

REPORT: VOLUME 1 OF 2

**ENQUIRY INTO THE FITNESS OF ADV. MASENYANE ANDREW
CHAUKE, THE DIRECTOR OF PUBLIC PROSECUTIONS' FITNESS TO
HOLD OFFICE IN TERMS OF SECTION 12(6)(a) OF THE NATIONAL
PROSECUTING ACT, 1998 (ACT 32 OF 1998)**

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GLOSSARY

Abbreviation	Definition
ADPP	Acting Director of Public Prosecutions
ANDPP	Acting National Director of Public Prosecutions
Cato Manor Unit	Cato Manor Organised Crime Unit in KZN
Chairperson	Baaitse Elizabeth ("Bess") Nkabinde, appointed in terms of the Presidential Minute No. 211/2025 dated 19 September 2025
Constitution	The Constitution of the Republic of South Africa, 1996
CPA	Criminal Procedure Act 51 of 1977
DDPP	Deputy Director of Public Prosecutions
DNDPP	Deputy National Director of Public Prosecutions
DOJCD	Department of Justice and Constitutional Development
DPCI	Directorate for Priority Crimes Unit
DPP	Director of Public Prosecutions
Enquiry Panel	The Chairperson as defined and Adv Elizabeth Baloyi-Mere SC (panel member) as well as Attorney Ms Matshego Ramagaga (panel Member)
Evidence Leaders	Evidence Leaders, referring collectively to Adv David Mmotse Mohlamonyane SC, Adv Nicole Mayet SC, Adv David Mtsweni and Adv Nkaiseng Khooe
Enquiry	This Enquiry established in terms of Section (12)(6)(a) of the National Prosecuting Authority Act, 32 of 1998 as recorded in the Presidential Minute No. 211/2025 dated 19 September 2025 and as instituted in Government Gazette No. R6686 of 30 September 2025
FUL	Freedom under Law
GCB	General Council of the Bar of South Africa
IAP	The International Association of Prosecutors
ICD	Independent Complaints Directorate
IPID	Independent Police Investigative Directorate
KTA	Kwa-Maphumulo Taxi Association
KZN	KwaZulu-Natal
LPA	Legal Practice Act 28 of 2014
LPC	Legal Practice Council
MOJCD	Minister of Justice and Constitutional Development
NDPP	National Director of Public Prosecutions
NPS	National Prosecuting Services
NPA	National Prosecuting Authority
NPA Act	National Prosecuting Authority Act 32 of 1998
PCLU	Priority Crimes Litigation Unit
POCA	Prevention of Organised Crime Act 121 of 1998
Prosecution Policy	NPA Prosecution Policy
SAPS	South African Police Service

Abbreviation	Definition
SCA	Supreme Court of Appeal
SCC	State Capture Commission (also referred to as the "Zondo Commission")
SDPP	"Special Director of Public Prosecutions", a DPP appointed under section 13(1)(c) of the NPA Act ("Special Director")
SPD	Special Projects Division
SMS Handbook	Senior Management Service Handbook
STA	Stanger Taxi Association
The Code	Code of Conduct for Members of The National Prosecuting Authority Under section 22(6) of the National Prosecuting Authority Act, 1998 – R. 1257 29 December 2010
the Standards	The Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors
the UN Guidelines	United Nations Guidelines on the Role of Prosecutors
ToR	The Terms of Reference for the Enquiry published in the Government Gazette No. R.6686 of 30 September 2025

Introduction

- [1] The circumstances giving rise to the issues raised in this Enquiry reveal certain horrific events. They have a long history, stretching over approximately two decades, primarily demonstrable of fundamental challenges in our criminal justice system. The challenges followed years of, among other things, certain malfeasance especially within the National Prosecuting Authority (NPA) and the South African Police Service (SAPS). Within these consecutive years, the NPA and SAPS dealt with acts of criminality, allegedly involving members of SAPS, that resulted in numbing tragic loss of many lives.
- [2] The traumatic events led to internal disciplinary actions, criminal investigations, expert reports, a plethora of statements by all concerned, criminal charges in many case dockets most of which deplorably remain unprosecuted, representations, transcripts of court proceedings and court pronouncements, legal opinions, memoranda and massive volumes of correspondence.
- [3] The core issue in this concerns the fitness of Adv Masenyane Andrew Chauke (Chauke) to continue holding office as the Director of Public Prosecutions (DPP): South Gauteng. Effectively, this means that only Chauke, and none other, is the subject of the Enquiry. There are several issues for determination. They emerge from the Terms of Reference (ToR) as determined by the President of the Republic.

[4] In the main, the issues concern, certain prosecutorial decisions allegedly taken by Chauke in two matters commonly referred to as the Cato Manor and Mdluli matters. In the former, the issue concerns Chauke having allegedly persisted with the racketeering prosecution against Booysen and his co-accused. In the latter matter, the allegations are that he failed to continue with charges against Mdluli. Several ancillary issues have arisen in relation to the Cato Manor matter which include whether Chauke complied with the Constitution, the National Prosecuting Authority Act 1998 (NPA Act), the Prosecution Policy and the policy directives of the NPA Act by, allegedly instituting or conducting racketeering charges against Major General Johan Booysen (Booyesen) and members of the Cato Manor Unit. It is alleged that he —

- (a) supported the decision to prosecute the accused;
- (b) recommended the issuance of the racketeering authorisation;
- (c) attempted to defend the institution of the said charges in the review proceedings brought by Booysen;
- (d) lodged an appeal against the High Court review judgment that favoured Booysen; and
- (e) attempted to reinstate the racketeering charges against Booysen,

allegedly in the absence of evidence.

- [5] Additionally, the issue is whether Chauke (a) withdrew charges against Lieutenant-General Richard Mdluli (Mdluli) for his alleged involvement in the murder of Mr Tefo Abel Ramogibe (Ramogibe) and related charges despite the strong evidence and whether by so doing he acted lawfully, (b) failed to continue with such charges and (c) discontinued the criminal proceedings against Mdluli.
- [6] As will become apparent later in this Report, a determination of the core issue ended up unravelling certain shocking actions, some of which resulted in the deaths of many civilians, allegedly by certain members of the SAPS. The deaths were a sequel to taxi violence killings between certain Taxi Associations in KwaZulu-Natal (KZN) that seemingly resulted in the killing of certain Senior Police Officers, including Superintendent Chonco (Chonco), Superintendent Govender (Govender) and iNkosi Zondi.¹
- [7] Chonco was a provincial coordinator tasked to investigate the said taxi violence between two faction associations, namely: Kwa-Maphumulo Taxi Association (KTA) and Stanger Taxi Association (STA). He was killed while transporting certain accused persons to court. The KTA members were suspected of involvement in Chonco's murder. Thereafter, about seven suspects were

¹ iNkosi Zondi was suspected of having leaked information about the whereabouts of Bongani Mkhize and Magojela Ndimande who were suspected by the Cato Manor Unit to have been involved in the killing of police officers.

targeted and killed.² The killings impacted on the public trust in our criminal justice system.

[8] The determination of the issues will also reveal certain ethical lapses within the NPA. In her statement before this Enquiry, the erstwhile National Director of Public Prosecutions (NDPP), Adv Shamila Batohi (Batohi) stated that upon taking office as NDPP she discovered that “there were various matters that had “wracked the NPA and its credibility”³ allegedly involving “serious allegations against those of the highest echelons of the NPA.”⁴

[9] It is common cause that Chauke was suspended and this Enquiry was established by the President, consequent to certain serious allegations of impropriety having been made against Chauke by Batohi. The allegations, if proven correct following this investigation, may impact upon his fitness to continue holding office as the DPP.

[10] The Minister for Justice and Constitutional Development, the incumbent Ms Mmamoloko Kubayi MP (Minister Kubayi), was instructed to designate a Judge to preside over the Enquiry who will, following the investigation, compile and submit a report to the President. I was, therefore, appointed to chair the Enquiry. Two senior practitioners, Adv E Baloyi-Mere SC and Attorney T Vilakazi, were appointed to assist me and the three of us composed the Enquiry Panel. It later

² On 3 February 2008, 3, 16, and 18, September 2008.

