

**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 Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Mr Sipho Tlhaole – The Calata Group
Ms A Thakor – The Calata Group
Lerato Zikalala- (for Ronald Lamola)
Irene Mpofu- (for Ronald Lamola)
Adv KD Moroka (SC) – DoJ representative
Adv Irene de Vos for President Cyril Ramaphosa

24 AUGUST 2026

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PROCEEDINGS ON 24 AUGUST 2026

CHAIRPERSON: Good morning to you all.

ADV SEMENYA: Good morning, Chair.

CHAIRPERSON: Yes, Mr Semenya.

ADV SEMENYA: Chair and Commissioner, we have Minister Lamola for cross-examination today.

CHAIRPERSON: Yes.

ADV SEMENYA: Mr Varney will be virtual to conduct the cross-examination on his part.

10 CHAIRPERSON: Yes, yes. Minister Lamola, good morning.

MINISTER LAMOLA: Good morning Chair and Commissioners.

CHAIRPERSON: Mr Lamola, you are reminded that you are still under your former oath.

MINISTER LAMOLA: Yes.

CHAIRPERSON: Yes. Mr Varney.

RONALD OZZY LAMOLA: still under oath

CROSS-EXAMINATION BY ADV VARNEY: Thank you, Chairperson, good morning to you and the Commissioner and to Minister Lamola. Chairperson, can I just check that I am visible and
20 audible?

MINISTER LAMOLA: Yes, I can hear you.

CHAIRPERSON: Yes, you are visible, Adv Varney.

ADV VARNEY: Thank you Chairperson and if the Minister confirms that he can hear me. Minister, firstly we want to thank you for taking out of your incredibly busy schedule to come to the Commission.

Minister, before I start with the cross-examination, I just want to confirm what we put in writing already, that we do not regard you as an implicated person, we agree with your sentiments that you should not have an issue with the Rule 3.3 notice, but rather you should have been requested to come to the Commission to assist it with its inquiries.

And secondly Minister, you will see from my application that we do give credit to you for kickstarting the TRC cases during your term of office and we extend our gratitude to you and your team for
10 taking those steps. We also agree with you that more cases were pursued in your term of office than in any preceding period. However Minister, there are a number of issues that we want to canvass with you and that is the purpose of this morning's proceedings. We will try not to detain you for very long.

Commissioners before I proceed, I just want to place a matter on record that I have raised with the Minister's counsel, Ms Zikalala, and that is the question of why certain documents that we rely on were not provided to the team representing the Minister. These are various NPA memoranda which we have referred to in our
20 application.

Ms Zikalala confirms that she was not provided with these documents before the Minister testified on the 11 August and the documents were in fact subpoenaed by the Commission from the Department of Justice and they were received on the 23 July. The Calata Group attorneys received a copy on the 24 July, so this was

some 18 days before the Minister testified and in an e-mail from Head of Legal Research and Investigations, there was an indication that the documents would be uploaded and distributed to all the parties.

Now as far as we know, the documents were not uploaded to the website and my team did a check yesterday, that they are still not on the website it seems, and Ms Zikalala confirms that she was not afforded the documents at that time. So that we believe, placed the Minister at a disadvantage because he could have dealt with these in his evidence-in-chief and it may very well have negated the need for
10 cross-examination had his team been provided with those documents.

So Commissioners, that explains why the Minister did not deal with the documents at that time, so we wish to place that on record. Minister, now that we have some of the housekeeping matters out of the way, we can proceed. You will see from our application that we have provided you with the issues we intend to canvass with you as well as most of our questions, so that you are not going to be taken by surprise this morning.

Let us start and I am assuming you have the application
20 before you on page 2, and I am going to refer you to a title called or a heading called the *Rodrigues* case from paragraph 12 onwards. Now in your evidence-in-chief you referred to the *Rodrigues* case as a watershed moment and by now of course you would be familiar with the facts of that case, so we will not need to go into what that case was about, suffice to say that it was brought by Mr Joao Rodrigues

for a permanent stay of prosecution and the issue in question was the long delay in bringing the prosecution against him.

If we look at paragraph 13, we refer to the supplementary affidavit from the NPA. Adv Torie Pretorius SC filed that affidavit on behalf of the NDPP. Commissioner, the supplementary affidavit which is dated 4 February 2019, is at page 1 of the bundle and you indicated in that affidavit that essentially the NPA does not deny that the Executive Branch took political steps to manage the conduct of criminal investigations and prosecutions in respect of the TRC cases
10 and we have quoted one paragraph which is at page 7 of the bundle.

Now to be fair to you, what Adv Pretorius was referring to, occurred long before you assumed office, it was primarily what took place between 2003 and 2010. So you only became Minister towards the end of the filing of pleadings in that matter, but you did assume office before it was heard in court. And we have referred you to certain passages of the judgment, for example the judgement of the full court, we have quoted paragraph 21 at our paragraph 16, where the full court mentioned that between 2003 and 2017, these crimes were stopped and they pointed to an executive decision.

20 The court also expressed its dismay at the interference and dismissed the NPA's attempt to portray itself as a victim in those circumstances. You are aware of course that it went on to the Supreme Court of Appeal? The SCA dismissed the appeal and we have quoted the passage, paragraph 26 of that judgment, and we have underlined the section that follows with "During this 14-year

period 2003 to 2017, that the executive adopted a policy position” and we underlined and bolded this section, “Conceded by the state parties that the TRC cases were not being prosecuted and then the SCA says it is perplexed and this is inexplicable”.

So we note that the state parties including the Minister of Justice, effectively conceded political interventions had contributed to the delays. So our question to you Minister is, did that remain the position of the Ministry of Justice until you stepped down as Minister in June 2024 when you became the Minister of International
10 Relations?

MINISTER LAMOLA: Thank you, Justice. I think for me to be able to answer the question, I will need to give context as I did earlier on in my earlier submission. As the counsel correctly points out, this was before my tenure and it is correct that I became aware of this judgment just as I came into office, it coincided with my resumption of office because I think I started in June, and the judgment was also delivered around the same period.

So my first task immediately after I was briefed by the NPA as I have said, Adv Macadam and the Head of the National
20 Prosecuting Authority, was to support the NPA to be able to prosecute the cases and all that, and that is why I mentioned that the *Rodrigues* judgment, this matter should be looked in the context of before and after the *Rodrigues* judgment, particularly the Supreme Court of Appeal judgement.

So at this stage our focus was to support the work of the

NPA to prosecute the cases that were in front of them, building systems and institutions. So it was not my position that was taken by the Minister of Justice before me, I was at this stage not even aware that there was such a position, so hence my focus was on the support for the prosecution. Thank you, Justice.

ADV VARNEY: Thanks for that clarification Minister, but you accept that at least at a technical level given that your predecessor have filed an answering affidavit and did in fact make reference to the political interference but not contest it, I must apologise, we actually
10 have not put up that affidavit in the bundle but it can be retrieved if necessary. Now at a technical level that was the position of the Ministry which did not change under your tenureship.

ADV MOROKA: Chair, may I object? Can I object because on the basis that he mentions the Ministry? If Adv Varney wants to quote what the Ministry said in that judgment, I think it is only fair to counterpose what was alleged and the response thereof, and then ask the witness that, and not make assumptions and conclusions from the Minister did or did not say. He makes a point that I have not put those documents forward but what, this is what the Minister said.

20 We contest that, so it would be helpful if he would put those documents before this Commission so that we have a clear indication of what happened and what did not happen.

ADV ZIKALALA: Chair, if I might also add to the objection in relation to the question that has been put forward? As Adv Varney has already indicated, those documents were not put to the witness in the

cross-examination bundle that was, he was asked to address and the question that he is asking now, is not a question that was detailed for which we were asked to consult with the witness.

CHAIRPERSON: Yes.

ADV ZIKALALA: So this is a completely new matter that has been tacked on to the issues that were outlined in the application of cross-examination.

CHAIRPERSON: Yes, Mr Varney?

