

**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
Adv KD Moroka (SC) – DoJ representative
Adv Motlalepule Rantho (for SAPS)
Adv Anisa Kessery-DOJ Representative
Adv Gwala (SC) – NPA representative
Adv Nwabisa Ntshizana (for Adv RC Macadam)

9 SEPTEMBER 2026

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**MzansiSA Business Solutions
Arbour Square
Cnr Melle & Juta Street
Ground Floor, Office 3
Braamfontein, 2001
TEL: 011 339 1289 Cell: 0794374335
E-mail: transcription@mzanzisa.com**

PROCEEDINGS ON 9 SEPTEMBER 2026

CHAIRPERSON: Good morning to you all.

FEMALE SPEAKER: Good morning.

CHAIRPERSON: Mr Semenya.

ADV SEMENYA: Good morning Chair and to the Commissioners as well. We have Mr Nhleko to come help us with his evidence.

CHAIRPERSON: Yes.

ADV SEMENYA: My learned colleague will take over.

10 CHAIRPERSON: Yes. Ms Seme, are you going to lead the evidence of Mr Nhleko?

ADV SEME: Yes, Chair.

CHAIRPERSON: Okay.

ADV SEME: Good morning Commissioner, good morning Commissioners. Morning, Mr Nhleko.

MINISTER NHLEKO: Yes, good morning.

CHAIRPERSON: Yes, before you do that let me swear him in.

ADV SEME: Sorry, yes.

CHAIRPERSON: Good morning, Mr Nhleko.

MINISTER NHLEKO: Good morning, Chair.

20 CHAIRPERSON: How are you, sir?

MINISTER NHLEKO: No, I'm still behaving Commissioner, thank you.

CHAIRPERSON: [Laughs]. Yes, you will behave for the duration of these proceedings.

MINISTER NHLEKO: Okay, thank you very much. [Laughs].

CHAIRPERSON: Are you going to take an oath or an affirmation?

MINISTER NHLEKO: I will do an affirmation, Chair.

CHAIRPERSON: Yes.

MINISTER NHLEKO: Yes.

CHAIRPERSON: Do you affirm that the evidence that you will give will be the truth, the whole truth and nothing but the truth?

MINISTER NHLEKO: I certainly do.

NKOSINATHI PHIWAYINKOSI THAMSANQA NHLEKO: (affirms)

CHAIRPERSON: Yes, thank you. Ms Seme.

- 10 EXAMINATION BY ADV SEME: Thank you, Chair. May I take you Mr Nhleko, to your statement at 21, page 2197? You will see that your statement begins there and at 2201, yes.

MINISTER NHLEKO: Yes.

ADV SEME: Is this your statement, can you confirm that this is your statement?

MINISTER NHLEKO: Yes, indeed it is my statement here.

ADV SEME: At the bottom of 2200, is that your signature Mr Nhleko?

MINISTER NHLEKO: Yes indeed, it is my signature.

- 20 ADV SEME: Chairperson and Commissioners, we are going to lead Mr Nhleko's evidence in the following manner, first Mr Nhleko is going to talk about, briefly about his experiences as an activist and how he came eventually to become Minister of Police, that he did not outline in his statement but he is going to give it orally and then we are going to take him through to the questions before the term, the questions in

terms of the Terms of Reference.

So Mr Nhleko, please will you enlighten this Commission about your journey, up, leading up to you becoming the Minister of Police?

MINISTER NHLEKO: No, thank you very much. It's a complex journey and I hope you will be able to compress it into whatever. Firstly I was raised, I grew up in a place called Ndabayakhe. It used to be a small town but I think it is still a very small town.

ADV SEME: Please face the Commissioners, sorry.

10 MINISTER NHLEKO: Oh okay, sorry, my apologies. It used to be a very small town and I think it still is a very small town, Commissioners. My mother was a domestic worker, my father was a farmworker and later on he became a mill worker, a sugar mill worker, sorry.

COMMISSIONER KGOMO: Maybe you will end up by saying that is why you are a communist. [Laughs]. I thought you were going to say that.

MINISTER NHLEKO: Oh yes, I mean ...[intervenes]

COMMISSIONER KGOMO: No, no, no, no, I should not
20 ...[intervenes]

MINISTER NHLEKO: [Laughs]. I have heard that song, yes.

COMMISSIONER KGOMO: I should not derail you.

MINISTER NHLEKO: Ja, it is all right. Now growing up in such conditions that were distinctively very influential, very influential in a sense that the town, the land and everything else belonged to other

people, not us and you could feel that. I think my first day impressions for an example, was that you would go into town with your parents because you have got to do shopping and so on, but the pavement belonged to white people. But also, you had the, a door for white people and a window for black people to do your shopping.

Now all of these issues and of course a lot of people in terms of we lived, we worked on the fields there, we worked on the farms. And I think all of these, they had quite a direct bearing in terms of how I observed them, reflected on the living circumstance by then.

10 Now so we had to go to school under those conditions and I remember, I think I was roundabout twelvish or so and by then I had already started working because we needed to supplement the, somewhat of an income on the family front, he needed to buy uniform, buy books and so on. So roundabout that age I was a fully-fledged sort of garden boy after school.

 Now the, I think roundabout, I think the Chair of the Commission would be interested about this and I think Adv Seme would also be interested about this, at age 11 I wanted to be a lawyer and I remember my mother asked me this thing and said, why do you
20 want to be a lawyer because those people lie most of the time? Okay and I said no, I wanted to be like Moses in the Bible who in my naivety who had led the freedom or the escape out of slavery for the Israelis and so on. That was my thinking at the time when I was 11.