³ Record, Batohi Witness Statement, page 58 at para 135.

⁴ *Id.*

became necessary for Attorney Vilakazi to be excused and was substituted by another senior Attorney, Ms M Ramagaga.

[11] For the purpose of gathering and leading evidence, two evidence leaders were appointed: These were Adv D M Mohlamonyane SC and Attorney P Thulare. The latter resigned before the Enquiry commenced with the hearing of evidence. She was replaced by Adv D V Mtsweni. In a while, two more practitioners were appointed to assist the evidence leaders. These were Adv T Skosana SC and Adv N Khooe. Adv Skosana SC was later replaced by Adv N Mayet SC. Collectively, these practitioners are referred to as Evidence Leaders on instructions by the State Attorney. Chauke's legal team comprised of Adv T Ngcukaitobi SC assisted by Adv T Ramogale, Adv M Kritzinger, and Adv T Links, as instructed by Mkhabela Huntley Attorneys Inc (MHA), at the instance of the State Attorney.

[12] In terms of the Presidential Minute No 310 of 2023, the NDPP was entitled to designate outside Counsel to represent the NPA at the Enquiry. To that end, Adv G Hulley SC and Adv N Lekgetho were appointed to represent the NPA.

[13] With reference to the same Minute, the President determined that the Enquiry must be conducted along the lines of the Public Service disciplinary procedure prescribed for Senior Management Service (SMS) members, of which Chauke is a member.

[14] The Enquiry hearings started on 17 November 2025. During the hearings opening addresses, by the Evidence Leaders on one hand and Chauke on the

other, were presented and oral evidence was tendered. It was open to the public and all media. In between the hearings, various requests and applications, including interlocutory applications, were made and these were followed by directions and Rulings by the Panel.

[15] This report follows the hearing and assessment of evidence of several witnesses and consideration of written submissions on behalf of the Evidence Leaders, the NPA through the Evidence Leaders and Chauke. Additional comprehensive evidential material — including expert reports and statements contained in the dockets — formed part of the voluminous documentary evidence considered by the Panel.

[16] The voluminous record of the Enquiry proceedings runs into tens of thousands of pages and a total of approximately 278 documentary exhibits⁵ were admitted to the record. It bears mentioning that certain witnesses, who had been identified by the Evidence Leaders, elected not to testify before the Enquiry. As will become evident later, the statement of Batohi and her partially tendered oral evidence has been considered.

[17] A determination of the issues summed up above necessitates a proper understanding of the background facts to the establishment of the Enquiry.

⁵ Most of the exhibits are documents already forming part of the Record, as contained in the record filed on 7 November 2025, the dockets filed on 19 November 2025 or the various witness statements filed during the course of the Enquiry.

General Background

In relation to the Cato Manor matter

[18] The lengthy background information and events, stated below, is significantly unavoidable. Although much of such information and occurrences are common cause, a careful regard to all the relevant contextual complex facts, within their chronological order, is important to paint a clearer picture for a better understanding of the issues at hand, in respect of the Cato Manor matter.

[19] It should be mentioned, at the outset, that there were serious conflicts and power struggles among high-ranking police officers including the Provincial Commissioner Brown and Booysen. The latter was the complainant and the only witness in CAS 466/09/2011.⁶ The case is alleged to have been the strongest case of high-end corruption involving one businessman in KZN – Mr Thoshan Panday – and Colonel Madhoe. They had allegedly blocked the way for Booysen to become the next KZN Provincial Commissioner. This matter occupied a large part of the record but little or nothing pertaining to that awkward conflict and the case itself bear relevant to the issues, here.

[20] The Enquiry, in so far as the Cato Manor matter is concerned, is a sequel to certain events that took place from approximately 3 September 2008 to 4 September 2011.⁷ Between 2002 and 2009, Batohi was the DPP for KZN. The

⁶ In respect of which the Prosecution – seemingly Noko had declined to prosecute. See Record Booysen Bundle, page B01987. See also Batohi's testimony in Transcript, Day 12, page 62.

⁷ See para 1 of the Internal Memorandum by Advocates R J De Kock, I Thenga, S Riley and E R Mamabolo dated 27 June 2019 (Exhibit 7).

events involved around 23 case dockets in which the State alleged that some police officers with the SAPS were involved in certain alleged criminal enterprises under the Prevention of Organised Crime Act⁸ (POCA) and killed for rewards and financial gain. As the case dockets **TABLE 2**⁹ below illustrates, the Cato Manor Unit members allegedly killed approximately 28 persons.

[21] As mentioned earlier, the events giving rise to the killings and subsequent charges occurred within the context of an ongoing feud between certain protagonists within the STA and the KTA. The conflict between these taxi associations was investigated by the late Chonco who was killed in an ambush on 27 August 2008. Chonco's killing resulted in the targeting of certain individuals allegedly by members of the Cato Manor Organised Crime Unit in KZN (Cato Manor Unit).¹⁰ Despite changes in the names of departments, sections and units (within the Cato Manor Units) there was operational continuity during the indictment period, i.e. 2008 and 2011.

[22] The Cato Manor Unit is alleged to have been headed by Booysen who was, at the time, holding the rank of Brigadier and serving as the Director of the Unit.¹¹ Certain individuals within the NPA got involved in relation to the prosecution of certain members of the Cato Manor Unit, in terms of the POCA.

⁸ 121 of 1998. This Act has been updated to Government Gazette 51083 dated 19 August 2024.

⁹ Table 2 appears at paragraph 75.

¹⁰ The Unit fell under the umbrella of the KZN Provincial Organised Crime Unit (POCU). See Record, Maema Witness Statement, page 1-11 at para 39.

¹¹ Record, Maema Witness Statement, page 1-11 at para 38.

- [23] During December 2011, The Sunday Times published a prominent investigative front-page story about the members of the Cato Manor Unit allegedly having been involved in a pattern of unlawful killings in KZN. The evidence of certain witnesses, for example Ms Sharmilla Williams (Williams), however shows that concerns about the Cato Manor Unit actually pre-dated the later discord forming part of the dockets listed in the indictment **TABLE 1**¹² of this Report.
- [24] The publication described the Cato Manor Unit as the “hit squad”/ “death squad”.¹³ But for our commendable investigative journalism, would the exposé have come to light? For a better appreciation of the context and effect of the article, it is necessary to reproduce its semblance:

¹² Which is dealt with later in this report.

¹³ Record, Maema Witness Statement, page 1A-141.

- [25] The said article resulted in an investigation by a joint task team, viz, the Independent Complaints Directorate (ICD) – now the Independent Police Investigative Directorate (IPID), and the Directorate for Priority Crimes Investigations (DPCI, commonly known as the HAWKS – previously the Scorpions (referred to herein as the joint task team)), conducted a fact-finding inquiry into the allegations against members of the Cato Manor Unit. The investigation was at the behest of Lieutenant General Anwar Dramat (Dramat) who was then the HAWKS' National Head.¹⁴
- [26] Preliminary investigations were conducted by the teams assembled and lead by Major General N J Mabula (Mabula) – the then Provincial Head: HAWKS North West. It is common cause that Mabula was, then, actively involved in complex investigations and had earned a reputation for handling sensitive matters. The investigation by the joint task team subsequently roped in the NPA including, as will be explained later, the involvement of Chauke.¹⁵
- [27] Already, at the time of that preliminary investigation, there was significant public concern, including from civil society and human organisations, regarding allegations that the members of Cato Manor were involved in unlawful killings linked to taxi violence and retaliatory operations.¹⁶

The NPA's involvement

¹⁴ Record, Mabula Witness Statement, page 7A-5 at para 21.