ADV VARNEY: Well with respect Chairperson, it is not a completely
10 new matter, we actually set it out in detail in paragraphs 12 to 20, so it is not a new matter. I have conceded that we did not put up the Minister's affidavit that was his predecessor of course, but that affidavit is before the Commission. My team is busy retrieving it as we speak, but the fact is that the Minister of Justice did make that affidavit and did not contest the position of the NPA.

So the simple question is whether he accepts at a technical level the Ministry as in the Minister himself adopted that position.

ADV ZIKALALA: Chair ...[intervenes]

COMMISSIONER GABRIEL: Mr Varney, how do you expect the
20 Minister to respond without looking at that supplementary affidavit?

ADV VARNEY: Commissioner yes, I accept that we should have, we should have put it up and we will put it up but perhaps to expedite matters, I will move on to the next topic.

CHAIRPERSON: Yes, thank you, Mr Varney.

ADV VARNEY: Thank you, Commissioners, Chairperson. All right,

let us turn to the next heading titled "Developments" where our Minister of Justice and this is from paragraph 28 of the application and here we rely on documents that unfortunately were not forwarded to the Minister's team before his evidence-in-chief on the 11 August, but we have put them up in the bundle and the first document we are going to refer to is the NPA's Memorandum from Adv Torie, the then NDPP to the Minister and it is titled, "Response to complaint by Foundation of Human Rights" dated 4 June 2019.

We attached it marked B, it is at page 45 of the bundle.

10 Minister, I just want to make sure that you do have a copy of that memo before you?

MINISTER LAMOLA: Yes, I do.

ADV VARNEY: Thank you. So to save time I am not going to read this whole memo into the record, that will take too long. I have assumed that you got an opportunity to look at it and as it suggests, this is a response to a letter that had been written about the Foundation for Human Rights. Now that letter is not identified, what is the date of the letter is not identified and we assume it is the letter from the former TRC Commissioners.

20 It is dated the 5 February 2019 and in that is a letter addressed to the President, I believe copied to the Minister calling on the President to appoint a Commission of Inquiry and to apologies to the victims who were denied justice. We have attached that letter, it is at annex C at page 51. But let us... We are not going to go to that letter unless you wish to refresh your memory? That is a summary of

what is in the letter.

Then turning to the next paragraph, so NDPP Batohi noted in paragraph 2.1 of the memo and perhaps I will just quote this paragraph:

“It is unfortunately a fact that the PCLU was prevented from fulfilling its mandate in dealing with the TRC cases because of the following series of events.”

And these are then reflected in bullet form at the bottom of the first page and then at the top of the second page at 46. And
10 these include the NPA’s perspective, refusals by SAPS and the DSO to investigate the imposition of former Minister of Justice of a moratorium on the investigation of TRC cases pending the special guidelines, the creation of a special Amnesty Task Team, the creation of guidelines ultimately, the fact that the then Minister of Justice complained that the NDPP was considering instituting prosecutions and the fact that investigations only commenced in 2010.

So you see that NDPP Batohi set out at least at high level, bullet form, the constraints impacting the TRC cases Do you accept that at least by this stage and I see you have signed the letter on
20 page 48 on the 11 July, and you can see Minister, by that time you had been given a high level overview of what had transpired with the TRC cases?

MINISTER LAMOLA: I am struggling to get the question, I could not hear clearly.

ADV VARNEY: Correct, yes. Sorry, we have taken a high level look

...[intervenes]

MINISTER LAMOLA: Just the question, I heard the rest of the narratives but I could not understand the question.

ADV VARNEY: Yes, so the question is, do you accept that by the 11 July when you signed this letter and made a comment, that you had been informed at high level of the constraints that had been holding back the TRC cases?

MINISTER LAMOLA: Yes I do, and you will remember in my evidence-in-chief that I said one of the first tasks that the NPA did
10 was to brief me by Adv Macadam and the NDPP about the challenges the NPA, TRC Unit is facing and the suggestion that they have put forward for us to take the matters further.

ADV VARNEY: Yes, thank you for that. And then if we can turn to the recommendations, essentially NDPP Torie is saying that:

“We need to wait for judgment in the matter because the court may make its own recommendation.”

And she then suggests that you communicate with the office of the President and she attaches a draft letter. If we can turn to the comments on page 48, there you will see that your Deputy Minister,
20 Mr John Jeffery makes the following comment:

“I suggest the FHR [that is the Foundation of Human Rights], the families of victims be engaged from the way forward.”

And then you comment as well on the 11 July 2019:

“I agree with the suggestion of the Deputy Minister.”

Now as far as we know, those consultations with the Foundation and the families did not take place. Can I ask you why they were not consulted?

MINISTER LAMOLA: Firstly I also stated in the, in my evidence-in-chief that there was a process of engagement with the families which I later delegated to the Deputy Minister, but also in my engagement of the NPA, one of the agreements was that the process must be victim centric, meaning that the NPA must from time to time engage directly with the families of the victims in how they are taking these matters
10 forward.

And I think, I am not sure if this is the memo that has that aspect on dealing with the, on engaging directly with the victims of the families, but if this is not the one I think the subsequent memos that will follow from the NPA, does have that aspects where the NPA was now directly engaging with the victims of the families on a number of issues, not only just the evidence that the families had but also on the strategy and how the matters can be taken forward. So I think one of the memos may have that.

If it is allowed, my team can help me just to check that
20 paragraph in one of... I know I have read it, is there. But with regards to myself, I did testify here that there was a time where we had a meeting with the families of the victims. The person I remember from the Foundation for Human Rights was Ms Yasmin Sooka and where we met with the ANC, the late Deputy Secretary General of the ANC and also I think it was Ms Fébé Potgieter and

also the Deputy Minister, was present in that meeting.

All the issues related to the TRC were raised by the Foundation for Human Rights and the two issues I remember vividly that were of huge concern to them, was firstly the lack of resources, dedicated resources which we responded that we are now working on it, we are in engagement with National Treasury and the Department of Public Service and Administration to deal with that, and hopefully soon there will be a solution in that regard.

10 We also stated that we were in the, we had just come from a period of state capture where the budget of the Department of Justice and that one of the NPA was on the decline, but we have to reprioritise for everything, including for the state capture cases which included the Commission of Inquiry into the state capture which needed a lot of resources at the time.

And we stated to the families that we will look into the Department to reprioritise and indeed there was reprioritisation of resources from the National Treasury, there was also that process to get further support staff for the NPA to prosecute. And then the Deputy Minister, I then delegated him and requested him to take the
20 discussions further with the families, but I also do remember that from time to time I will engage even at an informal level, with the families of the victims, and this happened at the Cradock Four where I also had some kind of engagements with them and also when there was some ceremony for Timol in the Central Johannesburg Police Station.

So there has been some engagements with the families in

this regard, but also at the NPA level they, I was also aware that they are engaging with the victims of the families. So I am not sure when counsel says the engagements did not happen, whether the expectations was that it was going to be some kind of a structured process of engagements between myself and the families, but to the best of my knowledge there was engagements with the families and I am also aware that this also happened with the NPA. Maybe I will stop there.

ADV VARNEY: Thank you Minister, for the clarification. Yes, I
10 suppose from our perspective we were talking about engagements around this time which is mid 2019 and correct me if I am wrong, but I think at least some of the engagements you are talking about, occurred in subsequent years?

MINISTER LAMOLA: Ja, I am no longer sure about the dates but I do remember that there was clear intentions from our side and also a process to engage with the families which we also, I also delegated to the Deputy Minister. But I am no longer, ja of the dates I am not sure whether it was subsequent. You may be correct because if I remember the first engagement was, which I had with the families
20 when we had the discussion with the ANC, was during the COVID period and I think COVID was around 2020.

So that may be correct, that it could be subsequent, maybe some six months or a year later, but there was a structured engagement directly with the NPA on the process and that is where I became briefed on the issue of the contest of the families with

regards to the decentralisation of the TRC Unit, that the families were not agreeable that this process must be decentralised. And in my engagements with the NPA, I agreed that it is the best way forward. So there was a process that was already underway with regards to the engagement. Thank you.