 Indeed by the way, Moses was a lawyer by profession and a philosopher as well on the one hand unbeknown to me at the time.

Now I know that indeed he was that. So but that was, that was my, that was my influence and outlook of what life was, life was like then at the time when we grew up.

I think at roundabout age 12 we began shouting slogans such as black power and I will tell you why we did that. At primary school we had to be punished for not performing well in class and one of the punishments is that we needed to dig holes for banana trees and plant banana trees. So we resisted this thing. So we jumped up and up and about, shouting black power and so on and so
10 it goes.

So in other words, I think that is my entry point, that was my entry point into student activism, because even at the level of high school and onwards, I was quite active as a student activist, youth activist and then I think in my teens I was also then recruited into the underground operations of uMkhonto weSizwe, the liberation army back then. And I will not delve into that particular chapter and I think that chapter is for certainly another day.

Later on I became a trade unionist, later on a parliamentarian and the rest is history up until the point when I
20 became Minister of the Police and subsequently a year, no, four years later after that I became Minister of Public Works.

ADV SEME: Mm ...[intervenes]

MINISTER NHLEKO: I hold the Master of Science Degree in Leadership and Change Management, so I think that sums up the, who I am in a sense and in recent times and of course I have been, I

have always said to people look, I grew up and I was ja, I actually, literally grew up in the ANC. Let me put it that way, and I left the ANC in 2024 to join uMkhonto weSizwe, the party now this time around. And up until quite recently I have been the National Chair of the uMkhonto weSizwe, the party. Thank you.

ADV SEME: Thank you, Mr Nhleko. That kind of experience would have put you in touch with the issues that we are dealing with before this Commission.

MINISTER NHLEKO: Yes.

- 10 ADV SEME: The issues around the gross human rights violations and you were aware of that. Can you just talk to us as an activist what you knew about these issues and the TRC cases?

MINISTER NHLEKO: I think it is an understatement to refer to our experiences as gross human rights violations. The truth of the matter is that as Africans and black people in general, we have been dehumanised for centuries. We have been dehumanised for centuries and part of the problem with that, is that as the people we also grew to internalise that dehumanisation.

- 20 I will give you some few examples Commissioners, because that will also tell you a story about the mere fact that this Commission, this Commission would not be sitting today if the circumstance was completely different and the other way around. If because I think we should ask ourselves these questions, if Steve Biko for an example was George Hutchinson and white, you would not be having this Commission.

You would not be having this Commission because there would have been consequence, there would have been accountability for his treatment and violations. If Victoria Mxenge was, her name was Lynnette Vermaak and white, we would not be having this Commission and this Commission have not got to ask one single question, why is it that nothing was done about these violations against fellow human beings?

ADV SEME: Not to disturb you Mr Nhleko, but I would like to probe you further about what you have just said. You were in the
10 leadership of the African National Congress, you speak passionately about Steve Biko and ama Victoria Mxenge. Explain to us then why is it knowing all of that pain and understanding it, that this, these cases remain not investigated, not prosecuted and the lives of these people that you have mentioned, is not respected as you say?

I mean you being the leader, society would have expected you, I mean it is no longer the white minority government, it is you are in government, you have the resources, you have the control and you cannot explain this away because now you have the wear it all to really bring justice.

20 It does, I mean the public at large would like to know why you can still take us back to the issue of maybe if I can call it colonisation and apartheid as an explanation, so you have been dehumanised, but now you are in control. You can change the situation and the circumstances. What, why that never happened?

MINISTER NHLEKO: Hey, hey, no, no, no, the reason why I am

giggling, I am giggling at your last point, we are in control, are we? I would want to suggest that perhaps that is a debate for another day, are we really in control of this society in this country? Now indeed I served in different deployments at the time and if I am not mistaken, the first, the first TRC report came out in 1996, I think the second one if I am not mistaken is what, 2002.

ADV SEME: 3.

MINISTER NHLEKO: 3.

ADV SEME: It is 1998 and 2003 ...[intervenes]

10 CHAIRPERSON: The first one was in 1998.

MINISTER NHLEKO: Oh 1998, sorry. Oh now I am mixing it up with the launch of the ...[intervenes]

CHAIRPERSON: Yes.

MINISTER NHLEKO: Constitution and so on, ja 1998 and I think the second one was the 2003 year, but thanks for correcting me, Chair. At the time I was not in the direct line of responsibility around the issue of the processing of the TRC report. It would be recalled and I think you would appreciate that I was a, the first point of contact with the TRC, no with this Commission, I was trying to correct something
20 because I think I once saw correspondence that said I was a Minister from 2008 to 20... I am not sure whether 2014 or beyond.

So I was trying to clarify that issue, that I have only been a Minister then from May 2014 to 2017, Minister of Police and from 2017 to 2018, one year, Minister of Public Works. Now at the time when I came in in the police portfolio, you would remember

Commissioners that one of the huge issues that affect that, that we were faced with in this country, I think actually there were two, the first one was of course the recommendations of the Fallin Commission, the Marikana, arising out of the Marikana massacre and we were quite seized with that.

I think one of the recommendations for instance by Fallin was that we needed to put together a panel of experts, an international panel of experts to deal with the issue of public policing and advisors about such matters and so on, because indeed I think
10 Marikana was a blot and a huge tragedy for our democratic state.

So we were seized with that and I think the second issue of course during that period when I was the Minister, was also the question of the xenophobic attacks that actually took place and we had to play quite an effective role there to try and contain that situation from all sorts of manner of different angles. Now so that is, partly that is one issue in relation to the question that the advocate has just posed.