¹⁵ *Id.*

¹⁶ *Id.*

- [28] Following the media publications in December 2011 and the preliminary investigation in early 2012 by the joint task team on the numerous cases involving several deaths of many civilians allegedly caused by the members of the SAPS attached to the Cato Manor Unit, senior officials within the NPA met with members of the joint task team on 8 March 2012 at the NPA Head Office in Pretoria.
- [29] The meeting was attended, on behalf of the NPA, by Adv Anthony Mosing (Mosing) – a Senior Deputy Director of Public Prosecutions in the office of the Head: National Prosecuting Services (NPS) at NPA Head Office.¹⁷ He was the head of the Special Projects Division (SPD), a unit based in the Office of the NDPP and reporting, as such, to the National Director.
- [30] More than 50 dockets were under investigation. In a number of those dockets the investigation had reached an advanced stage and required urgent prosecutorial decisions.
- [31] At that meeting, the joint task team referenced a meeting they held with the then late Minister of Police, Minister Nkosinathi Mthethwa (Minister Mthethwa) and the then Acting National Commissioner of Police – N Vilakazi¹⁸ – at which Minister Mthethwa expressed dissatisfaction with the slow progress made by the joint task team, despite the fact that its investigation had been pending from December 2011.

¹⁷ Mosing was the head of the Special Projects Division (SPD), a unit based in the Office of the NDPP and reporting as such to the National Director.

¹⁸ Record, Batohi Written Statement, page SB3 136 at para 5. (See also Exhibit 34).

[32] The joint task team had arranged to see the then Acting National Director of Public Prosecutions, Adv Nomgcobo Jiba (ANDPP-Jiba)¹⁹ because a need had arisen for the prosecutors to be roped in the handling of the matter urgently. Mention was made that Adv Cyril Simphiwe Mlotshwa, the Acting DPP-KZN (ADPP-Mlotshwa) had seemingly promised to avail prosecutors to handle the matter, but the promise was not materialising. The joint task team also wanted to know whether the prosecutors to be made available would join in its investigation. Mosing undertook to discuss the matter with the ANDPP-Jiba and did so.

[33] Following the discussions with Mosing, the ANDPP-Jiba called Chauke and informed him that there was a case in KZN which involved suspects from the SAPS who had worked closely with the KZN prosecutors. She indicated that it was, thus, necessary that prosecutors from outside KZN be appointed for prosecution of that case. On this basis, the ANDPP-Jiba requested Chauke to identify prosecutors from his office for appointment to the task.

[34] Initially, Chauke identified his deputy, Adv K R Mathenjwa (Mathenjwa) (DDPP from South Gauteng), two Senior State Advocates from South Gauteng: Adv M Ntlakaza (Ntlakaza) and Adv J J Mlotshwa (Mlotshwa)²⁰ and later added Adv P Futshane (Futshane) and Adv P Moleko (Moleko) after the ANDPP-Jiba had raised a concern about lack of female representation on the team. The ANDPP-

¹⁹ She was as ANDPP after Adv Menzi Simelane was relieved of his duties as the NDPP following a Court challenge to his appointment, first in the Gauteng Division of the High Court (Pretoria) and thereafter in the Supreme Court of Appeal.

²⁰ Email from Chauke to ANDPP-Jiba. See Record, Booysen Bundle, page B 00448.

Jiba, then invited Chauke to a formal briefing session scheduled for the following day, on 9 March 2012, at her office.

[35] It was during this meeting of 9 March 2012 that Adv S Maema (Maema) (Deputy DPP North West) was, designated to lead the prosecution team because of his experience in prosecuting organised crime cases on racketeering and his appointment was endorsed by his immediate superior, Adv J J Smit SC, former DPP North-West. In the meantime, the ANDDP-Jiba issued certificates in terms of section 20(1) of the NPA Act, authorising Maema and Mathenjwa to act on behalf of the state in any appeal, review or other applications arising from the Cato Manor Unit criminal proceedings in both the lower and High courts within the area of jurisdiction in KZN.²¹

[36] Concerns were raised about potential bias should the case be handled by prosecutors from KZN because of their close working relationship with the suspects particularly regarding the incidents that were the subject of the investigation by the joint task team. It is understood that the sensitive nature of the investigated killings pursuant to the publicity necessitated proper caution.²²

[37] Then, Chauke's involvement in relation to the prosecution of the Cato Manor cases arose following a request by the then ANDPP-Jiba, to coordinate and oversee the prosecution conducted by the prosecution team. His involvement

²¹ Authorisations in terms of sections 20, 21, 22 and 24 of the NPA Act. See Record, Booysen Bundle, page B 00444 to B 00445 (Exhibit 25).

²² Record, Booysen Bundle, page B 02000, para 10. See para 10 to the statement of Mosing dated 5 May 2015 that had, seemingly, been made before the Zondo Commission into allegations of State Capture in the Public Sector including Organs of State (State Capture Commission). See also Record, Maema witness Statement, page 1A-14.

was to co-ordinate and manage the prosecution team as most of them were from his office.²³

[38] The prosecution team was put together to guide the investigation by the joint task team in relation to the said case dockets with a view to conduct any resultant prosecution, should evidence justify. Given his experience, Maema was appointed to be part of the mentioned prosecution team at the behest of the ANDPP-Jiba.

[39] The importance of the section 20(1) authorisation will manifest itself in respect of some of the issues that have arisen under the Terms of Reference (ToR). For ease of reference, especially because of the relevance of this authorisation in relation to some questions that emerged during the Enquiry, casting doubt about Chauke's role (specifically that he made certain prosecutorial decisions and acted unlawfully by going out of his jurisdiction to perform prosecutorial authorisation letter, here. It reads:

“AUTHORISATION IN TERMS OF SECTION 20, 21 AND 22 OF THE
NATIONAL PROSECUTING AUTHORITY ACT, NO 32 OF 1998

I, Nomgcobo Jiba,

Acting National Director of Public Prosecutions of South Africa, do hereby in terms of section 20, read with sections 21, 22 and 24 of the [NPA Act], authorise

SELLO GLADSTONE MAEMA

To exercise the powers set in section 20(1) of the [NPA Act] in the Lower and High Courts within the area of jurisdiction of the KwaZulu-Natal Division in all offences committed by the members of the South African Police Services in the province of KwaZulu-Natal,

²³ Ibid. See also Record, Booysen Bundle, page B 01999, para 10 (Exhibit 14J). See also Record, Legal Opinion Bundle, LO 00862.

And to act on behalf of the State in any appeal, review or other applications arising from such criminal proceedings within the Province of KwaZulu-Natal, subject to the Prosecution Policy of the [NPA] and any directive issued by the National Director.

...²⁴

(Underlining for emphasis.)

- [40] According to Maema and based on the information he received from Mabula of the HAWKS, the decision to appoint a prosecution team drawn from provinces outside of KZN was triggered by concerns raised, allegedly, by the then ADPP-Mlotshwa²⁵ specifically given the close working relationship between the prosecutors within KZN and the members of SAPS.
- [41] After reviewing the 52 dockets that were presented by the joint task team, the prosecution team identified 23 murder dockets involving approximately 28 deceased persons. As will appear later from the gathered evidential material, the killings by the implicated police officers seemed not to have been justified.
- [42] The perusal of the material necessitated further investigation, tracing and interviewing further witnesses and securing ballistic and crime-scene reconstruction reports.²⁶ All these will be discussed later in the Report.

²⁴ Record, Maema Witness Statement, page 1A-151. See also Authorisations in terms of sections 20, 21, 22 and 24 of the NPA Act. See Record, Booysen Bundle, page B 00444 to B 00445 (Exhibit 25).

²⁵ Record, Maema Witness Statement, page 1-15 at para 55.

²⁶ Record, Maema Witness Statement, page 1-18 at para 65.