ADV VARNEY: Minister, let me run to the next document and we deal with that in the application at the bottom of page 5 at paragraph 22. You will recall that in the first memo ...[intervenes]

MINISTER LAMOLA: Which page?

10 ADV VARNEY: So I am looking at our application to cross, on page 5, paragraph 22. It is the bottom of page 5.

MINISTER LAMOLA: Ja no, I see it now.

ADV VARNEY: Okay, good. So you recall in the memo we just discussed, it was pointed out by NDP Torie that judgment was still being awaited and as it turns out, a judgment in the full court was handed down on the 3 June which is something that DG Madonsela pointed out as well and it looks like that then prompted a second letter from the NDPP which was sent off later the same day, the 4 June.

20 Commissioners, I am going to submit this letter is also in the bundle at page 61 and this letter is titled, "Findings made against the National Prosecuting Authority and other agencies in the *State v Joao Rodrigues*". So perhaps we can turn to that letter. It is at page 61, it is titled annex E and I am going to read into the record a few of the passages and it starts at 2.3 at the bottom of paginated page 61:

“Evidence was presented under oath by members of the NPA to the effect that no investigations had been conducted into TRC cases from 2003 until the end of 2010.”

Perhaps I will then jump to 2.4 on the next page:

10 “In delivering judgment the Court found that there had in fact been external political interference from persons outside the NPA which the Court refrain from identifying. The Court also found that there was a dereliction of duty on its part by not bringing this interference into the open.”

And there the Court is referring to the NPA and you are familiar with the recommendations that the Court made. Let us then turn to paragraph 3 under the heading, “Way forward”.

20 “3.1 The judgment clearly makes extremely serious findings against the NPA and the Executive. Material placed before the Court by the NPA implicated *inter alia*, the former Minister of Justice, National Commissioner and senior officials, a number of departments or agencies.”

Perhaps I will just pause here. So I want to put it to you Minister, that this letter also sets out the finding of the Court and that in its view, political interference played a role in holding the TRC cases back. So I want to put it to you that in addition to the previous memo, this memo also placed on your radar why the TRC cases had

not been taken forward.

CHAIRPERSON: So what is the question, Mr Varney?

ADV VARNEY: Whether he accepts that this memo also placed on record the reasons behind the slow delivery in the TRC cases.

CHAIRPERSON: Mr Minister?

MINISTER LAMOLA: I thought that is obvious. I mean it is, it does place on record but I think what I am reading when I look at the dates of this memo, it is also similar to the dates of the other one which ...[intervenes]

10 ADV VARNEY: Yes, that is correct, that is correct.

MINISTER LAMOLA: Ja, so I think from my reading is that my memory may be wrong but this was on the 5 June, the other one was on the 11th or so of July. So it was indeed placing this and that actions needs to be taken and that is why the NDPP was looking into an appointment of a retired judge. Also on our side there were various options that were being looked into, so it was during a period where the Department and the NPA was engaging on how to take this matter forward.

20 ADV VARNEY: Yes, that is entirely correct. Minister, it appears that Adv Batohi signed the letter on the 4 June 2019, so the same day which the other letter was sent and it looks like Director-General Vusi Madonsela read and signed it on the 5 June and then the Deputy Minister on the 17 June and then you signed off on the 1 July. And it appears that this letter was prompted by the grant, by the issuing of judgment on the 3 June which we think explains why the two letters

came in quick succession. But let us then ...[intervenes]

MINISTER LAMOLA: Ja and I think this one might have come before we were aware that Mr Rodrigues wants to appeal the judgment. So the second one was prompted by now Mr Rodrigues who was appealing the judgment because when you look at the second one, it has that paragraph that states that we will have to await the appeal process. But on this one the NDPP was suggesting the appointment of a judge to approach the Chief Justice.

ADV VARNEY: Yes, that is correct because judgment had just been
10 handed down and it was not known at that time whether Mr Rodrigues was going to appeal or not. And you are correct that Adv Batohi in paragraph 3.5 says that she has decided that the proper way to deal with his murder is to approach the Chief Justice, to appoint a retired judge to investigate the allegations and advise her accordingly.

If I can just take you back to the preceding paragraph and I will just read this in the record if we are on the same page at paragraph 3.4 at the bottom of page 62. She wrote:

20 "I could invoke internal NPA processes in order to investigate whether in fact there was wrongdoing on the part of any NPA officials. In my view however, this would not address the high public interest in the matter and the need for utmost objectivity and transparency. In any event, I do not have the mandate to investigate wrongdoing on the part of the then Executive and other

departments.”

Did you agree with the further conclusion that she would not have the power to investigate outside of the NPA?

MINISTER LAMOLA: On hindsight no, I will not agree with that because as you will see from the NPA's, from the memo itself, the first paragraph where it refers to section 41(1) of the National Prosecuting Authority Act which makes it a criminal offence for anyone to obstruct members of the NPA in the execution of their duties, this could be anyone.

10 It could also be a criminal offence for the Executive to interfere, so anyone whom the NPA believes or the police believe has interfered with the work of the NPA, is clearly prohibited by the NPA Act, but also section 41(1) makes it a criminal offence. So even the President, so there is no one that the NPA could not investigate and prosecute if they believe has violated this section.

ADV VARNEY: Yes, that is absolutely correct but you will notice from paragraph 3.5 that she is anticipating an inquiry that would precede any criminal investigation. If you look at that last sentence of hers, if you know, if she had gone ahead with the appointment of a
20 retired judge, then she would have waited for the findings and she says:

“If in fact any criminality was detected on the basis of the judge's report, the matter could be referred to the police for investigation.”

So here she is not talking about a criminal investigation, she

is looking to a point to have an inquiry to look into the matter and to see whether there is any warrant for criminal investigation and prosecution against anyone. But here we are talking about an inquiry and she says that her powers are limited in relation to an inquiry, if you can only look at what happened within the NPA and on that score I think she is correct.

MINISTER LAMOLA: And that is why you will notice that we had no qualms with the NDPP taking the approach that she was taking of appointing, approaching the CJ and so forth. The issue was then the
10 empowering statute but if you also look into the matters at play, all along our understanding was that this is not just an internal NPA inquiry, it is a matter that affects various organs of the state.

And the section I have pointed into which the [indistinct], in all the memos that came to me, it was preceded by this section, in most of them, so all along our understanding from the onset on this was that the NPA is empowered to deal with this matter within its Act and we did however, look at various options, including the issue of the Commission of Inquiry of appointing.

When the option of the CJ did not work, we ourselves also
20 looked at the option of appointing a judge from our side in terms of the Constitution that empowers me to do so. And in this regard we engaged former Deputy President Justice Mojapelo who at the end advised and was of the view that it will not be the best way forward in case this matter ends up in the courts and so forth, and that is how that was also abandoned.

And we looked at the other options and that is why I ended up requesting a legal opinion from our state law advisors which took us back to the section 41(1) of the NPA Act.

ADV VARNEY: Thanks for that clarification, Minister. Then if I can just draw your attention to what the Deputy Minister, Mr J Jeffery wrote at the top of page 64? He writes:

“I am concerned that even a retired judge will have to be paid.”

And he then goes on to also recommend engagement with
10 the families and we have dealt with that. If I can just ask you, did you know what he meant by saying that even a retired judge will have to be paid? What was the issue in that regard?

MINISTER LAMOLA: Ja, I ...[intervenes]

ADV ZIKALALA: Chair, I am not certain where this question goes to.

COMMISSIONER KGOMO: Sorry, switch on both microphones, counsel.

ADV ZIKALALA: Thank you, Commissioner. I am not sure where this question goes to, but it seems to be inviting the witness to speculate on a note that was written by the Deputy Minister when the
20 Deputy Minister himself was here to answer that question. That is ...[intervenes]

CHAIRPERSON: Yes, well the Minister says he agrees with the views of the Deputy Minister, so the question is legitimate.