The second one of course is that you will also correct me here because I think over a period of time I have grown dull, I think it
20 is section 206 and section 207 of the Constitution that makes a very clean and clear distinction between the role of a Minister of Police and Cabinet, and the role of a National Commissioner. I think those that have a copy of the Constitution perhaps will assist, but a Minister for an example is responsible for developing Policing Policy.

I think that is what that section talks to. The, I think the

section, probably 208 I think, it will talk to the National Commissioner
...[intervenes]

CHAIRPERSON: Section 205 and section 206.

MINISTER NHLEKO: Thank you very much Chair, section 205 and
section 206. So I think 206 will then be talking to the control and
direction of the, of police as a force for an example, falling under the
auspices of a National Commissioner. So in other words what does
this say? It says a Minister cannot direct the operations of policing,
but a Minister can develop a policy and/or policies in relation to
10 policing and so on.

I think that is, and there is a reason why that, those two
sections were formulated in that particular manner because before
we wrote the Constitution, we came from a particular era of police
that were a law unto themselves and we then felt that you needed to
have policing under civilian oversight as opposed to policing being
completely on their own in the manner in which they did during the
apartheid days and so on.

So I think that is what informed the section 205 and section
206 in the manner in which they were crafted. Whether they were the
20 correct and perfect formulations, perhaps it is a different sort of
discussion and debate for another day, but that is what we have in
the Constitution today.

ADV SEME: So Minister, former Minister Nhleko, I appreciate your
answers. I still have not received a direct answer to my direct
question and perhaps as you said, it is a mindset thing and the

dehumanisation thing. But I, it baffles the public minds that people who were aware of the dehumanisation and how people were killed and you speak passionately about Griffiths Mxenge, there is the Cradock, there is PEPCO 3, there is all these, could forget and not want accountability.

So I just want you to assist this Commission understand why is it that no investigation and prosecutions took place and no one was concerned you know, about that for such a protracted period of time? And you spoke about black life being dehumanised, where does that
10 originate and why is it continuing?

MINISTER NHLEKO: Look, I am certain that the period before 2014 I would assume that there was work that was done in relation to TRC cases, that is my assumption and of course during the period when I came in, the matter of the TRCC, TRC cases sorry, did not arise.

ADV SEME: Okay.

MINISTER NHLEKO: Whether in a direct or indirect form, did not arise. Now the last part of your question, we still have a very long way to deal with ourselves to confront some of the, some of the patterns of behaviour, either that we have adopted or otherwise and
20 so on. I mean this, this issue of the dehumanisation of an African person continues even in different sort of guises today.

If you go to Tembisa, you go to Umkomaas, you go to Soweto, any part of Soweto, Ngwelezane or wherever, it is just an accepted norm that you will have running sewer on the streets. It is accepted, it is fine and it is also accepted that in your white suburbs

you will not find that.

Now that also talks to the issue of mindset and the mindset that I am talking about here, is that the value, no, quality and value that we give to human lives is also informed by whether that human being is white or black and that is what we need to correct.

CHAIRPERSON: But you are now in a constitutional democratic state.

MINISTER NHLEKO: Ja.

CHAIRPERSON: Where the mind of a white person does not remain
10 dominant.

MINISTER NHLEKO: [Laughs]. When I started off Chair, I did say that we need to recognise that we have been dehumanised for centuries and in the process we also began to internalise this form of dehumanisation in an indirect form or otherwise and so when we talk of issues of social transformation and any other form of transformation, it means on the one hand we need to also work on our mind, collective mind in terms of for an example, how do you, how do you bring about and enforce this kind of equality that we should have in our society?

20 How do we make sure that the people that live in Tembisa, do not feel discriminated against because of their living conditions there as opposed for an example, to people living in Morningside? How do we do that? So my argument has always been that we need to be deliberate about these issues because it is not going to be automatic and it is not going to happen on its own.

COMMISSIONER GABRIEL: Minister Nhleko, can I interrupt you and bring you closer ...[intervenes]

MINISTER NHLEKO: Ja.

COMMISSIONER GABRIEL: To the Terms of Reference of this Commission? You were Minister of Police for three years, 2014 to 2017.

MINISTER NHLEKO: Ja, I think what, is it not four?

COMMISSIONER GABRIEL: Ja, my maths may be wrong.

MINISTER NHLEKO: Ja.

10 COMMISSIONER GABRIEL: And it worries me that you say the matter of TRC cases did not arise.

MINISTER NHLEKO: Ja.

COMMISSIONER GABRIEL: So in your tenure are you saying that as Minister of Police no focus was brought to bear on the TRC cases either in the form of you developing policy or in the form of any other attention to the TRC cases?

MINISTER NHLEKO: As I said it, ja indeed, you are correct. I never did analyse but as I said the, those are operational matters that will fall under the purview of a National Commissioner in control of
20 policing. Now when I say that, such matters during the period when I was there, did not arise.

You have got, what I mean is that a National Commissioner, any of the National Commissioners never reported the issue of these are the TRC cases that have been brought to their attention and therefore we were working on, they were working on those particular

matters and so on. But I also alluded to the fact that there were also pressures that were there at the time.

You know, Marikana was one of those pressure points, the other pressure point was the question of the xenophobic attacks for that day, whatever period that they occurred and so on. But they really needed some serious focus on, ja.

COMMISSIONER GABRIEL: So when you were Minister of Police, you were aware of the TRC cases arising from the reports of the TRC?

10 MINISTER NHLEKO: Mm-mm.

COMMISSIONER GABRIEL: Given your background, you had to have been aware?

MINISTER NHLEKO: Correct.

COMMISSIONER GABRIEL: Were these matters not discussed at Cabinet level?

