV SURTY: That is correct.

ADV SEMENYA: And if those who apply for this amnesty were to furnish a full disclosure of the crimes that they have committed, the auspices politically under which that happened, *et cetera*. And the TRC would have done its work culminating in submitting a report to
10 the President at the time, former President Mbeki, am I right?

ADV SURTY: That is correct.

ADV SEMENYA: But what he did amongst others was to make recommendations relating to treatment of individuals who did not apply and who were possibly guilty of these human rights violations, right?

ADV SURTY: Yes.

ADV SEMENYA: And it also made recommendations that those must be investigated and prosecuted.

ADV SURTY: That is correct.

20 ADV SEMENYA: And ultimately, that was central to what must happen to those who were outside the process.

ADV SURTY: That would be so.

ADV SEMENYA: It would be on the date of the 15 April that the former President Mr Mbeki then addressed the Joint Sitting of Parliament. Do you recall that?

COMMISSONER KGOMO: You have not stated the year.

ADV SEMENYA: In 1993.

CHAIRPERSON: 2003

ADV SEMENYA: 2003.

ADV SURTY: 2003, yeah.

ADV SEMENYA: Yes. The nature of the address was to say those who were not given amnesty because either they were politically ill-advised, not to participate, or they thought they could escape the process, can possibly be given another opportunity at advancing
10 greater reconciliation. You recall those episodes.

ADV SURTY: Very vaguely, very vaguely, but indeed I will not dispute it.

ADV SEMENYA: Okay. And as a result, the task, according to the speech, was given to the NPA to say, look at this and look at how within the tramlines of the law, a solution can be found to see whether or not there could be a way to accommodate those who did not participate.

ADV SURTY: I would imagine it would be referred to the NPA to do that because that would be their constitutional responsibility.

20 ADV SEMENYA: Correct. And of course, the NPA then does a Director General's platform, which was called the Amnesty Task Team. Are you familiar with that?

ADV SURTY: Well, I became familiar subsequently, quite late, about the task team.

ADV SEMENYA: Yes. And in 2025, the President proclaims the

establishment of this Commission. You can accept that as common cause.

ADV SURTY: It is agreed.

ADV SEMENYA: And its business, according to the proclamation, is saying to the commission, it must enquire into, I will just read out, just a section of the Proclamation. It would say:

10 "A Judicial Commission of Inquiry is hereby
 appointed in terms of section 84(2)(f) of the
 Constitution of the Republic of South Africa,
 1996. The Commission is appointed to
 investigate matters of public and national interest
 concerning allegations, efforts or attempts having
 been made to stop the investigation or
 prosecution of Truth and Reconciliation
 Commission, TRC cases."

Then says, under 1:

20 "The Commission must, in relation to the period
 since 2003, enquire into, make findings, report on
 and make recommendations concerning the
 following. Guided by the Constitution, relevant
 legislation, policies and guidelines,
 1.1, whether, why and to what extent and by
 whom efforts or attempts were made to influence
 or pressure members of the South African Police
 Service or the National Prosecuting Authority to

stop investigating or prosecuting TRC cases."

Now, that is the broad purpose of this commission. It has other aspects to it. Now, there was a legal framework within which the investigation and the prosecution of those who were to be investigated for those violations of human rights, as well as those who could stand prosecutable if evidence existed.

Now, I just want us to start and say it would appear from the Constitution there were matters pertaining to investigation that would have been the police, right.

10 ADV SURTY: That is correct.

ADV SEMENYA: And there would be matters for prosecution, which would be located under the NPA Act.

ADV SURTY: That is correct.

ADV SEMENYA: May I just go with you just at a quick glance of various instruments and or sections of law which govern to that. The Constitution would say something like this under section 179.

ADV SURTY: Pardon?

ADV SEMENYA: I will read it out to you.

ADV SURTY: Oh, thank you.

20 ADV SEMENYA: All right.

"Under 179 dealing with the Prosecuting Authority, it would tell us under subsection 5 that the National Director of Public Prosecutions, A, must determine with the concurrence of the cabinet member responsible for the

administration of justice and after consulting with the directors of public prosecutions, prosecution policy which must be observed in the prosecution process."

Now, the member responsible for the administration of justice would have been yourself.

ADV SURTY: That would be correct.

ADV SEMENYA: When you were the minister.

ADV SURTY: As a minister, yes.

10 ADV SEMENYA: Yes.

"You must issue policy directives which must be observed in the prosecution process."

This is an instruction to the NDPP. Might you just at this point indicate how you understood your relationship with the NPA which fell under justice?

ADV SURTY: Thank you, counsel. Counsel, if you want me to reflect on the sections that you have read, I do not have the relevant section of the Constitution, but my understanding on A, for example, would be that the responsibility of developing policy would be that of the National Director of Public Prosecutions.

20

ADV SEMENYA: Correct.

ADV SURTY: But he would do so in concurrence or in consultation with the minister and after consultation. The fact thereof is in the sense that he would confer with but does not require the concurrence with the directors. So A, the responsibility vests with the National

Director of Public Prosecutions with regard to policy, unlike other provisions of the Constitution where the executive would develop and implement policy here, particularly in the NPA Act or in the Constitution.

The reference is that it would be developed by the National Director of Public Prosecution, but he would not do so, he or she would not do so in isolation, but would do so in concurrence, in agreement with the Minister of Justice. So that would be my interpretation of that section.

10 With regard to B that you have read, the directives will be developed by the National Director of Public Prosecutions, and I imagine you would confer with his directives, but does not require the concurrence or the agreement of the minister. Those are the provisions of the Constitution, as I would read them.

As I have indicated, I have just taken notes as you have read. And that would be my interpretation, counsel. I hope I have responded adequately to it.

ADV SEMENYA: And as we will discover later, your period was very short as Minister of Justice.

20 ADV SURTY: That is correct, counsel. It was very short. I think it commenced on the 24th. I just got information from one of your colleagues this morning, 24 September 2008 and ended on the 9 May 2009. That would be shortly after the elections, but before or at the time that a new cabinet would be constituted, because you had to have an interim period in which you would have to deal with matters

should they arise during that period. So it was a short period.

ADV SEMENYA: And might I ask, during that short period, did you concur to a particular prosecution policy as contemplated in the section or not?

ADV SURTY: What did I?

ADV SEMENYA: Would you have concurred in the relevant policy at the time that is contemplated by the section or there was a policy already existing?

ADV SURTY: There was already a policy in existence. In fact, I was
10 unaware of any. I was not part of any conversation or discussion with regard to policy, with regard to guidelines, with regard to directives. These came prior to my time, prior to my appointment as a Minister of Justice.

ADV SEMENYA: Subparagraph 6 of 179 of the Constitution are saying:

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

Do you see that? You follow.

20 ADV SURTY: I do not see it, but I follow what you said, counsel. And I think the key word there is final responsibility. That is with the minister, the responsible minister would be the Minister of Justice, at the time, and that would have been myself during my tenure in that capacity.

ADV SEMENYA: Yes. And did you exercise any final responsibility?

ADV SURTY: Perhaps just to say that the way I understand it, it would be institutional responsibility. In other words, you would assume responsibility for the institution of the NPA. From a very practical and pragmatic perspective, I could say that the NPA does not have a voice as a representative of the people.

And the Minister of Justice would be a spokesperson in answering written questions, in answering verbal questions in Parliament. In Parliament would be both the National Assembly as well as the National Council of Provinces. So if questions are put
10 about any prosecutorial matter, then the responsibility of dealing with those matters would lie with the minister.

And he or she would then confer or communicate with the National Director of Public Prosecution to say this matter has been raised either in terms of a written question or in terms of a verbal question in Parliament. What would your response be in regard to this particular matter?

So the minister would not be the author or the director of that particular response. It would be the National Director of Public Prosecutions. But he would almost be a conduit in terms where he
20 would share that information or knowledge, as it is being passed on to him.