- [43] On 5 June 2012, the ADPP-Mlotshwa, designated by the ANDPP-Jiba in terms of section 20(5) of the NPA Act, authorised Mlotshwa²⁷ to exercise the powers in relation to the institution and conduct of criminal proceedings, set out in section 20(1) of the NPA Act, in both the lower and High Courts within the area of jurisdiction of the in KZN in respect of all offences with effect from 1 June 2012.
- [44] Certain emails had, in the meantime, been exchanged between Chauke and ADPP-Mlotshwa regarding the signing of the indictment. On or about 12 June 2012, ADPP-Mlotshwa declined to sign the indictment without being provided with the supporting documentation (prosecution memorandum) and evidence (dockets).
- [45] The contents of the emails in their sequence, were discussed at length during the hearing, seemingly to refute the allegations by Mlotshwa suggestive of the fact that Chauke imposed himself in his role as DPP-KZN. The emails entailed the following:
- (a) On 12 June 2012 at 13h29, Chauke's personal assistant, Ms Mamikie Suping, sent ADPP-Mlotshwa an email attaching the Cato Manor indictment without the prosecutor's memorandum.²⁸
 - (b) On 12 June 2012 at 15h21, ADPP-Mlotshwa sent an email to Chauke referring to an earlier phone call between them and requesting that Chauke furnish him with the prosecutor's memorandum or report in

²⁷ J J Mlotshwa as distinct from CS Mlotshwa, is a member of the prosecution team. See Exhibit 26.

²⁸ Email exchange between ADPP-Mlotshwa and Chauke, Record, Booysen Bundle, page B 00578. See also Exhibit 16.

order to read into the matter, including the relevant police station and CAS number information.²⁹

- (c) On the same day at 17h14, Chauke responded to ADPP-Mlotshwa requesting that he clarify a number of details, including who the prosecutor ADPP-Mlotshwa was referring to, as the indictment should give him a whole view into the matter. Chauke further requested that ADPP-Mlotshwa discuss any further issues with him, stating:

"You are kindly and fervently requested to please discuss any issues if any with me. I really do not see any need for me to give you any report other than what I have forwarded to you already. Please if I misunderstand you, make me understand. I do not want to play you or undermine your jurisdictional authority in any way whatsoever..."³⁰

- (d) The same email correspondence offers ADPP-Mlotshwa to arrange a meeting with the ANDPP-Jiba.³¹ On 13 June 2012 at 09h12, ADPP-Mlotshwa responded to Chauke, indicating his discontent at the tone taken in Chauke's email.³² ADPP-Mlotshwa set out a lengthy explanation as to why he had requested certain documents from Chauke, including the practice within the NPA that requests for authorisation of a racketeering certificate are accompanied by the prosecutorial memorandum giving the NDPP an outline of the matter.³³

²⁹ Record, Booysen Bundle, page B 00573.

³⁰ Record, Booysen Bundle, page B 00574.

³¹ *Id*

³² Record, Booysen Bundle, page B 00575.

³³ *Id*.

(e) Chauke acknowledged the correspondence that same morning and apologised, which apology ADPP-Mlotshwa accepted.³⁴

(f) At 11h20 on 13 June 2012, Chauke wrote to ADPP-Mlotshwa, withdrawing the request for him to consider the re-opening of inquests from his memorandum dated 18 May 2012.³⁵ This is the extent of the emails provided in the record in relation to this matter.

[46] Subsequent to the identification of the murder dockets and the further investigation by the task team at the behest of the prosecution team, the latter made a presentation to the ANDPP-Jiba on 9 July 2012 regarding the Cato Manor prosecution. ADPP-Mlotshwa's appointment as Acting DPP KZN was terminated on the same date.³⁶ This was on the recommendation of the ANDPP-Jiba to former Minister of Justice and Constitutional Development – Minister J Radebe. Similarly, on the recommendation of the ANDPP-Jiba, Adv Moipone Noko-Mashilo (Noko) was appointed on 2 July 2012 but the appointment would only come into effect as from 16 July 2012.³⁷

[47] On 10 July 2012, following the termination of ADPP-Mlotshwa's appointment, Chauke attempted to apply for racketeering authorisations from the ANDPP-Jiba, in terms of section 2(4) of POCA, for the prosecution of Booysen.³⁸ The

³⁴ Record, Booysen Bundle, page B B 00574.

³⁵ Record, Booysen Bundle, page B B 00573.

³⁶ Record, Mlotshwa Witness Statement, page CSM 0035.

³⁷ In the NDPP's memorandum dated 26 June 2012. This memorandum was not handed up but is, seemingly, available in the NPA's SCC website.

³⁸ Application for Authorisation in terms of s2(4) of POCA. See Record, Legal Opinions, page LO 00287 (Exhibit 14b).

application was unsigned but was allegedly supported by a prosecution memorandum in the name of the lead prosecutor, Maema. It was, however, not proceeded with. As will be discussed later, when dealing with the issues regarding Chauke's role, it was suggested that *ex facie* the unsigned cover letter, and following his perusal of the relevant documents concerning the Cato Manor matter, Chauke was thereby involved in taking a prosecutorial decision to have the criminal prosecution against Booysen proceeded with.³⁹ Put differently, that Chauke took ownership of and responsibility for that prosecution.⁴⁰

[48] As was arranged, the appointment of Noko as the Acting DPP KZN took effect as from 16 July 2012. Another racketeering authorisation in terms of section 2(4) of the POCA as regards the case against Booysen and Others, was sought from the ANDPP-Jiba. This time the application, supported by a prosecution memorandum in the name of and signed by Maema, was prepared by the prosecution team in the name of Adv Noko because the DPP South Gauteng "had no jurisdiction."⁴¹

[49] His signature on the cover letter was considered to be the "high-water mark" of the evidence supporting the charge against Chauke that he misrepresented to

³⁹ This narrative, is evident from the second opinion of Dr Broughton dated 21 April 2023 - Record LO 00171 to LO 00239 at paras 28 - 31. The opinion was prepared at the request of the NDPP, Batohi – into whether an Enquiry into Chauke's fitness to hold office should be established. The first opinion is dated 23 February 2023 in which Dr Broughton basically said that he did not have sufficient time (Exhibit 214).

⁴⁰ Some weight is attached to Mosing 's statement to the SCC at para 95 that:

"After considering the application it was concluded that the application must be made by DPP, KZN, as DPP: South Gauteng had no jurisdiction." .

⁴¹ Affidavit of Mosing to the para 95, Maema Witness Statement to the SCC at para 245 and referred to in Dr Broughton's opinion LO 00157 at para 32 (Exhibit 14p).

his employer, the NPA, what his role was with the Cato Manor prosecution.⁴² The covering letter also became a matter of controversy during this Enquiry, especially, when Noko disavowed the signature being hers.⁴³ During her evidence Noko did not dispute that the signature was “at her special instance and request.”⁴⁴

[50] According to Mosing, what may possibly explain why the application emanated under the cover of Chauke’s office was, seemingly, the agreement to such an arrangement in order to expedite the matter and avoid any possible delay on account of Noko being based in KZN. This is consistent with what was stated by Maema in the email referred to dated 15 August 2012 at 12h02.⁴⁵ Mosing, however, explained that it was later considered prudent that Noko rather sign the document instead,⁴⁶ but that the application for centralisation signed by Chauke should be proceeded with, as it has already been submitted.⁴⁷

[51] Evident from the exchange of emails,⁴⁸ between Mosing and Maema, certain queries had arisen. These queries concerned the contents of the indictment regarding the two managers, namely, accused 15 and accused 16, who were added consequent to the reading of the statement of Aiyer.

⁴² See Maenetje SC’s opinion – Record LO 00137 at para 47.

⁴³ See Transcript, Day 21, page 170.

⁴⁴ Record, Legal Opinions, page LO 00137 at para 47, as suggested in the opinion by Maenetje at 47.2.

⁴⁵ See fn 25 below.

⁴⁶ Op cit fn 44 Maenetje SC Opinion, read in conjunction with Broughton’s opinion Read this in conjunction with Broughton 2 (page LO 00183 at para 42).

⁴⁷ Statement by Mosing at para 13. See Record, Legal Opinions, page LO 00710.

⁴⁸ from 12h00 noon on 14 August 2012 to 15 August 2012. See Record, Legal Opinions, pages LO 00777 to 00779.