MINISTER NHLEKO: No, not during my, not during my tenure there. No, not during my tenure there. In fact the, I, ja as I said that one of the assumptions and whether that assumption is correct or not correct, my assumption was that between 1996 and 2003 there must
20 have been work that was focused on the issue of the TRC cases ...[intervenes]

CHAIRPERSON: And your assumption is based ...[intervenes]

MINISTER NHLEKO: And at that particular point of ...[intervenes]

CHAIRPERSON: On what, Mr Nhleko?

MINISTER NHLEKO: I am sorry, Chair?

CHAIRPERSON: Your assumption is based on what?

MINISTER NHLEKO: It is based on the period involved. It is based on the period involved. You had the TRC report that came out in 1998 and had recommendations, I would have expected that people that were there at the time, they would basically take up those issues and ...[intervenes]

CHAIRPERSON: Yes.

MINISTER NHLEKO: And focus on them, similarly also 2003, they must have been. So it is, that is why I am saying it is whether my
10 assumption is correct or not correct, but that is a, that is a natural expectation.

COMMISSIONER GABRIEL: But as Minister of Police that did not cross your radar at all?

MINISTER NHLEKO: I was not Minister of Police in 2003, I was Minister of Police in 1998.

COMMISSIONER GABRIEL: No, no, 2014 to 2017.

MINISTER NHLEKO: 2014, ja 2014 of course nothing was ever brought to my attention.

COMMISSIONER GABRIEL: Thank you.

20 ADV SEME: As a Minister of Police and I am now taking you to your statement on page 2199 and at paragraph 9, can you please read that into the record and then I will ask you the question.

MINISTER NHLEKO: That I should read paragraph 9?

ADV SEME: Yes, so it is page 2199.

MINISTER NHLEKO: Ja.

ADV SEME: Paragraph 9 of your statement.

MINISTER NHLEKO:

“My responsibility as the Minister of Police included determining National Policing Policy after consultation with the provincial governments. My role was thus strategic rather than operational.”

ADV SEME: Yes, so you are confirming that during your tenure, 2014 to 2017, there was no strategic role that you played or advised in your policy that dealt with the TRC cases?

10 MINISTER NHLEKO: Yes, I do confirm.

ADV SEME: Okay and as a Minister of Police you would obviously present to the Portfolio Committee and in that Portfolio Committee there were would be reports coming from the DPCI?

MINISTER NHLEKO: Correct.

ADV SEME: Yes, so also in those reports during your tenure, nothing of the TRC cases?

MINISTER NHLEKO: Ja, there were no, there were no TRC-related cases.

20 ADV SEME: Okay, can you also now read paragraph 10 into the record?

MINISTER NHLEKO:

“There is therefore distinction between the role of a Minister of Police and a National Police Commissioner. As a Minister, I was not responsible for, nor did I take a lead in the investigation of TRC cases [investigations

sorry, of TRC cases]. The National Commissioner is the person operating at that level. For instance, I have no control over the investigation of crimes and dockets, including crimes and dockets relating to TRC cases. Such control or attempts of control over the TRC cases from me would have rendered me overreaching and interfering with operations.”

ADV SEME: Paragraph 11.

MINISTER NHLEKO: 11 says:

10 “As a Minister of Police, I therefore never had any dealings with the TRC cases.”

So it confirms Honourable Chair and Commissioners, what I have been stating before.

ADV SEME: We will move on to the issue of the funding of the legal costs of the prosecution of former Security Branch members and this is a case that happened during your tenure as a Minister of Police where members of the Security Branch brought an application to court because they were not denied, they were denied funding for legal representation in their criminal cases.

20 We bring this because it links directly to our Terms of Reference. In fact, the lack of funding stops the prosecution of the perpetrators of those gross human rights violation, because the cases cannot go forward and without this funding. So can you read paragraph 12 into the record?

MINISTER NHLEKO: Okay:

“Regarding the payment of legal costs for the prosecution of former Crime Intelligence Police, I, as the then Minister of Police did not make any decisions relating to these matters. This is evident from the papers filed by the retired members of the Crime Intelligence application to the High Court in 2016, praying for an order compelling the police to pay their attorneys for the legal costs of representing them in their criminal trial. I have attached this application here
10 as “NN2”. The persons responsible for that decision are named at paginated page 10ff of “NN2”. This makes it clear who, within the SAPS, made such a decision.”

ADV SEME: Do you accept that the delays in the payment of these legal fees, have a direct effect in stopping the prosecution of TRC cases?

COMMISSIONER KGOMO: Let us say stopping and/or delaying.

ADV SEME: Yes.

MINISTER NHLEKO: I am sorry I could not, I could not get your input?

20 COMMISSIONER KGOMO: Ja, it had a direct effect of stopping or delaying the investigation and prosecution of the TRC cases?

MINISTER NHLEKO: A lack of funding? So I am not sure whether I am understanding this question, because before you have these cases, you have investigations but you also have an authority that would decide to prosecute or not to prosecute.

ADV SEME: I will assist you, Mr Nhleko.

MINISTER NHLEKO: So yes.

ADV SEME: When we are dealing with the issues of legal costs
...[intervenes]

MINISTER NHLEKO: Right.

ADV SEME: We have passed the investigation phase. The matters
are now before court, the charges have been prepared but because
these crimes were committed by former members of the police, they
are entitled in the course and scope of their employment, they are
10 entitled to legal representation. In fact, long before you came
onboard, the court had already determined that these legal costs
ought to be paid.