So that is my understanding of it. There is another element to it, and that is, being the executive, I would know that you would also be a "spokesperson", of the NPA in terms of resources and budgeting that is required for it to do its work. So for its prosecutorial work, for

its infrastructure, its administration, its human resources, its technical resources, somebody would have to engage with Treasury.

And justice would do that as its spokesperson, as the entity that is responsible for the NPA, until recently, it was also an administrator on behalf of the judiciary, until the judiciary now has its own power to be able to engage with Parliament in relation to its budget.

ADV SEMENYA: Yes, and under paragraph, sub-paragraph 7, 179 then says to us:

10 "All other matters concerning the prosecuting
 authority must be determined by national
 legislation."

Of course, that became the NPA Act, am I right?

ADV SURTY: That is correct. In fact, it is very closely aligned to the constitutional provisions.

ADV SEMENYA: It too would mirror image the sphere relating to the NPA and the sphere relating to the minister responsible for the NPA. Might I just read out for us what section 21 would say in relation to that. It would say, section 21, sub-paragraph 1:

20 "The national director shall, in accordance with
 section 179(4)(a) and (b), and any other relevant
 section of the Constitution, A, with the
 concurrence of the minister, and after
 consultation with the directors, determine
 prosecution policy."

You see that dovetails with the Constitution in that regard.

ADV SURTY: Completely so, counsel.

ADV SEMENYA: And issue policy directives would be sub (b). Also, might I just, whilst dealing with the policy, I mean, legislative framework for the work of the NPA read to you section 22, dealing with powers, duties, and functions of the national director. It then says to us:

10 "That the national director, as the head of the
 prosecuting authority, shall have authority over
 the exercising of all powers and performance of
 all duties and functions conferred or imposed on
 or assigned to any member of the prosecuting
 authority by the Constitution, this Act, or any
 other law."

Most important says sub (2) of that:

 "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."

20 Can I then ask if there was any separation between the NPA, which
 had its independence relating to prosecutorial decisions on whether to
 prosecute or not to prosecute? Was there any demarcation line
 between that and that which the minister would take final
 responsibility over the NPA?

ADV SURTY: The final responsibility, as I understand it, and that

would be my interpretation with respect, would be a broad institutional responsibility, the decision as to whether to prosecute, not to prosecute, or to decline to prosecute would lie solely with the National Director of Public Prosecutions. The minister would have no authority or right in terms of the Constitution or the law, the NPA Act, to interfere with or determine or direct prosecution or the refusal to prosecute.

Those, that functional aspect, the functional aspect or prosecution rests solely with the Director Public Prosecutions and I
10 think it would be illegal and unethical for a minister to interfere with that process of prosecution.

ADV SEMENYA: Happily, there are no suggestions that you would have transgressed that line. Let me read to you section 33, addressing minister's final responsibility over prosecuting authority.

Sub (1) says:

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

And says:

"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 report with regards 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 their duties and the performance of their functions."

May I ask if, during the brief period of your portfolio, requested any information or a report with regards to any case, matter or subject dealt with by the national director. Did you request any report?

10 ADV SURTY: No, I did not request a report, counsel.

ADV SEMENYA: And then says, the NDPP under (b)

"Must provide the minister with reasons for any decision 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."

Did you exercise that power at all?

ADV SURTY: No, there was no need to. It was never raised in the context of my tenure as the Minister of Justice. I never receive a request from Parliament, the public or the private sector or anybody in
20 relation to any aspect with regard to prosecution.

ADV SEMENYA:

"Furnish the minister with information with regard to the prosecution policy referred to in section 21.1."

Did you exercise any of those powers?

ADV SURTY: I had the authority to do so, but there was no need to do so. There was no cause for me to request that information, but I understand the reason for it.

ADV SEMENYA:

"Submit the report contemplated in section 34 to the minister."

Did any of that happen?

ADV SURTY: The only report that I had received was a submission from the acting National Director of Public Prosecution, Adv Mpshe, who was acting at that time, and I think it is towards the end of my tenure, it would probably be in March, that he submitted a memo to me for noting and he dealt with the TRC cases and he listed the cases that he had dwelt upon, indicated that he was going to re-establish a task team and also indicated that he intended to continue with the investigation in these matters.

I almost think, and I could look at the document with your permission.

ADV SEMENYA: I will definitely go there, Mr Surty.

ADV SURTY: I do not have to do so now.

20 ADV SEMENYA: I will get with you.

ADV SURTY: Sorry? Sorry, do you want me to do that now?

ADV SEMENYA: No, we will get to the document.

ADV SURTY: Oh, we will get to that. Okay, thank you very much.

ADV SEMENYA: But also, what 33 then says to us:

"Arrange meetings between the minister and

members of the prosecuting authority.”

There would be interface of this type of meetings you would have had with the NDPP during your time?

ADV SURTY: My recollection is shortly after my appointment, when I say shortly, probably within the first month, there was a meeting with the prosecuting authority, the NDPP and the various branches of it. You know, there was a team responsible for special investigations, *et cetera*.

10 An agenda was drawn up by them and a meeting was held. I almost think at the offices of the National Prosecuting Authority or at another venue. I am not too sure. It is such a long time ago. But I do recollect such a meeting. So, such a meeting had taken place. And what I can recall of this meeting are two issues, counsel.

One was probably a report on the proceeds of crime, you know, the proceeds that were recovered from criminal activities. And the other was, we had raised the issue of the possibility of, with the prosecuting authority, of having a dedicated court as a pilot in each Province to deal with the criminal matters in particular at the magistrate's court, not in the regional court, but at the magistrate's
20 court, where the prosecutor, the complainant, the accused person, and the legal representative spoke an indigenous language.

Given the fact that there is parity of language in the Constitution, and the reality is, and I think with respect, if I may defer to the learned Justice Commissioner Kgomo, who was also at one time a regional court magistrate in his past years.

ADV SEMENYA: Yes, but happily, those meetings had nothing to do with the TRC cases.

ADV SURTY: No, absolutely not.

ADV SEMENYA: Okay.

ADV SURTY: Absolutely nothing. I do not have a recollection of that at all.

ADV SEMENYA: All right. I have also documents in your file that relate to affidavits purportedly done by yourself. I think if you go to the top of the page. The first one would be 1746.

10 ADV SURTY: Yes, I have it, sir.

ADV SEMENYA: You do have it. It says affidavit and says Mohamed Enver Surty. Would that be your name?

ADV SURTY: That would be my name, sir.

ADV SEMENYA: If you go further pages and you get to page 1751, you will see that name appearing in the middle of the page. Do you see that?

ADV SURTY: I see the name.

ADV SEMENYA: There is a signature above that line.

ADV SURTY: That is my signature, sir.

20 ADV SEMENYA: So I want us – oh, maybe we may at the same time deal with the second affidavit, which you would find at page 1756A, with the name again.

ADV SURTY: 1756, you say?

ADV SEMENYA: 1756A. It is just...

ADV SURTY: So sorry, so sorry. Oh, I am sorry. I was looking at

1756 and not 1756A. Yes, sir. I have it.

ADV SEMENYA: You see the document. It too would have under 1756D, middle of the page, Mohamed Enver Surty, and a signature which you will recognise.

ADV SURTY: I recognise it as my signature, counsel.

ADV SEMENYA: There we go. All right. Now, of course, the evidence leaders directed a request for information of whatever nature in relation to the terms of reference of the commission. I am saying we sent you a request for information, and in response, you
10 gave us the affidavit to which you have now recognised.

ADV SURTY: That is correct.

ADV SEMENYA: And we go back to that first affidavit because it deals with specific issues.

ADV SURTY: That is correct, counsel.

ADV SEMENYA: Now, in this affidavit, you tell us your background. That you have started as a practicing attorney in Rustenburg in 1977, is that right?

ADV SURTY: That is correct.

ADV SEMENYA: And you later then retired from legal practice to join
20 Parliament.

ADV SURTY: That is correct.

ADV SEMENYA: And occupied various engagements in your standing as a member of Parliament. You deal with those in paragraph 4.

ADV SURTY: That is correct.

ADV SEMENYA: For what it is worth, can you just read it into the record?