ADV ZIKALALA: Thank you, Chair.

CHAIRPERSON: Yes Mr Varney, you may rephrase your question.

ADV VARNEY: Yes, in fact Commissioner I was going to point that out and I should have, but unfortunately when the Deputy, the former Deputy Minister testified before this Commission, to the best of my recollection these documents were not then before the Commission which certainly is unfortunate. And as the Chair points out, the Minister writes, "I agree with the views of the Deputy Minister", so one can assume that the Minister did consider what the Deputy Minister wrote and agree with him.

So Minister, I do not want you know, read words into what
10 the Deputy Minister was saying, I am sure you have a better sense, but it does give the impression that there was a concern that money would have to be found to pay a retired judge and that was potentially a problem. Is that right?

MINISTER LAMOLA: Ja, within that realm of speculation, you are correct that as I have said in my, when I started that this is a period where we had financial challenges in the Department and not only in the Department, the whole of Government. There were budget cuts across Government, so it was not just impacting the Department of Justice only, but the whole of Government, there were budget cuts.
20 We are from the period of state capture, the budget of the Department is declining.

The NPA itself, we were discussing how to support them in terms of the budget with National Treasury and not just for the TRC cases, but for the overall operations of the NPA. One of the most glaring examples which I provided last time I was here, was that the

NPA for almost five years or so, could not appoint aspirant prosecutors because of the level of financial decline and we were now building, assisting them to do so in a long period of time.

That is what we were working on. The second one was that they needed resources to, for their own operational expenses to increase the budget. The third one was the cases that were now coming for justice on the issue of the Zondo Commission of Inquiry which at the time was beginning to increase at an exponential rate.

So it is happening within that context, so and retired judges
10 as and when they are requested to work on Commission of Inquiries, they do it but there is a bit of a top-up that the Department is expected to provide. So it will always be a concern when you have to appoint a retired judge, you have to look whether you have the budget or not, so I think that is what the, what we are dealing with here but I hope this does not affect the rules of the Commission.

It is in the realm of speculation, but within my mind and my knowledge, I can confirm that indeed we had financial challenges. As and when we had to appoint, we had to look at whether the budget will support that.

20 ADV VARNEY: Thank you, Minister. Then let us move on. We did make reference on page 7, paragraph 24 to a Justice Portfolio Committee report what also considers the *Rodrigues* judgment and the families have requested a Commission of Inquiry. And then we make reference to a statement that you made in an address to Parliament and we put up the significance of this statement because

it is as far as we are aware, it is the first time that a Cabinet Minister or Government had made any public comment on the interference and this was on the budget vote debate on the Department of Justice on 16 July 2019. And you state as follows, this is at the top of page 8:

10 “Furthermore, we have noted the recent judgment on the *Rodrigues* matters related to the TRC cases. We assure victims with similar cases that interference with prosecutorial independence of the NPA will not be tolerated. We continue towards a durable and sustainable solution to all TRC cases including consideration of interest of victims.”

So I can tell you Minister, that that statement of yours was very welcomed indeed by the families and the victim community. It was the kind of statement that they had been waiting for. Can I ask, was this statement made on the, at the request of NDPP Batohi? You will recall that in her first letter she suggested that you make a public statement. Was this in response to that suggestion?

20 ADV ZIKALALA: Chair, could I just ask that the witness is shown exactly where?

COMMISSIONER KGOMO: Ms Zikalala, each time ...[intervenes]

ADV ZIKALALA: Oh.

COMMISSIONER KGOMO: Both microphones, please.

ADV ZIKALALA: Yes, apologies. Can I ask that the witness is shown the specific reference that Mr Varney is referring to from

NDPP Batohi, because that is the premise on which he is being asked to comment on his speech.

CHAIRPERSON: Mr Varney?

ADV VARNEY: Yes, I am just... Yes, I am just looking for that suggestion from the NDPP. Chair, I am just going to ask my team to find it so that we can move on. If they do, then we will return to this question. Chairperson, we are about to move to the next document, that is the letter from Minister Lamola to the President but I see it is almost 11:00. I am still going to be, I cannot give an accurate
10 estimate but I would imagine another 30 to 40 minutes ...[intervenes]

CHAIRPERSON: Yes.

ADV VARNEY: With the Minister. Would this be an appropriate time for the tea adjournment?

CHAIRPERSON: Yes, we will take a tea adjournment until 11:15. We are adjourned.

ADV VARNEY: As the Commission pleases.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Varney.

20 ADV VARNEY: Thank you, Chairperson. Chairperson, we promised to find that reference, it is in the document that is titled annex E, it is the memo to Minister Lamola from Adv Batohi and the passage is on page 62 at paragraph 2.5. It reads:

“Finally the Court indicated there must be a public assurance from both the Executive and the NPA that

the kind of political interference that occurred in these cases will never occur again.”

Minister, would I be right in saying that your statement to Parliament that we read before tea, is this public assurance?

ADV ZIKALALA: Chair, it appears the Minister is still seeking the correct reference.

MINISTER LAMOLA: Ja, I have seen it. I am just looking at the date and I just wanted to go back to the comment in the questions, the possible questions which is page 8. Ja, here Justice, I think I will not
10 remember whether it was on the basis of this request from the NDPP, but it was clear for me that we, I was already aware of the *Rodrigues* judgment that I am supposed to or someone in the Executive or the President is supposed to make some kind of public assurance to the families.

So it is possible that it came from these requests of the NDPP or it was part of what I already had to decide on, because as part of the budget vote, you receive lots of information that is compressed into the budget vote. But what I can say is that I had to make this assurance because these were ongoing or live matters, the
20 TRC cases.

And also, it was also forward looking to give assurances to the families that we will not interfere with the process that was already underway and in dealing with their matters, because as I have said, the *Rodrigues* judgment dealt firstly with the historical account and the historical part is where we said we are going to wait

for the Supreme Court of Appeal judgment.

But the part where it needed assurance for the families, we were not going to wait for the Supreme Court of Appeal judgment because the cases were ongoing, so the families needed to be assured.

ADV VARNEY: Thanks for that, Minister. Now Chairperson before I proceed, I just want to place on record before I forget, the evidence leaders have advised us that of these memos, annex E and E are in fact on the website. My team point out to me that they are
10 mislabelled, annex B is called Memo 7 June 2019 and annex E is called Memo from Lamola, 8 June 2019. So the dates are wrong and it is not a memo from Lamola, it is a memo from Batohi. So that perhaps explains why we and the Minister's team were unable to find them. We have not been able to see or find annex K on the website, we will be turning to that annex shortly.

All right, let us move on Minister, let us... I am now on paragraph 26 on page 8 and I believe you are also on page 8. We are now making reference to your letter to the President, it is titled "Response to complaint by Foundation for Human Rights". It is
20 signed and dated 23 July 2019 and you have just made reference to the appeal, but just to tie the loose end, you said in the middle paragraph:

"I agree with the view of the National Director that the judgment in the *State v Rodrigues*, state of prosecution case be awaited before responding to the request made

by the Foundation.”

And of course that request was for a judicial inquiry. Would I be correct in saying that you did have the appeal in mind when you referred to the judgment?

MINISTER LAMOLA: Yes, you are correct.

ADV VARNEY: Thank you, Minister. Now we do make reference to minutes of a Justice Portfolio Committee meeting that is at paragraph 27, the one in September 2019. I am not going to pose any questions on that and we also make reference to the NPA Annual
10 Report of 2019/2020. Now there is a reference that I would like your response to, it is the second paragraph that we have quoted and this annual report is attached at page 18. Now I will just read the highlighted section, it is that second paragraph under paragraph 28:

“It must be emphasised that the primary issue lies with the investigation of these matters which is a responsibility of the DPCI. Due to the nature of the cases, it is difficult to access all the relevant information needed to make informed decisions.”

And so my reading of that is that the NPA was placing on
20 record that there was a problem with the investigation of these cases and that the investigation rested not with them but with the DPCI. Now my recollection is that in your evidence-in-chief you did make reference to the fact that the NPA were complaining about the standard of investigations, so would I be correct in saying by this time you and I are aware of the poor state of investigations of the TRC

cases?