So the question is, do you accept that the fact of delays in
payment of the legal fees of the Security Branch or former Security
Branch policemen leads to either a stoppage or a delay and in some
cases because if these fees are not paid, we have had instances
where perpetrators have died which meant no justice for the families
and victims, so if the police are delaying making payment or they
refuse to make the payment, that has an effect on the Terms of
20 Reference of this Commission which is to investigate whether there
were any attempts or to stop the investigation and prosecution of
TRC cases?

COMMISSIONER GABRIEL: I think you deal with that ...[intervenes]

ADV SEME: At paragraph 13.

COMMISSIONER GABRIEL: Former Minister, in paragraph 13.

Maybe you want to read that into the record.

MINISTER NHLEKO: Ja, I think in the affidavit I must have put it in a better form, because there are two things that perhaps one, one part of it I agree with, the other part I have reservations about, but I will tell you what that is. 13 says:

10 “I agree that this decision had an impact in delaying and
in effect stopping the prosecution of the perpetrators in
the Nokuthula Simelane matter. I emphasise, however
that these were operational matters, in which I could not
have had any hand.”

COMMISSIONER GABRIEL: So what is it that you have reservations about in this paragraph?

MINISTER NHLEKO: What? Oh the sponge? Sorry. Ja I am sorry Chair, I have a habit of using my hands when talking, so I must have effected damage to public property in the process of doing so by removing the sponge over the mic, so I apologise.

COMMISSIONER GABRIEL: You said you had reservations about paragraph 13?

20 MINISTER NHLEKO: No, in, when the question was posed, I could
not associate the question of funding or resourcing legal
representation to effectively putting a stop to processing cases. I
could not connect the two in a sense. Maybe I misheard the, I did not
hear properly or something but the delays, I agree that the question
of funding if it is not availed where it is due to be availed and so on,
does have an impact in the, in processing and at a speedy resolution

to matters at hand, ja.

COMMISSIONER GABRIEL: And therefore delayed the quest for justice.

MINISTER NHLEKO: Mm.

COMMISSIONER GABRIEL: To the families of victims. Would you agree with that?

MINISTER NHLEKO: Yes.

COMMISSIONER GABRIEL: Okay.

ADV SEME: Thank you, Mr Nhleko. Unless you have anything else
10 you want to say to the Commission to place on record, the leading of evidence is complete.

MINISTER NHLEKO: No, I do not think there is much to say really, safe to say that it is quite discomforting that in 2026 we are still talking about these cases you know, arising out of the TRC investigations. No, was it not investigations, TRC hearings and I just do wish that it could have been a different thing, sort of circumstance altogether because people do require, particularly I think your point about families and victims, they do require closure, okay.

COMMISSIONER KGOMO: You could have been proactive by
20 saying to the Commissioner of Police, "What is happening about this matter?" You could have been, there was nothing stopping you for, from being proactive, was there?

MINISTER NHLEKO: Ja, I accept that criticism, that I could have been but you will remember the points that I have made, at least three distinctive points that I made earlier on about what were the

pressure points at the time, but also Chair, the way you made an intervention was about I suppose my assumption at the time, that you do not, matters were quiet and the, I you know, you easily assume okay, so these matters must have been dealt with somewhere else before my time and so on. So I nevertheless say I do not dispute your criticism about whether or not I could have been proactive, ja.

COMMISSIONER KGOMO: Thank you.

MINISTER NHLEKO: Thank you very much.

CHAIRPERSON: Thank you, Ms Seme. Is that your evidence-in-
10 chief?

ADV SEME: Yes, Chair.

CHAIRPERSON: Thank you, madam.

ADV SEME: Yes, thank you.

CHAIRPERSON: Ms Kessery?

COMMISSIONER KGOMO: And switch off your microphones,
please.

MS KESSERY: Chair, Adv Moroka is online.

ADV MOROKA: I am online Chair, good morning.

CHAIRPERSON: Is Ms Moroka here?

20 ADV MOROKA: Good morning, Chair.

CHAIRPERSON: Morning, Ms Moroka.

ADV MOROKA: It is online, good morning, Chair.

CHAIRPERSON: Thank you. Thank you Ms Moroka, you may
proceed.

ADV MOROKA: We do not have any questions for clarification

Chair, but if we may be allowed, we indicate that we reserve the right to, I mean the opportunity to cross-examine the witness. Thank you.

CHAIRPERSON: Thank you. Mr Gwala?

ADV GWALA: Thank you Chairperson, we do not have questions for clarification. I doubt if we will have cross-examination.

CHAIRPERSON: Thank you, Mr Gwala. Ms Rantho?

CROSS-EXAMINATION BY ADV RANTHO: Thank you, Chair.

Good morning, Mr Nhleko.

MINISTER NHLEKO: Yes, good morning, madam.

10 ADV RANTHO: I am seated just behind ...[intervenes]

MINISTER NHLEKO: All right, thank you.

ADV RANTHO: The television screen. Mine is just two questions for clarification. If I may start with a question that you were asked by Ms Seme about whether DPCI ever presented any report about the TRC cases, you remember that question?

MINISTER NHLEKO: Yes, I do.

ADV RANTHO: Now what I want to establish from you is whether you understood the role played by the DPCI *vis-à-vis* the National Commissioner insofar as the TRC cases were concerned at that
20 time?

MINISTER NHLEKO: You said that is the first question, then what is the second question?

ADV RANTHO: Okay, if I may just get your response in that one so that I do not confuse them?

MINISTER NHLEKO: Oh, okay.

ADV RANTHO: Yes.

MINISTER NHLEKO: Okay, the role of DCPI [*sic*], yes I understood it very well, where probably a slight problem with your question is that you are narrowing it, the role of DCPI, DPCI sorry, you are narrowing it to the TRC cases.

ADV RANTHO: Indeed, yes.