[52] Mosing, however, assured Maema that “we are there in terms of getting an authorisation.” Other members of the prosecution team, Mathenjwa and Ntlakaza, made modifications on the draft indictment that was in circulation.⁴⁹ Maema made some input to complete the participants in the enterprise to include the Port Shepstone Organised Crime Unit accused. Maema added Lockem and van Tonder as managers of the enterprise. In the same email⁵⁰ he said that he had “done the prosecution memo on the KZN letterhead, although our DPP will sign as arranged with the Acting DPP, KZN.”⁵¹

[53] The imputation, as will be dealt with in detail when issues are considered, was that, by so doing, Chauke “endorsed and recommended” the issuing of racketeering authorisations against Booysen whereas there was no evidence and information to justify such authorisations being given by the ANDPP-Jiba.”⁵² It was opined that Noko, who was the sole DPP vested with the jurisdiction to institute criminal proceedings against Booysen and other accused⁵³ could not have signed the covering letter to the racketeering application as she had not read the case dockets and could not have been satisfied that there was a prima facie case against the accused, including Booysen.

⁴⁹ For example, Adv Ntlakaza made minor changes on the concept “enterprise” in terms of POCA and commented that they could get the authorisation certificates. He urged Maema to make hard copies.

⁵⁰ Email dated 15 August 2012 at 12h02. See Record, Legal Opinions, pages LO 00777 to LO 00779.

⁵¹ *Id.*

⁵² This suggestion is explicitly stated, for example, in the internal Memorandum – a supplementary legal opinion by Dr Broughton (Broughton 2) to Batohi, dated 21 April 2023. See Record, Legal Opinions, pages LO 00171.

⁵³ In terms of section 20(1) and (3) read with section 24(1)(a) of the NPA Act.

- [54] The said application was necessitated by the fact that POCA⁵⁴ requires that any person alleged to be involved in racketeering activities shall only be charged of an offence relating to racketeering activities if the prosecution is authorised in writing by the National Director.
- [55] At the time of the application,⁵⁵ the accused had already appeared in the Regional Court-Durban and the case had been postponed to 24 August 2012 pending the issuance of the authorisations.
- [56] On or about 17 August 2012,⁵⁶ the ANDPP-Jiba authorised the prosecution in terms of section 2(4) of POCA against the accused for contravention of section 2(1)(e) of POCA, i.e. those who, while allegedly managing, or employed or associated with the enterprise participate in its affairs directly or indirectly through a pattern of racketeering activities, allegedly committed during the period 2008 to 2011.
- [57] On the same date, the ANDPP-Jiba further authorised prosecution in terms of section 2(4) of POCA against some of the accused for contravention of section 2(1)(f) of POCA, i.e. those who managed the operation or activities of an enterprise and who knew or ought to have known that those employed or associated with the enterprise participated in its affairs through a pattern of racketeering activities committed during the period 2008 to 2011.

⁵⁴ The relevant statutory framework will be described later.

⁵⁵ On 15 August 2012.

⁵⁶ The authorisations are dated 17 August 2012. However, Gorven J states at para 1 of the judgment that they were issued on 18 August 2012.

[58] For ease of reference and completeness, a comprehensive list of the names of the accused and the proposed charges (as per the indictment) under section 2(1)(e) and (f) of the POCA appears in **TABLE 1**, below.

INDICTMENT TABLE 1

Accused	Charges	Counts
1. Booysen Johan Wessel	Contravention of section 2 (1)(f) read with sections 1,2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, Act 121 of 1998 – managing an enterprise through a pattern of racketeering activity	1
	Contravention of section 2(1)(e) read with section 8 1, 2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, Act 121 of 1998 -participating in the conduct of an enterprise through a pattern of racketeering activity	1
	Murder, read with section 51(1) of Act 106 of 1997 and section 155(1) of Act 51 of 1977	2
	Contravention of section 3 read with sections 1, 103,117, 120(1)(a) and 121 read with schedule 4 of the Firearms Control Act 60 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977- unlawful possession of a firearm	1
	Contravention of section 90, read with section 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act, 60 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977-unlawful possession of ammunition	1
	Defeating or obstructing the course of justice	1
2. Padayachee, Gonasagren	Contravention of section 2 (1) (e) read with justice sections 1, 2 (2), 2 (3), 2 (4) and 3 of the Prevention of Organised Crime Act, Act 121 of 1998-participating in the conduct of an enterprise through a pattern of racketeering Activity	1
	Murder, read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977	3
	Contravention of section 3 read with sections 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act 60 of	7

Accused	Charges	Counts
	2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977 – unlawful possession of a firearm	
	Contravention of section 90, read with section 1,103,117,120(1)(a) and 121 read with, schedule 4 of the Firearms Control Act, 60 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977 - unlawful possession of ammunition	7
	Defeating or obstructing the course of justice	8
	Theft	4
	Housebreaking with intent to commit murder and murder, read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977	5
	Contravention of section 120(6) of Act 60 of 2000 read with section 1, 103, 120(1)(a),121 and schedule 4- pointing of a firearm	3
	Malicious damage to property	1
	Assault with intent to do grievous bodily harm	2
3. Stoltz Adriaan Jakobus Fick	Contravention of section 2(1)(e) read with sections 1, 2(2), 2(3), 2(4) and s of the Prevention of Organised Crime Act, Act 121 of 1998 - participating in the conduct of an enterprise through a pattern of racketeering Activity	1
	Housebreaking with intent to commit murder and murder read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977	3
	Murder read with section 51(1) of Act 108 of 1997 and section 155(1) of Act 51 of 1977	5
	Contravention of section 3 read with sections 1,108,117, 120(1)(a) and 121 read with schedule 4 of the Firearms Control Act 80 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977 ~ unlawful possession of a firearm	4
	Contravention of section 90, read with section 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act, 80 of 2000 further read with section 260 of the Criminal Procedure Act 51 of 1977 – unlawful possession of ammunition	4
	Defeating or obstructing the course of justice	4

Accused	Charges	Counts
	Contravention of section 120(6) of Act 60 of 2000 read with section 1, 108, 120(1)(a), 121 and schedule 4- pointing of a firearm	1
	Theft	2
4. Mostert, Paul Jonathan	Contravention of section 2(1)(e) read with sections 1, 2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act. Act 121 of 1998- participating in the conduct of an enterprise through a pattern of racketeering Activity	1
	Murder read with section 51(1) of Act 105 of 1997 and section 150(1) of Act 51 of 1977	11
	Housebreaking with intent to commit murder and murder read with section 51(1) of Act 105 of 1997 and section 165(1) of Act 51 of 1977	7
	Contravention of section 8 read with sections 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms' Control Act 80 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977 – unlawful possession of a firearm	15
	Contravention of section 80, read with section 1,1 03, 117, 120(1)(a) and 121 read with schedule 4 of the Firearms Control Act, 80 of 2000 and further read with section 250 of the Criminal Procedure Act, 51 of 1977-unlawful possession of ammunition	15
	Attempted murder read with section 51(2) of Act 106 of 1997; and read with section 155(1) of Act 51 of 1977	1
	Malicious damage to property	1
	Theft	3
	Contravention of section 120(8) of Act 60 of 2000 read with section 1, 109, 120(1)(a), 121 and schedule 4 - pointing of a firearm	2
	Defeating or obstructing the course of justice	16
	Assault with intent to do grievous bodily harm	3
5. Nel, Eric Alfred	Contravention of section 2(1)(e) read with sections 1,2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, Act 121 of	1

Accused	Charges	Counts
	1998-participating in the conduct of an enterprise through a pattern of racketeering Activity Murder read with section 51(1) of Act 105 of 1997 and section 165(1) of Act 51 of 1977 Housebreaking with intent to commit murder 2 and murder read with section 51(1) of Act 105 of 1997 and section 165(1) of Act 51 of 1977 Contravention of section 3 read with sections 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act 80 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977 – unlawful possession of a firearm Contravention of section 90, read with section 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act, 60 of 2000 and further read with section 250 of the Criminal Procedure Act of 51 of 1977 - unlawful possession of ammunition Malicious damage to property Theft Defeating or obstructing the course of justice Assault with intent to do grievous bodily harm	7 1 7 7 1 3 8 2
6. Eva, Neville	Contravention of section 2(1)(e) read with sections 1,2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, Act 121 of 1998-participating in the conduct of an enterprise through a pattern of racketeering Activity Contravention of section 2(1)(f) read with sections 1 ,2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, Act 121 of 1998-managing an enterprise Murder read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977 Housebreaking with intent to commit murder 5 and murder read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977 Contravention of section 3 read with sections 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act 60 of	1 7 6 10