MINISTER LAMOLA: Ja, if I am correct with my memory, I do not think I complained about the standards of the investigations. I raised the issue that the NPA raised the fact that both in the NPA there was not enough, both in the NPA and the Hawks there was not enough investigating capacity and I even said because of the delay effect, if you have enough prosecutors, you must also have enough investigators and that is what the NPA requested us to support them for.

10 So we supported the process of the NPA to get more prosecutors and we also supported them to work with the Hawks to appoint more investigators which the Hawks did. It was not the quality, it was the number of the capacity. If I put it, hopefully my English is not a foolish Shangaan one, you my understand what I mean with the capacity, the number of warm bodies.

ADV VARNEY: Yes. No, no, we understand perfectly and yes, it was not you who made the complaint, it was the NPA. All right, let us turn to the next memorandum we want to refer to and that is the Batohi memorandum to you dated 2 December 2020, and that is at
20 page 81 of the bundle, it is marked annex K.

Now before we deal with it, I just want to point out to you that this memo if we turn to the signature page which is 94, you can see that it is signed by Adv Batohi and it is dated 2 December 2020. And then you will also note that it was not signed by the Acting Director-General Ms Pillay nor the Deputy Minister Mr Jeffery nor yourself as

Minister of Justice.

If one looks at the front page of the memo, at the top there is handwriting, it says, "Our copy" and then it says, "To Justice". I cannot quite make out the word next to Justice and then there is a date underneath. I cannot quite make out that date, it might be the 6 or 8 December 2020. Now that you have had a chance to look at this memo, do you have a recollection of receiving this memo?

MINISTER LAMOLA: Ja no, I do not. I have, it was placed before me by my representatives. That is the first time I think I see. I
10 obviously with some memos, I may not remember them with the time that has lapsed, but some of them as I was going through them, I can recall including the information and all, but this one I really do not know, I do not recall.

And I was also struggling to understand because at this stage we were awaiting the *Rodrigues* judgment, so of the Supreme Court of Appeal. I am also struggling, what would have been... Ja, so I do not recall.

ADV VARNEY: All right, well I still want to get your perspective on the memo, given that it was addressed to you at that time. In terms
20 of the purpose, we can take a look at paragraph 1 on paginated page 81:

"The purpose of this memorandum is to brief the Minister on all relevant issues relating to TRC cases arising from questions raised during a virtual meeting on 16 November 2020 dealing with responses to

parliamentary questions.”

So it seems that you and the NDPP had a virtual meeting on 16 November 2020 to deal with responses to parliamentary questions and that she compiled this memo to assist you in that regard. Is that, does that ring a bell with you?

MINISTER LAMOLA: No, it does not. We had a lot of meetings and preparations to respond to parliamentary questions, so I will really not remember this specific one. I do not.

ADV VARNEY: All right, but as you say you would typically
10 ...[intervenes]

ADV ZIKALALA: Chair, I just wanted to raise an objection on the record. The witness has already indicated that he has no recollection of this memo and he as it was already shown, he has not signed it. So I am not too sure whether it is fair to the witness to then put the issues that are raised in a memo to the witness as ...[intervenes]

CHAIRPERSON: Well that is not, Ms Zikalala, just wait for Mr Varney to put his questions first before you object.

ADV ZIKALALA: Yes Chair, I was raising it in relation to that first paragraph which the witness has already indicated.

20 CHAIRPERSON: Yes.

ADV ZIKALALA: But I will raise it in respect of any other issue
...[intervenes]

CHAIRPERSON: Ja.

ADV ZIKALALA: That might arise.

CHAIRPERSON: Thank you.

ADV VARNEY: Thank you, Chairperson. So Minister, given that you said that you would typically have meetings dealing with parliamentary questions, I suppose I want to put to you that it would not be unusual to have such a meeting nor would be it unusual for the NDPP given that the questions relate to the TRC cases to prepare a memorandum for you.

MINISTER LAMOLA: Ja no, it would not be unusual. She, from time to time I would answer questions in relation to the NPA, but usually when such memos come through, they as you have seen with the
10 rest of the others, there will be where I have signed, I would have commented to confirm that I have seen it and I have gone through the memo. So it will be unusual that I have not signed and I have not commented on the memo if it has indeed come through.

ADV VARNEY: Yes and I think that the Commission and the evidence leaders, you know we need to make an effort to try and locate whether there any other copies of this memo available which potentially includes any comments and signatures from yourself and others.

Sadly we do not have that today but nonetheless, given that
20 this memo was in fact heard and signed by the NDPP, at that time in response to what was probably a request on your part for a written memo to assist you with parliamentary questions, I do want to put certain questions to you arising from this memo but I will keep it short.

CHAIRPERSON: Yes. Mr Varney, what would the import of putting

questions arising from a memo that was not received by the witness?

ADV VARNEY: Well the witness does not say with any certainty that he does not receive it, he says that he cannot put ...[intervenes]

CHAIRPERSON: He says he, yes, he does not recall, so what is the import of putting questions around the memo for which evidence has not been placed before us?

ADV VARNEY: Well the memo which is before the Commission, is evidence that the NDPP at this time which is December 2020, prepared a document for the Minister. That much we know, but it is
10 unclear whether the Minister had sight of the document.

That much we accept Chairperson, but given that the, this is a very detailed document, it is not my intention to take the Minister through the whole document given that it is a very detailed document setting out the perspective of the NPA on what happened to the TRC cases in which the NPA says that the cases were blocked for a protracted period and that responsibility must be taken, we would like to hear the Minister's perspective on that.

CHAIRPERSON: On a document that he has no knowledge of, is that fair for the witness?

20 ADV VARNEY: Well it is, I do not believe it is unfair. We simply want to hear from the Minister whether given what the NPA says, whether he agrees with their conclusion that responsibility has to be taken for the protracted period in which the cases were wilfully blocked.

CHAIRPERSON: No Mr Varney, we will not allow that line of cross-

examination.

ADV VARNEY: As the Chair pleases. All right, let us move on then to the next heading and Minister, this deals with the action taken by the Cradock Four families and we draw your attention to the bottom of page 10 at paragraph 33. And here we point out that the families after waiting for many, many years for action in their case, launched an application in July 2021 to compel the police and the NPA to finalise the investigations and take a decision in this case.

10 Now a copy of the notice of motion is annexed as annex N, it is at pages 115 to 120 of the bundle and Minister, you were cited as the second respondent in this matter. Did you accept Minister, that this was a reasonable step for the Cradock Four family to take in the circumstances?

MINISTER LAMOLA: Ja ...[intervenes]

ADV ZIKALALA: Chair, can I? I apologise to intervene, I just wanted to flag that in the cross-examination bundle, all that was given to the Minister is the notice of motion. So the underlying papers and what in fact the application concerned, is not anything that has been put to the Minister.

20 CHAIRPERSON: Yes.

ADV ZIKALALA: So to answer whether it was reasonable, the Minister would only be given the facts or whatever, the relief that is being sought in the notice of motion.

CHAIRPERSON: Yes, let us wait for the questions. Ms Zikalala. Mr Varney.

ADV VARNEY: If I can just point out, if I can just point out Chairperson, that we you know, the papers are volumes running to several pages but we did provide a link, an electronic copy of the full papers in footnote 18. So the question Minister is, you know I am sure you are very familiar with the Cradock Four matter and how old it is, and the fact that by July 2021, a decision in relation to that case have not yet been taken. So my question is, was that not a reasonable step for the families to take to approach the court, to compel a decision?

10 MINISTER LAMOLA: If you could point me the page that you are referring to? I have seen on page 11 or page 10, paragraph 23, but ...[intervenes]

ADV VARNEY: Yes, so I ...[intervenes]

MINISTER LAMOLA: But where you are referring to the fact that you have given me or my legal representative some kind of summary, I do not see the page. Which page is that?