ADV SURTY: Shall I read into paragraph 4.

ADV SEMENYA: Paragraph 4.

ADV SURTY: Paragraph 4.

10 "In 1994, I retired from legal practice after being
elected to represent the North West Province in
the Senate. I serve as the Provincial Whip of the
African National Congress and as a member of
the Select Committees on Security and Justice
and Cooperative Governance and Public
Administration. These committees exercise
oversight over defence, intelligence, local
government, and traditional affairs. Following the
adoption of the final Constitution in 1996, I
continued in this role in the National Council of
Provinces."

20 ADV SEMENYA: Yes. And then you track what happened in 1994
and 1996 with the Theme Committee 4 of the Constitutional Assembly
that you deal with under paragraph 5, right?

ADV SURTY: That is correct.

ADV SEMENYA: It would have later in your life some relevance
relating to justice.

ADV SURTY: Well, that would be so because the task I was
assigned with, was to be a negotiator of Bill of Rights on behalf of the

African National Congress and that is quite central to our system of justice.

ADV SEMENYA: Yes, but coming forward, I look under paragraph 7 that:

"During the second democratic Parliament, (June 1999 – 13 April 2004), I was elected to the National Assembly. After two weeks, I was deployed and elected as Chief Whip of the NCO, chaired by former Minister Naledi Pandor."

10 That is what you say?

ADV SURTY: That is correct, sir, yeah.

ADV SEMENYA: And during the third democratic Parliament, 14 April 2004 to 21 April 2009, you were appointed to Deputy Minister of Education under the Minister Pandor. In October 2008, following the resignation of President Thabo Mbeki, President Kgalema Motlanthe appointed you as Minister of Justice and Constitutional Development. In that capacity, you served until May 2009.

ADV SURTY: That is correct, sir.

ADV SEMENYA: And during the fourth and fifth democratic
20 Parliament, you served as Deputy Minister of Basic Education for both terms under Minister Angie Motshekga until your retirement from Parliament.

ADV SURTY: That is correct, sir.

ADV SEMENYA: And then you deal with a document we brought to your attention under paragraph 10. The purpose of this affidavit, you

say, is in response to a request for assistance from the commission dated 23 April 2026 requiring you to explain a handwritten note made by yourself on a memorandum prepared by the then Acting National Director of Public Prosecutions, ("NDPP"), Mr Mokotedi Mpshe, dated 17 February 2009.

Let me invite you to that document, which you will find at the top of the page being 1752. Can you see the document?

ADV SURTY: I see. It is 1752. That is correct, counsel.

ADV SEMENYA: Yes, you recognise the document now.

10 ADV SURTY: I recognise the document.

ADV SEMENYA: It have been directed by Mpshe in his Acting National Director of Public Prosecutions. You notice that?

ADV SURTY: I do.

ADV SEMENYA: And it is dated 17 February 2009 and addressed to ME Surty, MP, Minister of Justice and Constitutional Development. You see that is what it says.

ADV SURTY: I see.

ADV SEMENYA: To it, it tells the reader the purpose of this memorandum was to inform the minister of Mpshe's intention to reconvene the TRC task team and to advise him of matters relating thereto. Is there any significance that its purpose is said to be informing the minister?

20

ADV SURTY: I have indicated that in my affidavit, counsel, this is to provide... you have broadly two categories of submissions that you would receive as a minister. One is for consideration or decision.

That would be a memorandum where the recommendations would be made and you have to either approve or decline. And you would generally make comments as to why you would do one or the other.

The other is, as in this case here, is really for noting. The authority to do what the Acting Director of Public Prosecution had done was with him. He had the institutional, legal and constitutional authority to do so. He would provide a report to the minister indicating his intentions. That is an interaction that would take place. The minister, after all, has final responsibility and ought to know what
10 is happening in the institution.

So it is a courtesy and a very important one at that. It basically brings it to the attention of the minister the intention of the National Director of Public Prosecution. And he sets out his reasons for doing so. And he sets out in the memorandum the cases that are on hand at present, as he said so in paragraph 3.4, and these are very high profile and important cases, which we had heard of. It was in the public discourse anyway and part of what we have learned about people who were affected.

Then there are comments. Comments, you will notice, from
20 the memorandum, counsel ... [intervenes]

ADV SEMENYA: Before we go there.

ADV SURTY: Before we go there, I am sorry.

ADV SEMENYA: Before we go there.

ADV SURTY: Let me stop there.

ADV SEMENYA: Okay. I was just saying, even in its own language,

it talks about a briefing where you expected the minister to make any decision in relation to this briefing.

ADV SURTY: The nature of the document does not lend itself to one where the minister is to make a decision. It is really a report that is provided. And also information that is given in relation to the action that is going to be taken by the Acting Director of Public Prosecution in relation to TRC investigations and prosecutions.

ADV SEMENYA: If you go back to your affidavit under paragraph 11, you react to this document. It would be just 1747 of your first
10 affidavit.

ADV SURTY: Yes, I see paragraph 11, sir.

ADV SEMENYA: Yes. I read it for your reaction and response.

"The request arises from an email addressed to the commission on 15 October 2025, in which I stated that I had no engagement whatsoever with either the National Prosecuting Authority, (NPA), or the South African Police Services concerning the prosecution of TRC matters."

ADV SURTY: That is correct.

20 ADV SEMENYA: That is how it is.

ADV SURTY: That is what I indicated to you at the outset, counsel. And until the memorandum was submitted to me, it was a long time ago, I obviously told you that, look, you know, I, it is certainly a document that had been sent to me. My signature appears on it. And the comments that are there are indeed in my handwriting. I did not

dispute that. But merely to say that in terms of verbal exchange or discussions, there was no discussion between Adv Mpshe and myself or with anybody from the South African Police Service and myself in relation to TRC matters. But I certainly accept and acknowledge that this memorandum was submitted to me.

ADV SEMENYA: You do say that because against paragraph 12, you say:

10 "At the outset, I place on record that when I was first approached by the evidence leader of the commission, Ishmael Semenya, and requested to provide any information in your possession relevant to the commission's inquiry into alleged political interference in the investigation and prosecution of TRC matters, I did not recall having commented on the memorandum."

ADV SURTY: Yes, sir. I certainly had no recollection of the memorandum at the time.

ADV SEMENYA: Yes.

20 ADV SURTY: Had it not been for you providing me with a document, I would have been unaware.

ADV SEMENYA: For completeness of your evidence, you also continue to say:

"I accordingly informed Mr Semenya that I had not engaged with the NPA or SAPS regarding TRC prosecutions and indicated that all official

records would be in the custody of the Department of Justice and Constitutional Development."

ADV SURTY: That is indeed so because when you leave your office, you do not take any documents with you. They are left in the custody of the Department of Justice and that would be the reality.

ADV SEMENYA: And you tell us, on 23 April 2026, you received a further communication from Mr Semenya attaching a memorandum prepared by the then Acting NDPP, Mr Mpshe. The memorandum
10 was received by the DG, Mr Menzi Simelane, on 5 March 2009 and passed on to the office of the Deputy Minister of Justice and Constitutional Affairs, Deputy Minister Johnny de Lange, on 11 March 2009. It was transmitted to your office on 17 March 2009 for noting. You make that point? A copy is the one that we have just handled now.

ADV SURTY: That is correct, sir.

ADV SEMENYA: And you say:

20 "After having considered the memorandum together with Mpshe's evidence to this commission on 7 April 2026, I can confirm that the memorandum is authentic and the handwritten note attributed to me is indeed mine. My failure initially to recall the memorandum was attributable solely to the passage of time and the fact that at the time, the memorandum did not

appear to me to involve anything unusual or contentious."

But then you say, under that heading:

"I state categorically that during my brief tenure as minister, I neither interfered with, influenced, or suppressed any investigation or prosecution, including investigation or prosecution relating to the TRC matters."

ADV SURTY: That is indeed so.

10 ADV SEMENYA: All right. Then you say to us, under paragraph 17, if you read it into the record.

ADV SURTY: May I?

ADV SEMENYA: If you read it in the record.