MINISTER NHLEKO: Yes. Look, in broad terms I understood what DCPI is and how it relates to the National Commissioner and so on, but as I had said that at the time the issue of the TRC-related cases
10 were not brought to my attention and the DPCI also did not report on them at the time. The National Commissioner at the time or should I say National Commissioners at the time, they also did not necessarily bring those, the TRC-related cases to my attention if there were any, okay.

ADV RANTHO: Okay, maybe if I may just make it clearer, the DPCI, evidence has been led before the Commission that following the *Glenister II* judgment, the DPCI enjoyed or was given independence insofar as the investigation of whatever cases that are classified as priority crimes were concerned, so meaning the TRC cases classified
20 as priority would have been falling under the mandate of the DPCI who had that kind of independence, in other words it would have to investigate without the involvement or interference of the National Commissioner.

I think that is what I wanted to understand, whether you appreciated that it was ...[intervenes]

MINISTER NHLEKO: No.

ADV RANTHO: It was the DPCI, not the National Commissioner that was in charge.

MINISTER NHLEKO: I would not necessarily draw a thick sort of wall in between. I accept the point about DPCI in relation to the TRC cases but equally so, ja I think the National Commissioner would also have a responsibility.

ADV RANTHO: Okay.

MINISTER NHLEKO: Operationally.

10 ADV RANTHO: That is fine, okay. Maybe if I may just proceed to the next question about ...[intervenes]

MINISTER NHLEKO: Right.

ADV RANTHO: Your evidence that you did not concern yourself with operational matters that were dealt with by the National Commissioner. If I may specifically refer you to the issue of funding that you referred the Commission to, the funding in terms of legal representation of former Security members, you referred the Commissioner, I mean the Commission to annexure NN2 to your affidavit.

20 And that, if I may refer you to just page, I think it is page 39 of annexure NN2, that is a letter signed on the 24 February 2016 by the Divisional Commissioner of Legal and Policy Services, Lieutenant General Molefe.

MINISTER NHLEKO: Right.

ADV RANTHO: Now in that letter what is stated or what is explained

to Steyn Wilson who I believe was an attorney acting for those members, they are being informed that there are prescribed policies for applications of that nature. So I am trying to understand if the Minister was aware that application for funding was subject to applications that would have to be considered in line with applicable prescripts?

MINISTER NHLEKO: No I think, I think as it says you know, such applications were then sent to the Divisional Commissioner responsible for Legal Services and so on and I would also think
10 and/or assume that the National Commissioner should have been aware about those particular applications and the position taken by the Divisional Commissioner: Legal Services.

Remember that when the Constitution says that the police fall under the control of a National Commissioner, that also entails the control of the budget and resources of the state department concerned, in this particular instance the police, okay, and so that is what it entails. But there I would think that it is a matter that there must have been some conference between the Divisional Commissioner: Legal Services and the National Commissioner at the
20 time around the legal application and ...[intervenes]

ADV RANTHO: Okay.

MINISTER NHLEKO: The position taken not to grant that kind of legal funding.

ADV RANTHO: But you would accept that that request was not an entitlement that was given from the onset? In other words they had

to apply, which application had to be subjected to some level of consideration by whoever was delegated with powers to decide on that one?

MINISTER NHLEKO: Ja, thank you.

ADV RANTHO: Commissioners, that is all from my side.

CHAIRPERSON: Thank you, Ms Rantho. Ms, is it Nthambeleni?

ADV NTSHIZANA: Ntshizana.

CHAIRPERSON: Ntshizana. Yes ...[intervenes]

ADV NTSHIZANA: Thank you, Chair.

10 CHAIRPERSON: Ms Ntshizana?

ADV NTSHIZANA: Thank you Chair, we do not have any clarificatory questions to this witness.

CHAIRPERSON: Thank you. Is there anyone online? Mr Varney?

ADV VARNEY: Thank you, Chair. We do have a few questions by way of clarification.

CHAIRPERSON: Yes.

20 CROSS-EXAMINATION BY ADV VARNEY: Mr Nhleko, thanks for taking the time to assist this Commission today. We have a few questions arising from your statement and your evidence-in-chief, and just so that you are aware, me and my team represent the families at this Commission otherwise known as the Calata Group.

MINISTER NHLEKO: Known as?

ADV VARNEY: The Calata Group.

MINISTER NHLEKO: Oh, the Calata Group. All right.

ADV VARNEY: So I can just turn to page 3 of your statement, at

paragraph 8. It reads:

“The object of the police is to investigate crime, and in my view, TRC cases are crimes to be investigated by the police in accordance with section 205(3) of the Constitution.”

MINISTER NHLEKO: Ja.

ADV VARNEY: And we would certainly agree with the assertion you make in that paragraph, particularly given that the TRC cases were amongst the most serious crimes, murders, kidnapping and the like.

10 So would you agree that prosecutors should not have to negotiate with the police to have such cases investigated?

MINISTER NHLEKO: Prosecutors?

ADV VARNEY: Yes.

MINISTER NHLEKO: What would they negotiate? I mean if you have a, if a matter has been investigated and it is sent and it is referred for prosecution, the expectation is there that then prosecution must process. So what, what is the point of negotiation?

ADV VARNEY: Yes. Okay to be fair, let me give you some context.

MINISTER NHLEKO: Okay.

20 ADV VARNEY: There is evidence before this Commission and this occurred before your tenure as Minister of Justice between 2003 and 2010, by enlarge the TRC cases were not investigated by SAPS, to the point where eventually in early 2009 then Acting NDPP Adv Mpshe SC, instructed one of the prosecutors and Adv Macadam to negotiate with SAPS to have those cases investigated.