Accused	Charges	Counts
	2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977 -unlawful possession of a firearm	
	Contravention of section 90 read with section 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act, 80 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977- unlawful possession of ammunition	10
	Theft	2
	Defeating or obstructing the course of justice	8
	Assault with intent to do grievous bodily harm	1
7. Ghaness Adjthsingh	Contravention of section 2 (1)(e) read with sections 1, 2(2); 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, Act 121 of 1998-participating in the conduct of an enterprise through a pattern of racketeering' Activity	1
	Murder read with section 51(1) of 105 of 1997 and section 165(1) of Act 51 of 1977	5
	Housebreaking with intent to commit murder and murder read with section 51(1) of Act 106 of 1997 and section 155(1) of Act 51 of 1977	4
	Contravention of section 3 read with sections 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act 60 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977 – unlawful possession of a firearm	9
	Contravention of section 90 read with section 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act, 80 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977-unlawful possession of ammunition	10
	Attempted murder read with section 51(2) of Act 105 of 1997 read with section 155(1) of Act 51 of 1977	1
	Theft	2
	Defeating gr obstructing-the course of justice	8
	Assault with intent to do grievous bodily harm	2

Accused	Charges	Counts
	Contravention of section 120(8) of Act 80 of 2000 read with section 1, 103, 120(1)(a), 121 and schedule 4- pointing of a firearm	1
	Malicious damage to property	1
8. Makhanya, Phumelela	Contravention of section 2(1)(e) read with sections 1, 2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, Act 121 of 1998 - participating in the conduct of an enterprise through a pattern of racketeering Activity	1
	Murder read with section 51(1) of Act 105 of 1997 and section 165(1) of Act 51 of 1977	2
	Housebreaking with intent to commit murder 3 and murder read with section 81(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977	3
	Contravention of section 3 read with sections 1, 103, 117, 120(1)(a) and 121 read with schedule 4 of the Firearms Control Act 60 of 2000 and further read with section 250 of the Criminal Procedure-Act 51 of 1977- unlawful possession of a firearm	6
	Contravention of section 90, read with section 1, 108, 117, 120(1)(a) and 121 read with schedule 4 of the Firearms Control Act, 60 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977- unlawful possession of ammunition	5
	Defeating or obstructing the course of justice	1
	Assault with intent to do grievous bodily harm	1
9. Olivier, Willem Cornelius	Contravention of section 2(1)(6) read with sections 1, 2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, Act 121 of 1998-participating in the conduct of an enterprise through a pattern of racketeering Activity	1
	Contravention of section 2(1)(e) read with sections 1, 2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, Act 121 of 1996-managing an enterprise through a pattern of racketeering Activity	1
	Murder read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 61 of 1977	2

Accused	Charges	Counts
	Housebreaking with intent to commit murder and murder read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977 Contravention of section 3 read with sections 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act 60 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977- unlawful possession of a firearm Contravention of section 80, read with sections 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act, 80 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977- unlawful possession of ammunition Theft Defeating or obstructing the course of justice	2 3 3 1 3
10. Mkhwanazi, Bhekinkosi Mbhekiseni	Contravention of section 2(1)(e) read with sections 1, 2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, Act 121 of 1998-participating in the conduct of an enterprise through a pattern of racketeering Activity Murder read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977 Housebreaking with intent to commit murder and murder read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977 Contravention of section 3 read with sections 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act 80 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977 Unlawful possession of a firearm Contravention of section 80, read with sections 1,108,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act, 60 of 2000 and. further read with section 260 of the Criminal Procedure Act 51 of 1977- unlawful possession of ammunition Defeating or obstructing the course of justice	1 1 1 3 1 1

Accused	Charges	Counts
11. Mdlalose, Hathayiphi Enock	Contravention of section 2(1)(e) read with sections 1,2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, Act 121 of 1998-participating in the conduct of an enterprise through a pattern of racketeering Activity	1
	Murder read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977	2
	Housebreaking with intent to commit murder and murder read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977	3
	Contravention of section 3 read with sections 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act 80 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977 -unlawful possession of a firearm	5
	Contravention of section 90, read with sections 1,108,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act, 80 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of. 1977 - unlawful possession of ammunition	5
	Defeating or obstructing the course of justice	4
12. Naidoo, Rubendren	Contravention of section 2(1)(e) read with sections 1, 2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, Act 121 of 1998-participating in the conduct of an enterprise through a pattern of racketeering Activity	1
	Murder read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977	10
	Housebreaking with intent to commit murder and murder read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977	6
	Contravention of section 3 read with sections 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act 80 of 2000 and further read with section 260 of the Criminal Procedure Act 1 of 1977-unlawful possession of a firearm	15
	Contravention of section 90, read with section 1, 103, 117, 12d (1)(a) and 121 read with schedule 4 of the Firearms Control Act, 60 of	14

Accused	Charges	Counts
	2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977-unlawful possession of ammunition Attempted murder read with section 51(2) of Act 105 of 1997 read with section 185(1) of Act 61 of 1977 Malicious damage to property Theft Contravention of section 120(8) of Act 60 of 2000 read with section 1, 103,120(1)(a),121 and schedule 4- pointing of a firearm Defeating or obstructing the course of justice Assault with intent to do grievous bodily harm	1 1 3 3 13 3
13. Lee Christopher	Contravention of section 2(1)(e) read with sections 1, 2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, Act 121 of 1998-participating in the conduct of an enterprise through a pattern of racketeering Activity Murder read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977 Contravention of section 3 read with sections 1,108,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act 60 of 2000 and further read with section 250 of the Criminal Procedure Act 61 of 1977- unlawful possession of a firearm Contravention of section 90 read with sections 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act 60 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977- unlawful possession of ammunition Theft Contravention of section 120(8) of Act 60 of 2000 read with section 1, 103,120(1)(a),121: and schedule 4-pointing of a firearm Defeating or obstructing the course of justice	1 5 6 6 2 2 5

Accused	Charges	Counts
14. Lockem Anthon	Contravention of section 2(1)(e) read with sections 1, 2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, Act 121 of 1998-participating in the conduct of an enterprise through a pattern of racketeering Activity	1
	Murder read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977	9
	Housebreaking with intent to commit murder and murder read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977	1
	Contravention of section 3 read with sections 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act 60 of 2000 and further read with section 250 of the Criminal Procedure Act 61 of 1977- unlawful possession of a firearm	9
	Contravention of section 90 read with section 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act 60 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977 - unlawful possession of ammunition	8
	Attempted murder read with section 51(2) of Act 105 of 1997 read with section 155(1) of Act 51 of 1977	1
	Theft	1
	Defeating or obstructing the course of justice	9
15. Van Tonder, Jan Johannes Eugene	Contravention of section 2(1)(e) read with sections 1, 2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, Act 121 of 1998-participating in the conduct of an enterprise through a pattern of racketeering Activity	1
	Murder read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 81 of 1977	3
	Housebreaking with intent to commit murder and murder read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977	2
	Contravention of section 3 read with sections 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act 60 of	4

Accused	Charges	Counts
	2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977- unlawful possession of a firearm. Contravention of section 90 read with section 1,103,117,120(4)(a) and 121 read with schedule 4 of the Firearms Control Act 80 of 2000 and further read with section 250 of the Criminal Procedure Act, 51 of 1977- unlawful possession of ammunition Theft Contravention of section 120(6) of Act 60 of 2000 read with section 1, 103,120(1)(a),121 and schedule 4-pointing of a firearm Defeating or obstructing the course of justice	4 1 1 4
16. Smith, Charles John	Contravention of section 2(1)(e) read with sections 1, 2(2), 2(3), 2(4) and of the Prevention of Organised Crime Act, Act 121 of 1998- participating in the conduct of an enterprise through a pattern of racketeering Activity Murder read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977 Housebreaking with intent to commit murder and murder read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977 Contravention of section 3 read with sections 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act 80 of 2000 and further read with section 250 of the Criminal Procedure Act, 51 of 1977- unlawful possession of a firearm Contravention of section 90 read with sections 1,103,117, 120(1)(a) and 121 read with schedule 4 of the Firearms Control Act 80 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977-unlawful possession of ammunition Malicious damage to property Theft Contravention of section 120(6) of Act 80 of 2000 read with section 1, 103, 120(1)(a), 121 and schedule 4-pointing of a firearm Defeating or obstructing the course of justice	1 3 1 8 3 1 1 2 4