ADV SURTY:

20 "It is important to distinguish between the memoranda submitted for approval and those submitted merely for noting. This memorandum falls into the latter category. Its purpose was not to seek my direction or approval, but to inform me of the Acting NDPP's intention to reconvene the TRC task team."

ADV SEMENYA: Yes.

ADV SURTY: Do you want me to continue, counsel?

ADV SEMENYA: Please do.

ADV SEMENYA:

"The memorandum recorded that the work of the TRC Task Team had been delayed, amongst other reasons, by the establishment of the Ginwala Commission. It is further recorded that the Ginwala Commission had made no findings affecting the functioning of the task team. The memorandum also referred to a number of high-profile matters requiring investigations. It recorded that most of these matters required investigation by the South African Police Service and noted that guidelines formulated during my predecessor's tenure had been declared unconstitutional. Although an appeal against that decision was pending, the memorandum expressly recorded that there was no impediment to investigating proceedings. Given the sensitivity of the matters concerned, the memorandum proposed that a risk assessment be conducted by the National Intelligence Agency."

ADV SEMENYA: And under 21.

ADV SURTY: Under 21.

"As was the established process within the Department of Justice and Constitutional Development at the time, the memorandum was

routed through the Director-General and Deputy Minister before being submitted to me. That process ensured that I had the benefit of their respective views and comments before considering the memorandum."

That would apply to all memoranda that were submitted to me. It would always receive the attention of the DG first and before it comes to me, I directed that my Deputy Minister would look at the memorandum and make any comments, if he wishes to do so, so that

10 I have the benefit of their perspectives and points of view.

ADV SEMENYA: And relevant to the Inter-Ministerial Committee, you talk about that in the following paragraph, right?

ADV SURTY: Yes.

"The DG at the time, Mr Simelane, recommended that the matter first be discussed within the Inter-Ministerial Committee so that the Acting NDPP could be guided in relation to the NPA's mandate. The IMC comprised the ministers responsible for Justice and Constitutional Development, Police
20 and Intelligence."

ADV SEMENYA: Yes. And then you say under 24:

"Although no approval was required from me, I nonetheless had to apply my mind to the contents of the memorandum, given the significance of the matters addressed in it. It was both customary

and appropriate that I be informed of developments concerning matters of this nature."

ADV SURTY: That is indeed correct. I mean I could not be dismissive of such an important matter, so I will apply my mind to an important matter, and also given the reality that there were comments both from the Director-General as well as the Deputy Minister. But it is an important matter that I would not regard as trivial or simply note without making a comment on.

I almost think, and I speak subject to correction, if you could
10 just bear with me for a moment. I almost think that the Acting Director of Public Prosecution almost suggests that he was waiting for some signal from me. I thought I had read it somewhere, but I mean, the nature of the memorandum itself was really for noting, but I thought it was appropriate to advise what my feelings were about the matter, and I thought I had made that quite clear in terms of my written comments.

ADV SEMENYA: If you go to page 1756, you will find something written in manuscript.

ADV SURTY: Yes.

20 ADV SEMENYA: 1756.

ADV SURTY: Yes.

ADV SEMENYA: Under your name, there is your manuscript comment with an exclamation mark.

ADV SURTY: Yes, the comment there is, "Investigations must proceed!" That is an emphatic suggestion or request that please

continue with the investigations.

ADV SEMENYA: So nobody can seriously accuse you of having attempted or interfered with the investigations and or prosecutions, am I right?

ADV SURTY: Not at that time or any other time. It is just not in my nature to interfere with the prosecutor of your work. So it is...

ADV SEMENYA: Yeah. And you say in your statement, the decision whether to prosecute or not to prosecute still remained the province exclusively that of the NPA.

10 ADV SURTY: Well, it is. In fact, that is what the deputy minister says, and that is why I endorse his sentiment. He says that the decision to prosecute or not to prosecute lies with the National Director of Public Prosecutions, or I do not know what his language was, but that was one point that he made, and I endorse that fully because, I mean, it would be inappropriate.

It would be illegal and unconstitutional for a minister to direct a prosecutor, National Director of Public Prosecutions, to prosecute or decline to prosecute. It is something that is the power vest in him or, as the case may be.

20 ADV SEMENYA: Of course the NPA would criminalise such conduct under section 41.

ADV SURTY: It would, yes.

ADV SEMENYA: Can I go with you to paragraph 30 of your statement where it reads:

"Upon my appointment as minister, I was also

required to address the findings of the Ginwala Commission concerning the conduct of the then Director-General. Given the seriousness of those findings, I propose that the matter be referred to the Public Service Commission for investigation. My term of office ended before that process could be finalised."

Am I right?

ADV SURTY: That is correct, sir.

10 ADV SEMENYA: Okay.

"Except for what is reflected in the memorandum itself, I do not recall any engagement with the NPA or SAPS concerning TRC prosecutions."

But you do reiterate during your term as minister, you say you did not interfere with, influence, or suppress any investigation or prosecution, including those relating to the TRC matters. Have we covered that affidavit?

ADV SURTY: That seems so, sir.

20 ADV SEMENYA: We have also dealt with the memorandum by the Acting National Director of Public Prosecutions at the time, Mr Mpshe. Right. I now invite you to look at page 1756A, which you confirmed to be your statement.

ADV SURTY: I do.

ADV SEMENYA: And you say you want to make a supplementary affidavit in response to a further request by the evidence leaders that

you address implications of section 179(4), read with 179(6) of the Constitution, and explain your understanding of the constitutional responsibilities that resided with the prosecuting authority in the light of commission's evidence concerning absence of TRC-related prosecutions during the period in question, right?

ADV SURTY: That is correct, also.

ADV SEMENYA: Now, if you page over, of course, under 5 you say, what you do say here enjoys the benefit of legal advice you would have received. And then you explain the process by which the
10 memorandum came before you, and we have dealt with that, am I right?

ADV SURTY: That is correct, sir.

ADV SEMENYA: Under 7, you say:

"I explained that the memorandum did not seek
any decision."

We have gone through that part, am I right?

ADV SURTY: That is correct.

ADV SEMENYA: And you further explained that your comments reflected your views that investigations should continue, that
20 decisions whether to prosecute remained the responsibility of the NPA, and that coordination through Inter-Ministerial Committee could appropriately be considered.

ADV SURTY: That is correct.

ADV SEMENYA: And you confirm that you neither interfered with or influenced any investigation or prosecution, including those relating to

TRC matters, am I right?

ADV SURTY: That is correct.

ADV SEMENYA: Then you deal with section 179(4), which we touched on earlier in your evidence. am I right to say that?

ADV SURTY: That is correct.

ADV SEMENYA: You go over page, you deal with 179(6), you deal with 179(6) of the Constitution, and can you read what you say in paragraph 13?

ADV SURTY: Paragraph 13.

10 "I stress that I do not recall any concern regarding an alleged failure to prosecute TRC matters raised with me by the NDPP, any member of the prosecuting authority, the Director-General, Cabinet, Parliament, or any person, nor do I recall receiving any report suggesting that prosecutions which ought to have been instituted were not proceeding."

That is my recollection.

ADV SEMENYA: Continue to read 14 for us.

20 ADV SURTY: 14.

"Apart from the memorandum referred to in my principal affidavit, I cannot recall any discussion, briefing, or request was brought to my attention concerning the progress of TRC-related prosecutions or the absence of such

prosecutions."

ADV SEMENYA: And you conclude your affidavit supplementary in paragraph 15.

ADV SURTY: Sorry, shall I read that?

ADV SEMENYA: Yes, please.

ADV SURTY:

10 "The absence of TRC-related prosecutions was never presented to me as an issue requiring ministerial attention or intervention. I therefore had no occasion to enquire into why particular prosecutions had not been instituted. Had concerns of that nature been brought to my attention, I would have referred them to the NDPP at the time and asked for a report."

ADV SEMENYA: And that concludes your evidence-in-chief, Mr Surty, am I right?

ADV SURTY: That is correct, sir.

ADV SEMENYA: Chair that is the evidence.