And we want to put it to you that there should have been no need to negotiate, because serious cases like murders and kidnapping should be investigated as a matter of course.

MINISTER NHLEKO: No, I agree.

ADV VARNEY: Thank you.

MINISTER NHLEKO: It should have been investigated and executed accordingly, I think. I was not aware that there was that exchange in 2009 between the prosecution and the police, that there had to be some negotiations and so I agree with you.

- 10 ADV VARNEY: Thank you. Let us turn to paragraph 12, oh sorry, paragraph 13 which you have read into record. Essentially you say that you agree that your decision in relation to the legal cost question in the Nokuthula Simelane case, that that ended up stopping the prosecution of the perpetrators in the Simelane case. And you are aware of course that there was litigation, you attached the application to your affidavit.

Now we agree that this was an administrative matter that fell within the domain of the National or Provincial Commissioner at the time.

- 20 MINISTER NHLEKO: All right.

ADV VARNEY: And of course as Minister you do not have the power to get involved in the day-to-day operational matters, but as Minister could you have issued a direction directing the SAPS to engage in new policy dealing with all these cases that you know, matters arising from the conflicts of the past, that those police officers acting in the

course and scope of the employment should be entitled to legal costs at a policy level?

MINISTER NHLEKO: Look, policy does exist around legal funding. Of course there are conditions and the limitations to that and of course if I am not mistaken, whether by a regulation or otherwise, the discretion is there to, for a National Commissioner to either grant or not grant a legal funding when application have been sort of brought to his or her attention.

10 And the difficulty I would have is that I would, I would not know in essence the fuller sort of detail as to what informed the position of a National Commissioner in either denying or granting a legal funding to a person. So safe to say, I mean when this Commission asked, they asked me a question about whether or not delayed funding, do I agree that it has a direct impact on meting out justice and so on, so I accept that, that it has, it does have a direct bearing on that.

ADV VARNEY: Thank you. Just to remind you that you have to direct your answers to the Chairperson and the Commissioners.

20 MINISTER NHLEKO: Oh, I am sorry that I have had to be, my ...[intervenes]

CHAIRPERSON: It is understandable, Mr Nhleko.

MINISTER NHLEKO: Oh no, thank you very much, Chair.

CHAIRPERSON: Yes.

MINISTER NHLEKO: Thank you very much. I like looking people in the face.

ADV VARNEY: Thank you, Chairperson.

MINISTER NHLEKO: So ja, so thanks very much for that correction.

CHAIRPERSON: Yes.

MINISTER NHLEKO: Now where I am facing here the Honourable Commissioners.

ADV VARNEY: Thank you, sir.

COMMISSIONER GABRIEL: But feel free to look at Mr Varney to understand the question. I mean swivel your chair and turn this way.

MINISTER NHLEKO: Okay, okay.

10 ADV VARNEY: Thank you, Commissioner.

MINISTER NHLEKO: Yes, thank you very much.

ADV VARNEY: So Mr Nhleko.

MINISTER NHLEKO: Yes, sir.

ADV VARNEY: In your evidence-in-chief this morning you if I recall your evidence correctly, you raised certain pressure points that you were seized with while you were Minister of Justice.

COMMISSIONER KGOMO: Of Justice?

MINISTER NHLEKO: Of Police.

20 ADV VARNEY: Sorry, Minister of Police. We have had quite a few Ministers before this Commission, I beg your pardon. And one of those pressure points was the massacre that took place at Marikana and the subsequent Fallin Commission that followed. Do I understand you correctly that these are one of the things that could potentially have deflected you from focusing on the TRC cases?

MINISTER NHLEKO: No, no, sir, I think it needs to be understood in

context. I mentioned several points, of course including the question of the pressure points that were there. You will recall that the Chair pointedly asked me what make me assume that these matters had been dealt with? And I said the, it is because of the time and the period involved you know, and of course the mere fact that they are not the matters that were also brought to my attention during my stay there in the Ministry.

That, those as factors and any other factor including by the way the mere fact that you know, the issue of the Fallin
10 recommendations also needed to be dealt with, so in other words I am saying it would be incorrect to just singularly isolate the Fallin issue out of the whole package of the other issues that I had referred to. So I am, you are partly correct but not entirely, I am just simply saying there are a number of factors that also were part of the issues that we are dealing with today.

ADV VARNEY: Because it would not have been the first time that SAPS has put up a Commission of Inquiry as to why could it not investigate the TRC cases and various evidence that the police would not investigate until the Ginwala Commission of Inquiry into the
20 fitness of the then NDPP, Vusi Pikoli to held office had been completed, but that was before your time, so I will move on.

Now it has been put to you by my learned friend, Adv Rantho, that while you were Minister of Police, your responsibility to investigate the TRC cases fell to the DPCI. The DPCI have put a document before this Commission of the cases that they opened up,

the TRC cases that they opened up between 2011 and 2025. Commissioners, that is bundle 18, it is titled "DPCI cases put up by Commissioner Lebeya".

Now during the time you were Minister of Police, the DPCI list of cases constitute just two cases that were opened, one in 2013 being the St James Church massacre and another in 2016 being the Cradock Four matter. So that is only two cases that according to the DPCI that they opened between 2014 and in fact I make a mistake because if it was... You became Minister in 2014 and we have to
10 remove ...[intervenes]

MINISTER NHLEKO: Ja.

ADV VARNEY: The St James case because that was in 2013. So if their records are correct then they in fact only opened one fresh case in respect of the TRC matters. Would you agree that is an appalling record of work?

MINISTER NHLEKO: I would agree that it is a what, sorry, I could not catch you, your last word?