Accused	Charges	Counts
	Assault with intent to do grievous bodily harm	2
17. Marten, Jeremy	Contravention of section 2(1)(e) read with sections 1, 2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, Act 121 of 1998-participating in the conduct of an enterprise through a pattern of racketeering Activity	1
	Murder read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977	4
	Contravention of section 3 read with sections 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act 80 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977- unlawful possession of a firearm	4
	Contravention of section 90 read with section 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act 60 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977-unlawful possession of ammunition	4
	Attempted murder read with section 51(2) of Act 105 of 1997 read with section 155(1) of Act 51 of 1977	1
	Theft	1
	Defeating or obstructing the course of justice	1
18. MacInnes, Bruce David	Contravention of section 2(1)(e) read with sections 1, 2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, Act 121 of 1998-participating in the conduct of an enterprise through a pattern of racketeering Activity	1
	Murder read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977	3
	Housebreaking with intent to commit murder and murder read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977	3
	Contravention of section 3 read with sections 1,108,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act 80 of 2000 and further read with section 250 of the	2

Accused	Charges	Counts
	Criminal Procedure Act 61 of 1977 - unlawful possession of a firearm Contravention of section 90, read with sections 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act, 60 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977-unlawful possession of ammunition Theft Contravention of section 120(8) of Act 60 of 2000 and read with section 1, 103, 120(1)(a),121 and schedule 4 -pointing of a firearm Defeating or obstructing the course of justice harm Assault with intent to do grievous bodily	2 3 3 1 2
19. Dlamuka, Felokwakhe Thomas	Contravention of section 2(1)(e) read with sections 1, 2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, Act 121 of 1998-participating in the conduct of an enterprise through a pattern of racketeering Activity Murder read with section 51(1) of Act 105 of 1997 and section 155(1) of Act 51 of 1977 Contravention of section 8 read with sections 1,103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act 80 of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977-unlawful possession of a firearm Contravention of section 90 read with section 1;103,117,120(1)(a) and 121 read with schedule 4 of the Firearms Control Act of 2000 and further read with section 250 of the Criminal Procedure Act 51 of 1977- unlawful possession of ammunition Theft Defeating or obstructing the course of justice	1 3 3 3 2 3

- [59] The indictment **TABLE 1** catalogues the names of the accused who were charged for their alleged participation in the activities of the racketeering enterprise under section 2(1)(e) of POCA, namely: Booysen (accused 1), Padayachee (accused 2), Stoltz (accused 3), Mostert (accused 4), Nel (accused 5), Eva (accused 6), Ghaness (accused 7), Makhanya (accused 8), Olivier (accused 9), Mkhwanazi (accused 10), Mdlalose (accused 11), Naidoo (accused 13), Lee (accused 14), Lockem (accused 15), Van Tonder (accused 16), Smith (accused 25), Marten (accused 26), Mc Innes (accused 27), and Dlamuka (accused 19).⁵⁷ Only 5 of these accused were also charged with managing the racketeering enterprise under s 2(1)(f) of POCA. These are Booysen (accused 1), Eva (accused 6), Olivier (accused 9), Lockem (accused 15), and Van Tonder (accused 16).
- [60] On the exact same date, 15 August 2012, a request was made to the ANDPP-Jiba for centralisation of cases in relation to the Cato Manor matter.⁵⁸ The request was on the letterhead of the DPP, South Gauteng - Chauke. Linked to this is a suggestion that this constituted a material prosecutorial decision by him in relation to the prosecution of Booysen.⁵⁹

Review of racketeering authorisations

⁵⁷ Indictment. See Record, Booysen Bundle, page B 01064.

⁵⁸ See the remarks by Mosing regarding this aspect at para [50], above.

⁵⁹ See Record read with *fn* 18 (para 70 of Dr Broughton's opinion).

[61] It is common cause that the racketeering authorisations issued by the ANDPP-Jiba, on 17 August 2012,⁶⁰ were challenged in the review application launched in the KZN Local Division, Durban by the applicant, the first accused in the indictment (Booyesen). The cited respondents were the ANDPP-Jiba (as first respondent), the Public Prosecutor (as second respondent), Col Pharasa Daniel Ncube (as third respondent), DPP KZN Noko (as the fourth respondent), the Deputy National Commissioner of the SAPS (fifth respondent) and the Provincial Commissioner of the SAPS (sixth respondent).

[62] In a nutshell, Booyesen's case was that the impugned decisions, i.e, the racketeering authorisations, were arbitrary and irrational and that such irrationality offends the principle of legality and the law. He contended further that his dignity was impaired because he was forced to face prosecution when there was no evidence to support such decisions.⁶¹

Opposition of the review application

Internal memorandum to ANDPP by Mosing

[63] Mosing addressed an internal memorandum⁶² to the ANDPP-Jiba. It is important to give somewhat detail regarding this memorandum as it impacts one of the issues in terms of clause 3.1.1.3 of the ToR regarding the role allegedly played by Chauke in defending Booyesen's review application.

⁶⁰ See para [47] above.

⁶¹ S Booyesen v Acting National Director of Public Prosecution 2014 (2) SACR 556 (KZD) (26 February 2014) per Govern J at para 4

⁶² On 4 June 2013. See Record, Legal Opinions, LO 00738 at para 2.1.

- [64] The purpose of the memorandum was to update the ANDPP-Jiba of the outcome of the consultative meeting with the appointed counsel, Adv Laurens Hodes SC (Hodes SC) and his junior, Adv N Manaka (Manaka) regarding the pending review application. The prosecution team had prepared notes in reply to points raised in the founding papers. Attached to the notes was the prosecution memorandum, an indictment and a memorandum prepared by Booysen himself, in support of the payment of rewards for himself and the rest of the accused for the work done during the killings. These documents were made available to Hodes SC and Manaka. Except Mathenjwa, who was on leave, the entire prosecution team and Chauke were present.
- [65] Mosing stated that counsel considered the evidence regarding the rewards and held a view that it is crucial to weaken the review application. The issue of jurisdiction of the application being lodged in the Pietermaritzburg High Court was raised (not by Chauke) and regard was had also to the fact that Booysen might argue that the trial was in that Court. To that end, the prosecution team considered approaching the National Director to invoke the provisions of section 111 of the CPA, which empower her to remove a trial from one jurisdiction to another. A recommendation was accordingly made for the issuance of a directive that a trial should take place in another jurisdiction, for example, Gauteng.
- [66] In the email⁶³ by Chauke to Mosing and the prosecution team, a further consultative meeting at the instance of Chauke was arranged.⁶⁴ It was

⁶³ Dated August 2013. See Record, Legal Opinions, page LO 00742.

⁶⁴ It was arranged to take place on 14 August 2013.

anticipated that the intended consultation would address issues including the possibility of the IPID's joinder to the review proceedings. Answering papers were filed followed by Booysen's replying affidavit.

Prosecution team's internal memorandum to Hodes SC

- [67] After the closing of the pleadings, an internal memorandum from the prosecution team and Chauke was addressed to Hodes SC. The memorandum refers to Booysen's replying affidavit that makes mention of the statement of Aiyer (NJ2).⁶⁵ This statement raised issues of Booysen's alleged managerial responsibilities, participation and interferences in the activities of the Cato Manor Unit. According to Aiyer, this Unit was allegedly under Booysen's management and supervision (the applicant in the review application). NJ4⁶⁶ was a further statement dated 31 August 2012 by Aiyer and obtained after NJ2. It was obtained following the consultation with the prosecution team regarding the prosecution of Booysen.
- [68] Also mentioned in the internal memorandum was NJ3.⁶⁷ The evidence revealed that this was the draft statement of Mr Aristeidis Danikas (Danikas)⁶⁸ which was intended, allegedly, to corroborate the statement of Aiyer and evidence in possession of the prosecution team – revealing Booysen's alleged involvement

⁶⁵ The statement was obtained before the 17th of August 2012, the date on which the certificates for authorisations were issued.