CHAIRPERSON: Thank you. Mr Gwala.

20 ADV GWALA: Good morning, Chairperson. We do not have questions for this witness.

CHAIRPERSON: Thank you. Ms Kessery.

ADV KESSERY: Morning, Chair. We do not have any questions or clarifications.

CHAIRPERSON: Thank you. Ms Ntshizana?

ADV NTSHIZANA: Thank you, Chair. Yes, I do have questions, Commissioner.

COMMISSIONER KGOMO: Switch on the other microphone, please.

ADV SURTY: Yes.

ADV NTSHIZANA: Good morning, Mr Surty. I would just like to find out from paragraph 28 of the first affidavit, it is your testimony that the IMC-proposed discussion did not take place. The discussion proposed by Adv Simelane did not take place. I would just like to find out if, since you were in support of the contents of the memorandum
10 proposed by Adv Mpshe, did you have any further interactions with him or discussions regarding the proposed memorandum?

ADV SURTY: No, there was no discussion or interaction with him, counsel. If you look at the memorandum itself, towards the end of March, we were almost in the cusp of an election that was taking place, and that is probably the reason why he did not submit the intelligence report to me or come back to me. I am speculating now, but I am saying that the elections were imminent.

I think they were announced in February that year, and as ministers, you were almost closing. You had to submit your final
20 report, I think, by the end of March, if I am not mistaken. It is a long time ago. And there was not really an opportunity to follow up on this particular matter. So the IMC did not take place. It is usually arranged by the Director-General. So if an IMC has to take place, and I indicated in the memorandum that I was not averse to it, that indeed it could take place, it would depend, obviously, on the

availability of your colleagues in the security cluster.

I cannot now speculate as to why it did not take place, where efforts had been made. The best person who would be able to respond to that would be the Director-General, Menzi Simelane, at the time. But I certainly do not recollect having a meeting for that particular purpose.

ADV NTSHIZANA: Thank you. Thank you, Mr Surty. Thank you, Chair.

CHAIRPERSON: Thank you. Am I missing anyone? Mr Varney?

10 ADV VARNEY: Thank you, Chair. Just a few questions by way of clarification. Mr Surty, firstly, thanks for taking the time to come to the commission to assist us. We make no allegations against you from the perspective of the families. You have denied categorically being involved in any political interference in the TRC cases. We do not dispute what you say. We also note that – I think I will just wait for this mic to be replaced.

CHAIRPERSON: Yes.

ADV VARNEY: We also note that you were only Minister of Justice for around seven months, so you did not have too much time to really
20 fulfil that role meaningfully, which cannot be done in seven months. So I just want to draw your attention to a few paragraphs in your statement, and these deal with that memorandum of the 17 February 2009. I am going to refer to paragraphs 18, 19 and 20. So that starts on page 1749 of your bundle, and you point out at paragraph 18, making reference to paragraph 2.2 of that memorandum that the

investigations into the TRC matters could not continue, given that the task team had not sat and the matters table before the Ginwala Commission. That is essentially what paragraph 2.2 in the memo says.

Was it your understanding that, because of the work of the Ginwala Commission that the investigations into the TRC matters could not continue?

ADV SURTY: Thank you, Adv Varney. Firstly, thank you for your kind words and for understanding that my tenure was very, very brief.

10 No, what I indicated here on paragraph 18 was that this is what the memorandum stated. It was not my view. I certainly have not looked at it closely enough to say. In fact, when I read the report, I had to read the Ginwala report in relation to the Director-General and his comments. There was nothing, no reflection in the report that I had read, and it is a long time ago. We suggested that work had to be suspended or stayed at the time.

So, I have no knowledge of that being a directive or a consequence of the Ginwala report being initiated. So, let us put it this way, I do not have sufficient knowledge on that particular matter,
20 but it is not my view. I am merely conveying in paragraph 18 the view of the Adv Mpshe, as he submitted the memorandum to me.

ADV VARNEY: Yes, no totally understood. From the perspective of the families, you know, their view would be, well, even though Commission of Inquiry is sitting, looking to the suitability of Adv Pikoli, criminal investigations through the investigations of the SAPS could

continue nonetheless.

ADV SURTY: Well, you know, there is nothing from where I sit, I mean, I do not recall the facts at that particular point in time, so it is difficult to respond, but I mean, investigations must continue because principal categories are those who have not applied for amnesty, were not granted amnesty, and those who have not applied for.

So, investigations, they would be culpable or liable for prosecution unless there was legislation or other laws that prevented that. So, there is nothing that could prevent investigations, and I think
10 that probably is the reason why I was so emphatic to say investigations must continue. That is probably the reason.

It is difficult to consider now after 17 years precisely what are the factors that gave rise to a particular comment of that nature there, but I would imagine that would be one of them.

ADV VARNEY: Yes, and as you mentioned, you added the exclamation point to emphasise that.

ADV SURTY: Well that is emphatic, yes. I mean, that was my emphatic view, that investigations must continue because you could not wait for an IMC or even a discussion or a report before – that
20 should not hold back the investigations. That was my emphatic view at the time.

ADV VARNEY: Yes, indeed. Okay. So, let us then turn to your paragraph 19, and this, I believe, is a comment on paragraph 5 of the memo, and here you indicate that the memo referred to high-profile matters requiring investigation.

"It is recorded that most of those matters required investigation by the SAPS and noted that guidelines formulated during my predecessor's tenure have been declared unconstitutional."

Let us just pause there. You have noted that the matters required investigation. At that time, were you aware of the struggles of the NPA to get investigators between 2003 and around 2010?

ADV SURTY: Adv Varney, to be honest, I was not, and then I could explain why I was not. I was the Deputy Minister of Education, and
10 education at that time involved both higher education and basic education, and at the time of my appointment, I was seized with many tasks, and if I could just give you an understanding of some of them, we had to develop legislation around colleges, we had to finalise norms and standards for districts, we had to proceed with the finalisation of workbooks for promoting literacy and numeracy, and a range of other urgent matters, and then there was the Education Laws Amendment Act, and it was one of the delegated responsibilities of mine as the deputy minister was to deal with all legislative matters in the Department of Education.

20 So it was towards the end of our phase, and we were so busy and so engaged in that particular aspect, in both curriculum, interactions, *et cetera*, I really did not look at security or justice matters at all. So I can only apologise that I did not do so, but those were the realities.

So when I got appointed as Minister of Justice, I mean, it was

without warning, it was quite sudden, and I had shared with Counsel Semenza that I had two records. One is the longest-serving Deputy Minister of Education, and the second is the shortest-serving Minister of Justice. I mean, that was the reality, and you know, it was a huge task in education, not to say that there was any lesser in justice, it was huge, given the limited time that we had over there.

ADV VARNEY: Yes, and you have already indicated that while you were Minister of Justice, I think it was only this memo that brought the TRC cases to your attention.

10 ADV SURTY: That was the only, only, only, only memo that I had received. To my knowledge, I mean, it is a long time ago, but, you know, I enquired from the Department of Justice whether there is any other documentation, and they were not able to submit, and I did write at the outset to say, if there is anything else, please bring it to my attention. I have received no other such documentation.

ADV VARNEY: Yes, well, we are not aware of any, yeah.

ADV SURTY: Neither am I.

ADV VARNEY: In that same paragraph, you indicate that the guidelines were declared unconstitutional, and although an appeal
20 against that decision was pending, the memo randomly expressly recorded that there was no impediment to investigations proceeding, and that appeal ultimately was not taken forward.

A leave to appeal was lodged, it was dismissed, and then I understand there were discussions around petitioning the SCA, but that never went ahead. Do you recall that?

ADV SURTY: No, no, it was not during my time, because when I received the memorandum, it was in March. I think I responded to it towards the end of March, and the elections were just around the corner. So, obviously, I could state that I, having practice as a lawyer, I would know that appeals take an inordinately long time before you even get a date for set down to argue the appeal, and probably, I am saying probably, at the time, I would not regard that as a reason to hold back your investigations, because, I mean, you would basically feed into dilatory or delayed action in this matter here,

10 but I certainly was not aware of it, and if I probably, if I was in office, I would probably have asked for the notice of appeal, because it happened before my time, and to find out, get, let me get more information about this particular aspect, but...