ADV VARNEY: So ...[intervenes]

MINISTER NHLEKO: You said according to the record?

20 ADV VARNEY: It is an appalling record because we know that the cases were not investigated between 2003 and 2010, and following the World Cup, the DPCI then started investigations. And the record put up by Commissioner Lebeya is that between 2014 and I believe March or April 2017 which is when you left office, they only managed to open one fresh TRC case and so I just want to hear from you

whether you agree that that is an appalling record?

MINISTER NHLEKO: No, I agree.

ADV VARNEY: And my last question is, who should take responsibility for that poor record?

MINISTER NHLEKO: I think in that regard we should be guided by the Constitution, the provisions of the Constitution of the Republic ...[intervenes]

COMMISSIONER KGOMO: But who?

MINISTER NHLEKO: Which is ...[intervenes]

10 COMMISSIONER KGOMO: Who?

MINISTER NHLEKO: The Constitution clearly states that issues of investigation and the operational matters rest with the National Commissioner. Now so if you were to ask me as to who should take accountability for that, I would stand by saying we must look, we must look and be guided by the provisions of the Constitution.

ADV VARNEY: Thank you Chairperson, no further questions.

COMMISSIONER GABRIEL: Former Minister, in your parting words at the close of your evidence-in-chief, you said something interesting that I just want to probe with you. You say, you said if I captured your
20 words correctly, in 2026 it is discomfoting to have this Commission of Inquiry. Why do you say so?

MINISTER NHLEKO: Commissioner, I say this because these matters arose in a particular era and that these matters, they should have been handled with a degree of sensitivity that says that you need closure in our society around this.

And particularly because we had been hopping around the issue of reconciling and people uniting and people and so on and so it goes, atrocities of this nature, they should, I would argue that they should have been handled in a particular way and certainly prioritised, so and therefore that in 2026 we are still talking about atrocities that were committed by people that could be described as being on the other side of humanity, in other words inhumane.

I think we should be concerned about that, so that is in essence, that is what I meant. But also I think these, I know that this
10 is not in your Terms of Reference and whatever, but we should talk about it and look, a society who failed to develop and foster the culture of accountability, no matter how look at it, I mean if I was going to be here spending two days with yourselves I would have shared experiences about...

Because the interesting thing, I mean I was in government, I was in parliament, I was and when I saw these things right, but I am saying generally speaking in the South African context, then the broader society and culture, there is a problem with the issues of accountability, whether these matters are around TRC cases or any
20 other for that matter.

Now and I am not trying to criticise anybody and point fingers to anybody, all I am trying to say is, as we develop our society and as the people, we need to emphasise on these particular fundamentals around issues of accountability and the... But also being swift in processing and handling some of these matters so that

they do not linger on for that long, because if they linger around forever they, they can easily turn around to be a central point that also causes instability in society and that is my point really.

Ja, I suppose that is the point that I was trying to bring across, Commissioner. Thank you.

COMMISSIONER GABRIEL: Should we as society not to look to our leaders?

MINISTER NHLEKO: Should society do what?

COMMISSIONER GABRIEL: Not look to our leaders to account for
10 the lack of movement in these TRC cases?

MINISTER NHLEKO: Yes, that is one part. Yes, look into it but also society, there is nothing wrong for society to activate itself to put pressure to bear on these issues, you know, in ...[intervenes]

COMMISSIONER GABRIEL: As the Calata Group have done?

MINISTER NHLEKO: Ja, in engaging with the leadership of society, ja.

COMMISSIONER GABRIEL: Thank you.

MINISTER NHLEKO: Thank you very much, madam.

CHAIRPERSON: Ms Seme?

20 RE-EXAMINATION BY ADV SEME: Thank you Commissioner, I have no questions for re-exam.

CHAIRPERSON: Thank you. Mr Nhleko ...[intervenes]

MINISTER NHLEKO: Yes, Chair.

CHAIRPERSON: We wish to express our profound gratitude for having availed yourself to come before this Commission to give

evidence. As you have heard, Ms Moroka may apply for your cross-examination.

MINISTER NHLEKO: Okay.

CHAIRPERSON: In which event you would be required to return to this Commission for such cross-examination.

MINISTER NHLEKO: Yes.

CHAIRPERSON: But for now you are excused as a witness.

MINISTER NHLEKO: No, thank you very much. You said Ms who?

CHAIRPERSON: Ms Moroka.

10 MINISTER NHLEKO: Ms Moroka, where is Ms ...[intervenes]

CHAIRPERSON: On behalf of the Department of Justice.

MINISTER NHLEKO: Oh, where is Ms Moroka?

CHAIRPERSON: Kgomotso Moroka.

MINISTER NHLEKO: No, I am asking ...[intervenes]

CHAIRPERSON: She is not here.

COMMISSIONER GABRIEL: She is online.

CHAIRPERSON: She is online.

MINISTER NHLEKO: Oh, she is not here? Okay, thank you. No, no, no, sorry, I just needed to see the face.

20 CHAIRPERSON: Yes, you could not see the face because she was speaking online.

MINISTER NHLEKO: Okay. No, thanks very much, Chair.

CHAIRPERSON: Thank you.

MINISTER NHLEKO: Yes.

CHAIRPERSON: Thank you, sir.

MINISTER NHLEKO: No, thank you very much.

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

INQUIRY ADJOURNS UNTIL 10 SEPTEMBER 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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MzansiSA Business Solutions
Arbour Square
Cnr Melle & Juta Street
Ground Floor, Office 3
Braamfontein, 2001
TEL: 011 339 1289
E-mail: transcription@mzanzisa.com
E-mail: mzanzisa1@gmail.com