ADV VARNEY: Well we simply, we pointed out relief sought and the relief sought is to finalise the investigations and an order compelling the NPA to take a decision. In relation to the underlying papers which
20 run to hundreds of pages, we provided a link to those papers at footnote 18.

MINISTER LAMOLA: Oh, okay.

ADV VARNEY: My question is focused on the relief itself.

MINISTER LAMOLA: Ja.

ADV VARNEY: And whether the relief sought by the families in the

circumstances was quite reasonable. Do you agree?

MINISTER LAMOLA: No, I would not know because as I had no sight of the whole document, but also from what I see here and with our, with my opposition of the matter, it does look it was just run-of-the-mill by the state attorney which they usually do when a matter comes forward to put a notice to oppose.

So I do not think we are really... Because from what I have seen, it does not look I have even disposed to an opposing affidavit, to oppose this in a substantial manner because I was not really, there
10 was not really any substantial relief against me. So I will really struggle to answer the question, whether it was reasonable or not. I think it will be left to the Court to decide it.

ADV VARNEY: Yes, I hear where you are coming from and I accept that the relief was directed against the NPA and SAPS. You were cited though as an interested party. I can tell you that the NPA did put up a very substantial answering affidavit opposing the relief, but I will not belabour the issue. Let us turn to the next topic and that is titled, "Further request for a Commission of Inquiry". We have set out the issues on page 11, from page 35.

20 We have already had reference to an earlier letter that the TRC Commissioners addressed to the President, that was in 2019. And then in 2021 they again wrote to President Ramaphosa, asking for a decision on a Commission of Inquiry dated 25 March 2021. Commissioners, that is at page 121 to 125 of the bundle.

Now in this letter they set out why the subject matter of the

proposed Commission was a matter of great public concern and attached drafts and Terms of Reference, and pointed out that the interference cut across multiple Government departments. And I just want to read the one passage which we have quoted here into the record and then I am going to ask you a question:

10 “It is accordingly not sufficient for there to be separate internal or departmental inquiries by the different institutions. Such inquiries will not be able to deliver the full history of the interference that had unfolded over time and over multiple entities. Moreover, such inquiries will not be able to compel the production of testimony and evidence from other departments. In any event, there appears to be a considerable resistance to carrying out meaningful investigations at this level and it goes without saying that the departmental officials would not be investigating themselves or their colleagues.”

20 So my question Minister is, did this not make out in your view a compelling case for a Commission of Inquiry that would have powers to compel a production of testimony and documentary evidence and also given the point that the former Commissioners make, the TRC Commissioners that this was not just the work of one department but it cut across multiple Government departments? Can I ask why you were not persuaded by such arguments to recommend a Commission of Inquiry?

MINISTER LAMOLA: Ja we as I said when we started, we were dealing with the compendium of options that we had to look into and the first process and I said we looked into, for me the matter now was it has the post *Rodrigues* judgment, the Supreme Court of Appeal, and before, and the before was that the NPA and the Hawks were struggling in dealing because of resources to prosecute the perpetrators of the apartheid crimes to bring them to justice.

So in my first phase this is the first and primary responsibility, as a Minister of Justice I need to support the NPA to
10 prosecute the apartheid crimes and that is what I focused on. I had to look for resources which were not there, engaged with the National Treasury, engaged with DPISA that this is what the NPA needs, they need human resource, they need money and they need to prosecute these crimes.

And I am not only responsible for TRC matters, there is a state capture, a matter which there was already a Commission of Inquiry which was also loads of money at the time and I think it is the most expensive Commission of Inquiry in this democracy. At the time already we are looking, I cannot remember exactly how much, but it
20 was now clear that this Commission will end up at a billion or something. We do not have the money, we do not have the resource.

The first primary complaint of the victims of the families of apartheid, the ANC, all the liberation movements, their first complaint in it is that there is no prosecution happening. What am I supposed to do? As the Minister of Justice I must support that there must be

prosecution that happens and I can do that by providing the financial support, the human resource support which is what I did.

And this is before the *Rodrigues* judgment, Supreme Court of Appeal decision, but in the midst of this the families and everyone, they are saying no, we want a Commission of Inquiry. If you are in my shoes you have to make your choices at that time, do I abandon this course of supporting the NPA and the Hawks to prosecute the perpetrators of apartheid crime and shift the resources to a Commission of Inquiry that is now going to deal with the post-
10 democratic obstruction and prohibition alleged of the prosecution?

Any reasonable person in my position, the focus would be the prosecution of the apartheid criminals and that is what I focused on and that is what I did. So and secondly as I have shown in all the memos from the NPA, the primary introduction is section 41(1) of the NPA Act. We look at all the options, the first option, the NDPP wants to appoint a judge retired through the CJ and I think there could not be a mechanism to do that if I remember well.

The second one appoint a retired judge by the Minister in terms of the provisions in the Constitution and the retired judge says
20 no, this will not be appropriate in case this matter end up in the courts. I then look for a legal opinion from the state law advisors and the state law advisors take me back to section 41(1) of the NPA Act. And seated here, I cannot see why if any matter comes in terms of section 41(1) of the NPA Act, all the issues of public interest cannot be ventilated there ...[intervenes]

COMMISSIONER KGOMO: So you made a ...[intervenes]

MINISTER LAMOLA: Because it is complete, it is open.

COMMISSIONER KGOMO: In short Minister, you made a choice and you stand by that choice?

MINISTER LAMOLA: Yes, I made a choice that I need to focus on the support for the prosecution of these matters and also that this is a matter for the NPA to handle in terms of section 41(1).

CHAIRPERSON: Mr Varney.

ADV VARNEY: Thank you, Chairperson. Minister, I certainly hear
10 what you say, but do you not agree that when there has been a controversial matter such as this one where several hundred serious cases, murders and kidnappings are not taken forward, that you know it is one thing to say, well you know, if the NPA has the, has you know, hard evidence, then they must simply prosecute under the relevant provisions of the NPA Act, because often times there may be information or evidence that does not necessarily rise to the criminal justice threshold of the under reasonable doubt.

But given the monumental acts of failure of justice that governments typically seek to hold an inquiry to understand what
20 happened and why, it would not necessarily be uncovered through a criminal prosecution. Do you agree?

MINISTER LAMOLA: No, I do not. I do not see why it could not be uncovered through a prosecution. People must investigate, they must find out, statements must be taken and this goes to a court which is public. The inquest themselves although they were not

dealing with the interventions or any form of prohibition, they were also public, handled by a judge, the information is ventilated in the public domain.

I have just seen this morning the inquiry onto Steve Biko. It is public, it is open, so I think it is just a different, it is a difference of opinion on approach and this could be the question that the Commission will have to decide on, whether the difference of opinion on approach by the families of the victims and the difference of opinion of approach by ourselves means that therefore this matter cannot be ventilated in the public domain and be handled in a lawful manner.

So it was just a difference of opinion on approach on the matter in my view and it is not only on these.

ADV VARNEY: That is ...[intervenes]

MINISTER LAMOLA: And it is not only on these Mr Varney, it was also on the decentralisation of the prosecution. These were the two contentious issues between the NPA, ourselves and the families and the issue related to the Commission of Inquiry and that is why we then divided to say there was a pre-*Rodrigues* judgement, Supreme Court of Appeal and the post.

ADV VARNEY: Let us move on. We make reference to the response of the Presidency in a letter to the families' attorneys dated 6 May 2021. You will see Minister, it is at paragraph 37 at the bottom of page 11 and the letter itself is in the bundle at page 126. And in that letter the Presidency acknowledges receipt of the letter, the

former TRC Commissioners advising that the matter has been referred to the Department of Justice for further attention and reply.

It is a matter of record that the Department of Justice did not reply to the former Commissioners or the families. Now in your evidence-in-chief you have pointed out correctly that under the law it is only the President who can appoint a Commission of Inquiry, that is a power you do not enjoy and you have also pointed out repeatedly that it is the NPA that has the power to prosecute violations of the NPA Act.