ADV VARNEY: Yes, indeed, and Adv Mpshe says there is no reason why investigations cannot continue notwithstanding the appeal.

ADV SURTY: I agreed with him.

ADV VARNEY: Yes, you said so as well, but I just want to put to you what the NPA Annual Report for 2008 and 2009, what that said about the appeal. It mentioned that the TRC guidelines were declared

20 unconstitutional, and a decision to appeal will be made in early 2009. And then it says a further delay in the prosecution of cases emanating from the TRC process is therefore inevitable.

ADV LEKOANE: I am sorry to interrupt, Chair. Can we perhaps get a reference for that report?

ADV VARNEY: Yes, Chair, it is, it is, the reference is in bundle one

at page 116. So essentially, the NPA said in the Annual Report for 2008 and 2009 that because of the appeal, the prosecution of cases from the TRC would be delayed, and that was inevitable. So it seemed as if there was something of a mismatch.

ADV SURTY: I really cannot comment on that. You know, it is just that my view has been the view that if you wrote an appeal, it does not mean that you are going to stay investigations that they should continue. I mean, you know, you cannot even predict or foresee the outcome of an appeal.

10 And as I said, I was not the author of the decision regarding the appeal, and I had insufficient knowledge regarding the content of the matter in respect of policy or guidelines or directives to be able to, to, to make a decision.

ADV VARNEY: Thank you, and noted.

ADV SURTY: Thank you, Adv Varney.

ADV VARNEY: And then if we turn to your paragraph 20, where you state that:

20 "Given the sensitivity of the matters concerned,
the memo proposed that a risk assessment be
conducted by the National Intelligence Agency."

And the paragraph in the memo where it says that, it is paragraph 6, it says:

"Given the unique circumstances surrounding
TRC cases, NIA has been requested to compile a
threat analysis of the risks attached to such

investigations."

Can I ask, did you agree that there was a need to assess the risks, and why this should be done by NIA and not perhaps, Crime Intelligence or SAPS?

ADV SURTY: Well, what I received, what I was reflecting on is really what has been indicated by Adv Mpshe. So, it did not, it is not as a result of my request or initiative. It is something that he said he would submit. He was unable to do so, and I think probably more than likely it is because of the elections that had come up.

10 But I certainly did not receive any report, nor would I go to the President and raise the matter with him unless I had information which suggested otherwise that there would be a threat, national interest, whatever the case might be. But, I mean, I really had no report. I had no sense of what the threat was, or the threats were, or what the analysis was at the time.

ADV VARNEY: Noted, thank you.

ADV SURTY: Sorry, I sound ignorant, but that is the reality.

ADV VARNEY: Certainly no need to apologise.

ADV SURTY: Thank you.

20 ADV VARNEY: Perhaps we can then turn to your references to the handwritten notes on that memo. And just from paragraph 22 onwards, and the handwritten notes are on pages 1755 to 1756 of the memorandum. And let us perhaps start with the first one, which is Mr Simelane's handwritten note, which is right under the signature of Adv Mpshe. And perhaps I will just read into the record what we

understand that handwritten note to say. He writes:

"It may be useful that the minister first discuss these matters with the IMC ministers, so that the Acting NDPP can be advised how to proceed, especially on what the mandate of the NPA is on these matters."

Is that also your reading?

ADV SURTY: Well, that is what he had written there, yes.

ADV VARNEY: Yeah. It is just sometimes difficult to read
10 handwriting, so I just wanted to...

ADV SURTY: You know, that is how I read it as well, and that is the reason for my comment.

ADV VARNEY: We note that Mr Simelane says that the ministers on Inter-Ministerial Committee, he says:

"It is useful that the minister first discusses it with those ministers, so that the Acting NDPP can be advised how to proceed in respect of the cases listed, and especially on what the mandate of the NPA is on these matters."

20 Did you ask, you know, why would a senior prosecutor like Adv Mpshe need to be advised on what the mandate of the NPA is?

ADV SURTY: I do not know, I do not know, I cannot speak on his behalf in regard to that there. I could only speak about the value of an IMC. It would not be a condition antecedent to my comment. In other words, I did not have to meet the IMC before I made a decision

to say, continue with the investigations, but it would be beneficial from a perspective that if they are aware of the fact that the task team has been set up, that is being activated, they could basically ensure that progress is made more swiftly.

So, I mean, you know, if I could give you an example of, just maybe an example or two of IMCs where I was involved in terms of early childhood development and education, for example. Preschool was with the Department of Social Development. Health was involved, Education was involved, and Social Development.

10 We then transferred ultimately as a result of interaction in the IMC to grade R's to the Department of Education, which was previously with Social Development. It makes great sense because our preschool children are now going to school. Had that interaction not taken place, we would still have had a contestation between development on the one hand and education on the other. And that is one example.

 Another example of the value and benefit of interaction is before the elections, there were huge problems in KwaZulu-Natal in the Ulundi area, especially with noble areas. And you may have, you
20 were probably aware of it at the time. And there was a newly appointed Minister of Intelligence, Siyabonga Cwele. I was the Minister of Justice. And the National Commissioner at that time was the former Minister of Police, Bheki Cele.

 We met in northern – and Adv Mpshe as well, as the National Director of Prosecutions to say, how do we deal with this matter here,

because you cannot have noble areas during an election period. And the decision was that we would have a dedicated court, a dedicated prosecutor to deal with the matter.

So the moment police would be there, we would have top-notch police to basically ensure that when there is a transgression, arrest has taken place, prosecutions are not awaiting. We have got a dedicated court for that matter. And the result of that interaction is we went through an election, and there were no problems in the northern part of KwaZulu-Natal.

10 So I knew what the value and benefit of an IMC was, but it certainly would not be something that would be a condition antecedent to investigations continued. So I had no difficulty with an IMC discussion. But I certainly did not want it – a discussion did not have to precede my view that an investigation should continue, Adv Varney. That would be my view.

ADV VARNEY: Yes, and thanks for that explanation. It is helpful and insightful. So I understand that an IMC can be useful when you have to deal with structural issues, when you need to perhaps develop a policy and approach, perhaps you need to raise budget and
20 resources. The collaboration between ministries is important. But given that that is why we are a bit puzzled that individual cases would be going to the IMC.

ADV SURTY: No, no that was not my understanding, and that is not my view, emphatically. But we would not give a mandate to the prosecutor to decide on whether to prosecute or not, or to decline to

prosecute or to investigate for – in police service. We would not interfere in that particular process. I certainly would not be party to such a discussion.

ADV VARNEY: And indeed, I think you underscore that in your supplementary affidavit. It is at 1756C paragraph 12, where you deal with section 179(6) of the Constitution, which talks about the minister exercising final responsibility over the prosecuting authority. And you state:

10 "I do not understand section 179(6) to extend to directing prosecutors whether to investigate, prosecute or decline to prosecute in individual matters. Decisions concerning individual investigations and prosecutions fall within the exclusive competence of the NPO."

Which, again, is why we are a little concerned that these cases were referred to the IMC and potentially the President as well.

ADV LEKOANE: Sorry, Chair, I am sorry to interrupt. Can you also then perhaps give us a reference where, in the evidence, where it is said that these cases were taken to the IMC, just for our own record?

20 ADV VARNEY: Yes, certainly. It is in the handwritten notes that we have just made reference to, page 1756, bottom of 1755 and then 1756 of Mr Surty's bundle. Mr Surty, do you understand our concern around referring individual cases to a ministerial committee?

ADV SURTY: No, I do not think, I did not, I certainly, when the DG suggested the referral to the IMC, my understanding would be that

basically to draw the attention to the fact that you have got a task team that has been re-established by the NDPP. Obviously, your police service is required to assist in that particular process because they are principally responsible for investigations.

And it would be nice if intelligence, the police service and the prosecuting authority work together in order to achieve an outcome that gives rise to prosecution that should take place. So that is my view. It is certainly not my view that it is to give a mandate for individual cases to be prosecuted or not. That would definitely not be
10 my view.

ADV VARNEY: Thank you. Let us then turn to the handwritten note of Deputy Minister de Lange, which as you point out in paragraph 23, is not entirely legible. I want to read you our sort of interpretation of his handwriting. And this is on page 1756. He writes:

"I cannot find fault with the approach proposed.
In fact, in law, NDPP must proceed with prosecutions or not prosecute. To ensure this does not take place in isolation, the task team was established as part of prosecuting policy. As
20 this is a sensitive matter, I agree with urgent consultations with the NSC and the President."

Do you perhaps know why he felt the President needed to be consulted?

ADV SURTY: I do not know. You know, what I could say is that Adv de Lange which was my deputy minister and a very competent and

efficient one at that, I must say. He had served in the previous term as deputy minister to my predecessor. He might have had information or knowledge that I was totally unaware of that gave rise to it.

What I agreed with, the sentiment, there are two sentiments that I agreed with, and I say that quite emphatically. The first is that the decisions to prosecute or not to prosecute, that is solely with the NDPP. It is not a decision of government, of the executive, or any external sources. Really, that authority is given to them through the
10 Constitution and the provisions of the NPA, which, as senior counsel had indicated, is mirrored in the Act itself. So that is one element.

The second element was basically the value of the Inter-Ministerial Task Team. And here again, I first had existential experience of the benefits of these groups working together in a range of matters, where they work together, whether it is in terms of alcohol abuse, which involve Health, Education, and Social Development, whether it is in terms of children's well-being and welfare, which involve those task teams of this nature here, where you have a collective end in mind, which you share, certainly are
20 beneficial.

So I think what Adv de Lange was saying out here is that there are huge and enormous benefits in having a task team look at this over here, because there are forensic aspects, investigative aspects, and a range of things. And basically, they could feed off each other in terms of ensuring that there is sound prosecution. So I

had no difficulty with that.

With regard to the last part, I must say it was not clear in terms of the sensitivity. I saw sensitivity, and you can look at the document here, as I see it in the folder. There are words that are missing. So I do not know precisely what was meant over there. But my position is simply this that I am not going to go to the President and raise an issue with the President without having some factual, substantive information to say the President, here is a reason why we should stop investigation or reflect on this matter.

10 I did not do so. I did not receive the intelligence report. I had no information about its sensitivity. And in my opinion, respectful opinion, it was no reason for the investigations not to continue and to continue with speed, actually, because it had been a long time. you know, so that is my perspective. And that is my understanding.

My endorsement was on those two points, the value of, and I support that, and I continue to support that, of, you know, a task team, which would be beneficial. And also the fact that the prosecuting authority is the authority to make decisions on individual cases, and it is not an executive authority or a collective authority.

20 It is invest solely with the National Director of Public Prosecutions. And I have no doubt in my mind that that would be the view of Adv de Lange that in terms of his interpretation of policy and in terms of the Constitution, it would be very emphatic that the decisions to prosecute or not to prosecute in individual cases lies not with the executive or any other person or institution, but solely with

the National Director of Public Prosecutions. I am speaking on his behalf, but I do so on the basis of the fact that we have worked together for a long time as members of Parliament and his colleagues.

ADV VARNEY: Thank you. Thank you, Mr Surty. And perhaps, you know, I think that particular question around this, where he says, as this is a sensitive matter, I agree with urgent consultation with the NSC and President. I think that is really a question that must be put to Mr de Lange, and perhaps we will approach the evidence leaders
10 in that regard. All right, let us just move on.

I just want to see if there is anything else arising from the memo. Perhaps if I can draw your attention to paragraph 3.3 of the memorandum. So, there Adv Mpshe writes:

"No request to investigate TRC matters have been received since November 2007, and it is anticipated that once the matters on hand have been dealt with that the chapter on these cases may be closed."

I would like your comment on that statement where he says, well, we
20 have not received any further requests to investigate since November 2007, and then once the matters on hand have been dealt with, and I am assuming he is referring to the nine matters listed, then the cases, the chapter on these cases may be closed.

I ask because we know that, we do not have the exact figure, but it was a few hundred, perhaps between three and four hundred

cases that were referred by the TRC to the NPA. Do you have any comment on what Adv Mpshe is suggesting, that they have not got any further requests, once they have dealt with these matters, then this chapter can be closed?

ADV SURTY: I really cannot comment on the veracity of his statement. I do not know where he would have got his information from, and I certainly was not aware of. I had not received a briefing, either from my predecessor, because of the sudden movement, she had moved to Public Service and Administration, I had moved to
10 justice, or from anybody in relation to the TRC matters, so I cannot really say that it is within my knowledge, it is not within my knowledge, and I would not like to comment on that.

I am not disputing what you are saying, but I really would not want to comment on something that I am unaware of and I have no information on.

ADV VARNEY: You would understand the perspective of the families that there were a large number of matters, aside from these nine, involving many serious crimes such as murder and kidnapping, which do not prescribe. From their perspective, they would have expected
20 the authorities to continue.

ADV SURTY: I certainly have empathy for the victims and the families of the victims of these crimes. One has to have that compassion and understanding, but what I am saying is that, I cannot comment on the factual or the veracity or the authenticity of that information there, because I do not have any direct knowledge of that,

Adv Varney. So it is not to dispute the rights or the sensitivities of the families. I share in the compassion. I am aware of your commitment to that particular task and empathise. So, emotionally, I do, but speaking specifically now about the information there, I do not know.

ADV VARNEY: Okay. Thank you, Mr Surty. Your sentiments are appreciated.

ADV SURTY: Okay.

ADV VARNEY: If we can then turn to paragraph 3.4, and here the nine matters are listed.

10 ADV SURTY: 3.4?

ADV VARNEY: Yeah, paragraph 3.4, it lists several matters such as Pebco 3, Lubowski, Cradock 4, Nokuthula Simelane, Heidelberg Tavern, St James massacres, and a few others. Murder of Rick Turner, allegations against General Basie Smit. Now, as far as we are aware, all these cases remain unresolved.

We are aware that one or two of them have been enrolled, although they have not been finalised, such as Nokuthula Simelane. We are also aware, Mr Surty that between 2007 and 2016, there were no TRC cases, such as inquests or prosecutions that went ahead.

20 So, perhaps I can ask for your comment on the fact that, you know, as we stand here today, these nine matters still remain unresolved.

And in that period between 2007 and 2016, which included your seven months, as I mentioned, we do not hold any of that against you personally, but do you have a comment on the fact that so few of these cases have been taken forward over the years?

ADV SURTY: It is very difficult to comment. But I can agree that it is a long time, a long period of time. I do not know what the circumstances were during my predecessor's time or my successor's time. What I do know is that, indeed, ministers have been called to testify, and ministers of police and ministers of justice and directors general. And I think they would be the appropriate people to put those questions to.

My tenure was short, indeed, and I have no difficulty to raise anything in the context of my time there. So, other than commenting
10 that it is an enormously long time, I really cannot comment about its status and the current status over that. I think it is best to direct that to the ministers concerned. I am not being dismissive or evasive, Adv Varney.

ADV VARNEY: Mr Surty, thank you so much for your time and your endeavours to assist us. No further questions, Chairperson.

ADV SURTY: Thank you.

COMMISSIONER KGOMO: Good morning, Mr Surty. I cannot hear you.

ADV SURTY: Good morning to you, sir, justice, Judge Kgomo.

20 COMMISSIONER KGOMO: Yes, I must just be careful not to call you Surty, because we are on first name terms, as you were a regular in my regional court 45 years ago in Rustenburg, and had also subsequently a few briefs from you. Mr Surty, can we go, after this pleasantries, can we just go back to your main statement, paragraph 6, and if you could read it into the record again, just to refresh our

memories.

ADV SURTY: Paragraph 6, pardon judge?

COMMISSIONER KGOMO: Of the main statement.