10 And we do not dispute that clear interpretation of the law, but it does seem apparent from this letter from the Presidency that they do rely on the advice of the Minister of Justice and the Department of Justice and that they require such advice or at least the President requires such advice before he decides to act. Would you agree?

MINISTER LAMOLA: Yes, that is correct, that is also in my evidence-in-chief. It is in the affidavit that indeed before the President appoints a Commission of Inquiry, there is some role for the Department of Justice, to some administrative advisory role but the decision is that of the President.

20 ADV VARNEY: And then a few months later in June 2021, Webber Wentzel Attorneys then address a letter of demand to the President, copied to yourself, placing the President on terms and that letter is at page 127 to 128 of the bundle. But moving on, you on the 23 June 2021, announce that the NPA will pursue an investigation into the alleged political interference and that the investigation will be

overseen by a retired judge. In that regard we referred to a new 24 Article of the same date that is at pages 129 to 134 of the bundle.

Now at that time no details of that proposed inquiry were released and as far as we are aware, no consultations were held with the former TRC Commissioners or the families. Can I ask why you did not hold those consultations in respect of a request for an inquiry?

MINISTER LAMOLA: Ja, I think there was at this stage already ongoing engagements with the families that were happening. If you remember, I pointed out that there was some discussions and I think
10 if my memory serves me well, this could have been the point where we now appointed the former Deputy Judge President of Gauteng, Judge Mojapelo who then raised the issue that it would not be appropriate after several consultations with him.

And ja, so I think at that time there were some ongoing engagements on the various options that we were looking into, which included the judge, the NPA approaching the Chief Justice for themselves to appoint, so it was an involved process where we were all looking at which one would be the most appropriate platform to take this matter forward and I think it was after these that then, I then
20 requested a legal opinion from the state law advisors which brought us back to the section 41(1) of the NPA Act.

ADV VARNEY: Thank you for the clarification. And then just moving on, later that year in November, the former TRC Commissioners and family members and various organisations including the Nelson Mandela Foundation and the 22 Legacy Foundation, they issue a

press statement and their main concern is that the proposed inquiry would be an internal inquiry.

But let us not jump ahead, if I can ask you to turn to the next page 13, let us deal with the Ntsebeza Inquiry and I will assume that you are there. So on the 14 January 2023, the NPA issue a statement, it is titled "NPA further enhances efforts to ensure effective handling and prosecution of the TRC cases" and that press statement is in the bundle at page 142, and in this statement the NPA announce an inquiry by senior counsel that would be in line with the
10 requirements of Rodrigues and that the counsel will conduct a thorough assessment and make recommendations if necessary to strengthen the NPA's handling of TRC cases.

Now I want to take you through the key findings of the Ntsebeza Report as we see them and these extracts Minister and Commissioners, are in the bundle at page 143 to 150. But let me just read the key findings that are under subparagraphs of paragraph 43. We put that into the record so that we can discuss further. The Ntsebeza Report concludes and of course he made many other findings as well, we see these ones as the relevant ones:

20 "43.1 The NPA and the PCLU were swayed from
 their constitutional and statutory duties in
 relation to the TRC cases.

 43.2 The Ntsebeza Inquiry could not investigate the
 political interference given the narrow ambit of
 its Terms of Reference and its lack of an

investigative arm.

43.3 A Commission of Inquiry is the only sensible way forward in order to get to the bottom of why the TRC cases were never investigated or prosecuted with a deal.

43.4 A Commission of Inquiry must be established to investigate the extent and rationale behind the political interference and should look into the roles, multiple state entities as well as implicated individuals.

10

43.5 It must be a public inquiry and be empowered to hold hearings and conduct a proper investigation including the exercise if powers of subpoena and seizure.”

20

So Minister, can you see that Ntsebeza SC in his report is saying that he was unable to investigate the alleged political interference because of his narrow Terms of Reference and he did not have an investigative arm and he was not able to investigate other entities and that in his view a Commission of Inquiry was the only sensible way to go forward on this matter? Would you concede that Ntsebeza SC was correct in those conclusions?

MINISTER LAMOLA: No, I will not because I mean the first aspect is that the Terms of Reference were, is the NPA and who supported the process? But it still does not say anything about section 41(1) of the NPA Act you know, and in my view still there was nothing that

prevented the NPA to deal with what is in section 41(1) of the Act.

The Act is very clear.

So I would not really concede that all this is correct, but it is correct in the context of the Terms of Reference by Adv Ntsebeza SC, but in terms of the NPA Act because the NPA still has the duty to deal with what is in section 41(1).

ADV VARNEY: Thanks, thanks Minister. I did not really want to return to that debate but since you have raised it again, I want to put it to you that it is not necessarily one or the other. So for example,
10 you made reference to the Zondo Commission. It was the backbreaking work of the Zondo Commission that ultimately led to the uncovering of evidence and leads that were then handed over to prosecutors so that they could commence investigations and begin prosecutions. That could very well have been the same process and outcome here.

MINISTER LAMOLA: Ja, but for you when you represent the victims' families, you look at it from the victims' perspective, but I look at it with the overall eye, dealing with the victims, with the TRC matters, dealing with the Zondo Commission, dealing with all the inquests,
20 dealing with all the issues that the NPA needs support from and these choices I have to make.

It is overall, it is not just narrow and TRC matters, I deal with it from a policy perspective with all that and you are correct, the Zondo Commission was already weighing heavily on the finances of the Department at the time, so it had to be weighed in in making the

decision.

But if you want to comment, if you want me to comment about the processes after the Commission of Inquiry, even with the Zondo Commission you will remember we had to make lots of amendments even to support, to enable the support for the NPA work with the Zondo Commission, because the recommendations of the Commissions, I believe even these ones, are recommendations. The NPA and the Hawks still needs to go and investigate if there is any criminality that is being recommended.

- 10 So already there is an Act of the NPA, section 41(1) which says if there is any interference by anyone, the Hawks is going to investigate, the NPA can prosecute. It is clear, direct, it is there is no confusion.

ADV VARNEY: Yes sir, let us move on perhaps just to wrap up that section on the Ntsebeza Report and its recommendations, would I be correct in saying that you and the Government more generally decided not to implement these specific recommendations of the Ntsebeza Report in relation to the Commission of Inquiry for the reasons you have put up?

- 20 MINISTER LAMOLA: Remember this is the, the Ntsebeza Inquiry is the NPA Committee that they appointed in terms of the NPA Act, and the NPA now comes to us with the recommendation. We still have to apply our mind to the Ntsebeza Report and I will not interpret it as an intention not to implement. We had to look at all the options in front of us and one of them, options, was what the state law advisors had

already advised us on, that this matter falls for the NPA in terms of section 41(1) of the NPA Act to act on, to work on.

So there are other matters that came through from that matter in terms of the ongoing investigations and so forth, which we still continued to support the implementation.

ADV VARNEY: All right, well we know that Ntsebeza SC handed over his report in June 2023, it was publicly released in February 2024 and then if I can turn your attention to the next page, page 14 of the application to cross, we make reference to the fact that you had
10 noted in Parliament that you had considered the recommendations of the Ntsebeza Report, but to be fair to you, you know your terms as Justice Minister came to an end in May 2024.

Now after you left, the President was again placed on terms in a letter dated 10 July 2024. That is at page 151 of the bundle. There is no need to go there. Again the letter was acknowledged in August 2024 and the President again says he is waiting for a report and advice from the Department of Justice. That is at page 155.

And then when nothing further is heard, the families known as the Calata Group, eventually in January 2025, they then applied to
20 court and part of the relief they seek is an order compelling the establishment of a Commission of Inquiry and an impartial settlement that is in fact established as we are all aware and that is what we are busy with today.

So my question is Minister, would you agree that the families in the circumstances that they acted with, they acted reasonably and

with considerable patience and restraint?

MINISTER LAMOLA: You know what, I think they were. I mean even in our engagements sir, formally and informally the families were acting with reasonableness and there would be times where we would be irritated with the comments of particularly Yasmin Sooka, but we still took it on the chin that it is part of our job and if I remember, some, in one of the meetings here the comments were really... But we understood that it is an emotional issue, it is an emotive issue and as Government we have to take it on our chin and
10 work on the facts and the law and that is what we focused on.

ADV VARNEY: Indeed. Let us move on to the last few matters and I will try to be quick, and these are matters that arise directly from your affidavit, so I am now looking on page 14 from paragraph 48 onwards and this deals with the reopening of various inquests such as that of Neil Aggett and Hoosen Haffeejee and we have it on record Minister, acknowledging the constructive role that you played in moving these cases forward and in ensuring that many other cases were opened for investigation.

But I do want to point out to you that in relation to the Aggett
20 and Haffeejee as well as the Haron inquest that were all reopened while you were Minister of Justice and all these cases the NPA had to be threatened with litigation if they did not take action and to save time, I am not going to take you through those letters, but they do speak for themselves. We have quoted a passage from one of them at the top of page 15.

Commissioners, these letters are at pages 156 to 167 and then once you assumed office, on the 29 July and the 15 August 2019, the families' lawyers threatened you with an urgent High Court application if you did not instruct the Judge Presidents in the Gauteng and KZN divisions to reopen the inquests and those letters are at pages 168 to 176.

So would you agree Minister, that notwithstanding much better work that was happening in those years, Government needed a nudge to get cracking on these cases?

- 10 MINISTER LAMOLA: No, I will not agree because I made a decision on the basis of the facts and the law. If the facts were not there and the law did not support, even if there was a gun on my head, we would not have proceeded with the inquests. So I will not agree that what we have done, it was on the basis of a gun being put on our heads. We did it because it was the right thing to do so. The facts that were put before me by the NPA for us to open this inquest, were convincing.

- 20 Secondly, they said we have also to be victim centric to work with the victims of the families and the victims of the families making submissions and making inputs, for me I did not see it as a nudge. I saw them as participating to see justice for themselves, for their families and for this country which is necessary given the history of where we come from. So it was out of that commitment to see justice happening that I supported and agreed with the submissions of the NPA on these matters. Even if there was no gun or no nudging or

anything from the families, I would still have done it.

ADV VARNEY: Yes and we do not doubt that Minister, but can you see it from the perspective of the families, so in the cases mentioned for example Aggett and Haron, there was a delay of Haron two years or more between the representations made about the families for the reopening and the ultimate decision and from their perspective, that delay given the circumstances and the fact that witnesses and suspects were dying, were too long in the circumstances?

MINISTER LAMOLA: Ja, I would not know, I was not there. I
10 believe my predecessor could answer that question. Maybe Minister Masutha, I think he is the one but myself as soon as these matters were put before me, I made a decision. You can see some of it, the memos from the NPA could have maybe taken a month on my desk as I was applying my mind, but within that month period, I made a decision and I think it is so with all of them.

You can check the dates when the memo arrived and the date on which I made a decision, but with regards to my predecessors, I would not know. I think they were here or they will come, they can answer for themselves.

20 ADV VARNEY: And then the last matter Minister, deals with the new approach which you have made reference to a few times, the decentralised approach and you have also pointed out that the families were in favour of a specialised unit under a special director, perhaps an investigating directorate to really kickstart the cases. Now also I do agree with you that this is a matter of policy and

approach and that the approach of the NPA, DPCI and your Ministry differed with that of the families.

So in fact I am not going to ask any questions on this issue, because the families were keen to see a specialised approach and a specialised unit and you agree with the NPA that the decentralised approach was the better way to go. So in the interest of time I will not discuss or debate that issue with you.

And so thanks again for taking time out of your schedule, I know that you have international priorities that are on your plate and
10 so we are grateful for you coming to the Commission today.
Chairperson, no further questions.

CHAIRPERSON: Thank you, Mr Varney. Mr Semenya?

ADV SEMENYA: There is no re-examination, Chair.

CHAIRPERSON: Thank you. Ms Zikalala or before you do your re-examination Ms Zikalala.

COMMISSIONER GABRIEL: Minister, thank you for your evidence. I just want your views on the investigations and the prosecution of TRC cases. Now we know that the final TRC report was delivered in 2003 that recommended prosecutions and by the time you became Minister
20 which was in 2019, 16 years had elapsed, so that is a decade and a half.

And from what has been put before us and from what you have said, it is clear that both the investigation and prosecution of TRC cases required dedicated action, but for those 16 years certainly before you became Minister, who should take accountability in your

view for the non-investigation and the non-prosecution of TRC cases? Let me put it simply, where should accountability lie?

MINISTER LAMOLA: Ja, firstly I think it should be, I should deal with my term and be accountable for my term, and I think my predecessors should deal with their terms and be accountable for their terms.

COMMISSIONER GABRIEL: But the NDPP Shamila Batohi, gave you the history of these matters and pointed to the fact that there were no investigations or poor quality investigations and the lack of
10 prosecutions. Now you were the Minister of Justice for five years. If that had happened during your tenure, who would you hold accountable for that?

MINISTER LAMOLA: That is why I looked for solutions, that if there was a problem, let us solve it and solving it was to put resources, both human and financial. So I believe my predecessors should account for their attempts. I am here to account for what I did and that is why I endeavour to assist the Commission with.

COMMISSIONER GABRIEL: And you have been very helpful. So when you say my predecessors should account for what they did, do
20 you extend that beyond just the Ministers of Justice?

MINISTER LAMOLA: Yes, whoever was responsible, whether it is the NPA, it is the Justice Department, it is issues of finance because this involve finance, DPSA and all that. They should be able to account.

COMMISSIONER GABRIEL: Okay, thank you very much.

CHAIRPERSON: Ms Zikalala?

RE-EXAMINATION BY ADV ZIKALALA: Thank you, Chair. Chair, I have one question which is really just a clarification for purposes of the record. Minister, if you could go to the cross-examination application at paragraph 4.15 of that application, I think it is page 3 at paragraph 15 ...[intervenes]

CHAIRPERSON: Page?

ADV ZIKALALA: I think it is page 3.

CHAIRPERSON: Yes.

10 ADV ZIKALALA: And at paragraph 15. There is a just a matter I want to, for clarification. The paragraph reads:

“Lamola became Minister of Justice towards the end of the filing of pleadings in *Rodrigues* but before the matter was heard in the High Court.”

Now it is a matter of record, just if one looks at the judgment, the hearing of the *Rodrigues* matter was actually on the 28 and the 29 March. Minister, when did you ...[intervenes]

COMMISSIONER KGOMO: Of what year?

ADV ZIKALALA: Of 2019.

20 COMMISSIONER KGOMO: Yes.

ADV ZIKALALA: Yes. So Minister, when did you become the Minister of Justice?

MINISTER LAMOLA: I think it was during 2019.

ADV ZIKALALA: Correct. Minister, so just in relation to this paragraph, then the clarification Chair, is that the paragraph is

incorrect in that suggestion.

CHAIRPERSON: Thank you.

COMMISSIONER GABRIEL: Ms Zikalala, sorry, have you finished?

ADV ZIKALALA: Yes, that was the one point of clarification just for purposes of the transcript and the record.

COMMISSIONER GABRIEL: No continue, I have just, I just, I do not have my notes with me. Do you remember when the first judgment of the *Rodrigues* case was handed down?

ADV ZIKALALA: Yes, the judgment was then handed down on the
10 3 June.

COMMISSIONER GABRIEL: Thank you.

ADV ZIKALALA: Chair, those are questions in re-examination.

NO FURTHER QUESTIONS

CHAIRPERSON: Minister, we thank you for having availed yourself to come and give evidence given your hectic schedule, before this Commission. We truly appreciate it. You are now excused as a witness. Thank you for coming.

MINISTER LAMOLA: Thank you, thank you very much Justice. Thank you very much.

20 CHAIRPERSON: These proceedings are adjourned until tomorrow at 10:00.

INQUIRY ADJOURNS UNTIL 25 AUGUST 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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