ADV SURTY: Of the main statement.

COMMISSIONER KGOMO: Of the main statement, yours.

ADV SURTY: Oh, okay, so sorry.

COMMISSIONER KGOMO: At 1747.

ADV SURTY: Would that be the memo of Adv Mpshe?

COMMISSIONER KGOMO: No, no, your statement.

10 ADV SURTY: Oh, my statement, so sorry about it, pardon me. That comes with age, I am sorry, sir.

COMMISSIONER KGOMO: I agree, I know.

ADV SURTY: Okay, that would be during the same period. Are you talking about page 1747?

COMMISSIONER KGOMO: Yes, yes.

ADV SURTY: Okay.

20 "During the same period, I served as Programming Whip in both the Senate and later the National Council of Provinces. I also served on the Rules Committee and Joint Rules Committee of Parliament, which were responsible for drafting the rules governing the Senate, the National Council of Provinces, and the Joint Rules of Parliament."

COMMISSIONER KGOMO: Yes, now you, the lead counsel, Adv

Semenya broached with you the statement, the address to Parliament by President Mbeki in April 2003. Were you perhaps in Parliament during that time, and if so, did you listen to his speech?

ADV SURTY: Thank you, esteemed Judge. I probably was. I do not recollect missing a joint sitting of Parliament in the 25 years that I served as a member of Parliament. But if you are going to ask me what were the joint statements in 25 years, because you get a joint sitting every year, and then what was its contents, whether it is from President Mandela through three the other Presidents, it is going to
10 be hard for me to recollect.

The year 2003 is a long, long time ago. I probably would have been aware if it was just a year or two ago, but it is such a long time ago. So I am not going to dispute that, in fact, it probably was raised and certainly would have been raised, but I would not, I cannot honestly say to you with the greatest of respect that I have a recollection of the detail, nor have I sought to ascertain what the detail was subsequently.

So I do not have any knowledge, but I certainly do not dispute that the matter was raised as suggested by senior counsel.

20 COMMISSIONER KGOMO: Yes, do I understand you that you have not refreshed your memory from this address by him to Parliament? This is by President Mbeki, you have not refreshed your memory.

ADV SURTY: No, I have not referred to it, it was not raised with me, Commissioner.

COMMISSIONER KGOMO: Okay, okay, I understand. No, thank

you, Chair.

COMMISSIONER GABRIEL: Thank you. Mr Surty, thank you for your evidence and thank you for your many years of service to the country. Thank you. I just want to take you to the memo that was addressed to you by Adv Mpshe, specifically at page 1755.

ADV SURTY: 1755.

COMMISSIONER GABRIEL: So this was written on the 17 February 2009. In the previous pages, Adv Mpshe lists the nine TRC matters that are on hand. And in paragraph 4, he says:

10 "All of the above matters, except for the Pebco 3
 case, require investigations by SAPS before I can
 make a decision whether there are sufficient
 grounds to institute prosecutions or not."

Now, your comment is investigations must proceed. So who would have been responsible for those investigations?

ADV SURTY: Thank you very much, and it is a very important and relevant question. As norm, South African Police Service would be responsible for the investigations, unless a structure, a dedicated structure, is set up in order to assist and support and collaborate with
20 the South African Police Service, as you would have in instances within the Prosecution Authority for commercial crimes, *et cetera*.

So I am not too sure what it was, but what paragraph 4 conveys to me is that in order for the National Director of Public Prosecution, the acting National Director of Public Prosecution, to make a decision, he would require evidence through investigations to

make an appropriate decision. And that probably, that could have contributed to my thinking in any case.

Like I say, it is such a long time ago, I do not know what are the factors that all fell into my tiny brain at the time. But that could have been the reason why it was so important that investigations should proceed immediately, was the emphasis there, in order that it would enable the National Director of Public Prosecutions to make a decision as to whether to prosecute or not.

COMMISSIONER GABRIEL: Thank you. And therefore, to exercise
10 his constitutional powers.

ADV SURTY: Absolutely. Absolutely.

COMMISSIONER GABRIEL: Yes, thank you.

ADV SURTY: Thank you very much.

COMMISSIONER GABRIEL: Thank you.

ADV SURTY: Thank you for your kind words too.

CHAIRPERSON: Mr Semenya, any re-examination?

ADV SEMENYA: No re-examination, Chair.

NO RE-EXAMINATION BY ADV SEMENYA

CHAIRPERSON: Thank you.

20 ADV VARNEY: Chairperson, sorry to seek your indulgence. My memory has been junked and I did forget to put one matter to Mr Surty. With your indulgence, may I put one question?

CHAIRPERSON: Yes, you may, one point.

ADV VARNEY: Mr Surty, you have mentioned in your supplementary affidavit that, apart from the memo, the TRC matters were not brought

to your attention. The President, on the 21 November 2007, he announced in Parliament special dispensations on political pardons, and that was to assist those who had not applied for amnesty.

It was put into practice in 2008, and then civil society organisations went to court in March of 2009 to seek an urgent interdict to stop the political pardons going ahead, largely because victims and families were shut out of that process. And a judgment from Seriti J was handed down on the 28 April 2009, just days before you left office, and he did interdict the President from proceeding.

10 Do you recall that development? Because you as Minister of Justice, you were cited in those proceedings.

ADV SURTY: May I respond?

ADV VARNEY: Please.

ADV SURTY: Thank you for raising the matter. You know, I tried to just try to give you the context, the existential context here. Here is a man busy, very, very busy in education matters. He is called up in the afternoon, just during plenary, to say you have been appointed now as Minister of Justice.

20 I almost think it is a Wednesday or Thursday or Friday, whatever the case might be. I get sworn in the next day, I have got to go to the office. The first thing that is on my desk is in the media, and it is on the radio and television, there is going to be a national strike by prosecutors throughout the country. That was my first invitation to say, yeah, welcome to the Department of Justice.

So at that time, those were the dominant things. The Monday

after that calls came from the media regarding my Director-General to say the Ginwala Commission had made a finding against him. What are you going to do about it? That is like two days in my office. The day after that, I receive a call from the, I am just giving you in context so that you can understand, I receive a call from the Acting Judge President in the Western Cape to say the esteemed Judge Hlophe has just rocked up in court, in court to take over his position when he was on special leave.

Now, I will just give you just an example of just three matters
10 that were there on me immediately. Kind of just closed about everything else because those were all urgent matters. I could not delay the prosecution because our courts would have been with our prosecutors, and there would have been a national strike. I had to deal with the matter immediately.

I could not delay the issue of the Director-General because he would be in my office, and I had to clarify how that would be dealt with, and I do not think it is really, if the commission wants to hear how I dealt with it, I think I reflect on it in the affidavit, so I am not going to repeat that there.

20 And then the issue of the Western Cape Court. So that is within the first week itself. So there were so many aspects that were dominant, and then we had the application for pardon by one of the perpetrators. So it is just like one after the other, and you are so immersed in that and other work over there that if at all it was there, I was in education, probably paid less attention to that there, and I

have indicated to you the task we had at that point in time. It was so immense, so immense, and I had a very, very hardworking minister at the time, Naledi Pandor, who had so much on her hands, and we just tried to pull together.

So I am saying to you, it happened so quickly that if it escaped me, I can only say I am sorry, but really and truly, it did not come to my attention at all, and I think it is just the circumstances, the issues that contributed to this pressure that made the kind of normal absorption of facts a bit more difficult.

10 ADV VARNEY: Thank you. Thank you, Chairperson.

CHAIRPERSON: Thank you. Mr Surty, we are profoundly grateful to you for having come to give evidence before this commission. You are now excused as a witness, and we thank you for coming.

ADV SURTY: May I thank the esteemed commission, chaired by yourself, Lady, as well as Judge and Adv Gabriel, as well as the team, Adv Semenya SC, and the representatives who are present here, and I hope I was able to assist the commission in its task. Thank you very much.

NO FURTHER QUESTIONS

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

INQUIRY ADJOURNS UNTIL 24 JULY 2026

CERTIFICATE OF VERACITY

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

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