⁶⁶ See Record, Batohi Witness Statement, SB1e 103 (Exhibit 32e).

⁶⁷ Record, Legal Opinions, page LO 00746 at paras 22 to 25.

⁶⁸ He was a police reservist in the Durban Organised Crime Unit based in the Cato Manor Unit, having been recruited by Booysen, himself.

in the activities of the Cato Manor Unit and his alleged like-mindedness in its operational component in the killing of suspects.

[69] Danikas referred to the *modus operandi* of the Cato Manor Unit regarding the alleged killings of suspects and Booysen's allegedly condoning and/or concealing the Unit's activities. NJ3 formed part of the information considered by the ANDPP-Jiba when she issued the racketeering authorisations for the prosecution of Booysen as the implicated manager and a participant in the Unit's activities.

[70] Furthermore, mention was made of statement NJ5 of Ndondlo⁶⁹ which is considered to have given a breakthrough in the killings of the KTA by the Cato Manor Unit, allegedly under the management of Booysen in favour of the STA to kill its rival (i.e. KTA members), for monetary gratification.

[71] The prosecution team drew attention to the fact that the case dockets placed before the ANDPP-Jiba, related to 28 deceased persons killed by the Cato Manor Unit allegedly under the pretext of solving crime in KZN and that the deceased were suspects in criminal activities. The team held the view that this was without substance. Booysen, it is mentioned, was fully aware of the pretext and is said to have also participated and got rewarded.⁷⁰

[72] It is common cause that the monetary award motivation for the Cato Manor Unit was drafted by Booysen, himself, and that he too was rewarded. It is not

⁶⁹ Although NJ5 constituted hearsay, so stated the prosecution team at LO 00747 at para 26, there was corroborative evidence against Booysen.

⁷⁰ *Id* prosecution memo. See Record, Legal Opinions, page LO 00749 at paragraph 30.1.

insignificant that the offences detailed in **TABLE 1** above were committed during Booysen's tenure as Director Organised Crime KZN and subsequently as Major General: Organised Crime KZN. It may, safely, be said that Booysen was the line manager of the Organised Crime Unit in KZN and that the members of the Cato Manor Unit fell under his direct command.

[73] Mention is further made of Booysen having deposed to the answering affidavit on behalf of the SAPS opposing the High Court interdictory application by Mr Bongani Elphas Mkhize (Bongani Mkhize) (the deceased in count 20 on the indictment)⁷¹ against four respondents, namely the Minister of Safety & Security (1st respondent), MEC KZN Community Safety & Liaison (2nd respondent), SAPS Provincial Commissioner: KZN (3rd Respondent) and Booysen, cited as Commissioner J Booysen: Head of the Organised Crime Unit – SAPS KZN (4th Respondent).

[74] By deposing to the opposing papers Booysen is said to have demonstrated thorough and highly detailed understanding and participation in the investigation and subsequent killings.⁷² It needs to be stressed that the evidential weight of these averments are matters this Enquiry need not concern itself with. Clearly, these matters fall within the province of the criminal trial court for determination.

[75] There were multiple case dockets concerning the Cato Manor Unit. These dockets are listed in **TABLE 2**, below. They show the case numbers reflecting

⁷¹ The deceased in the Durban Central CAS 137/59/2008.

⁷² Prosecution memorandum. See Record, Legal Opinions, page LO 00759 at para 30.2(ii).

the year and the name(s) of the deceased person(s) in respect of each case and the suspected killer(s) as per that table. The dockets contained, among other things, statements, crime-scene photographic albums, post-mortem reports, ballistic reports with material relating to the shooting incidents such as ballistic trajectory, bloodstain patterns and related forensic material. Evidence in relation to some of these matters will be dealt with when the issues are considered.

DOCKETS TABLE 2

Police Station	CAS NUMBER	Deceased	Counts	Accused Persons (as per Maema's presentation to NDPP-Nxasana, dated 9 July 2015)	CHARGES
Berea	288/05/08	Thabo Sunshine Msimango	35 – 38	4. Paul Mostert 5. Eric Alfred Nel 6. Neville Eva 7. Adjithsingh Ghaness 8. Phumelela Makhanya 11. Thathayiphi Enock Mdlalose 13. Rubendren Naidoo	Housebreaking with intent to commit murder Murder Unlawful possession of a firearm Defeating or obstructing the course of justice
Bhekithemba	44/05/11	Musawakhe Aubrey Ngcobo Xolisani Allen Ngcobo Simphiwe Shozi	70 – 79	6. Neville Eva 7. Adjithsingh Ghaness 13. Rubendren Naidoo	Housebreaking with intent to commit murder Murder <i>Unlawful possession of a Firearm</i>

Police Station	CAS NUMBER	Deceased	Counts	Accused Persons (as per Maema's presentation to NDPP-Nxasana, dated 9 July 2015)	CHARGES
					Defeating or obstructing the course of justice
Durban Central	185/02/09	Bongani Mkhize	20 – 24	2. Gonasagren Padayachee 3. Adriaan Jakobus Stoltz 14. Raymond Christopher Lee 19. Thomas Felokwakhe Dlamuka 20. Stanley Sandile Mfene	Murder <i>Unlawful possession of a Firearm</i> Defeating or obstructing the course of justice Theft
Durban North	67/07/11 ⁷³	Jabulani Bhengu Boysie Mbonambi	80 – 93	4. Paul Mostert 7. Adjithsingh Ghaness 13. Rubendren Naidoo 14. Raymond Christopher Lee 15. Anton Lockem 26. Jeremy Martens	Murder Attempted Murder Unlawful possession of a Firearm Defeating or obstructing the course of justice Theft
Durban North	69/07/11	Dumisani Mgobhozi		Cross reference with CAS 69/07/2011 above	

⁷³ See also, Phoenix CAS 120/07/2011 and Durban North CAS 71/07/2011

Police Station	CAS NUMBER	Deceased	Counts	Accused Persons (as per Maema's presentation to NDPP-Nxasana, dated 9 July 2015)	CHARGES
		Cross reference with CAS 69/07/2011 above			
Durban North	71/07/11	Cross reference with CAS 69/07/2011 above		Cross reference with CAS 69/07/2011 above	
eSikhawini	03/04/10	Kwazi Ndlovu	66 – 69	2. Gonasagren Padayachee 4. Paul Mostert 7. Adjithsingh Ghaness 8. Phumelela Makhanya 9. Willem Olivier 11. Thathayiphi Enock Mdlalose 16. Jan Eugene van Tonder 23. Peter William George 24. Wilbard Mhlabunzima Thabethe	Housebreaking with intent to commit murder and murder Unlawful possession of a Firearm Defeating or obstructing the course of justice
eSikhawini	50/09/11	Qinisani Gwala	94 – 97	4. Paul Mostert 8. Phumelela Makhanya 11. Thathayaphi Enock Mdlalose 16. Jan Eugene van Tonder 25. John Charles Smith 26. Jeremy Martens	Murder Unlawful possession of a Firearm Unlawful possession of ammunition Defeating or obstructing the course of justice
Estcourt	-34/08/08	Sanele Majola	102 – 103	4. Paul Mostert 5. Eric Alfred Nel 13. Rubendren Naidoo	Murder Defeating or obstructing the

Police Station	CAS NUMBER	Deceased	Counts	Accused Persons (as per Maema's presentation to NDPP-Nxasana, dated 9 July 2015)	CHARGES
				30. Mukesh Panday	course of justice
Howick	106/09/08	Magojela Ndimande Sibusiso Tembe	8 – 12	1. Johan Booysen 4. Paul Mostert 5. Eric Alfred Nel 6. Neville Eva 8. Phumelela Makhanya 9. Willem Olivier 15. Anton Lockem 16. Jan Eugene van Tonder	Murder Firearms Control Act Defeating or obstructing the course of justice
Kwadukuza	115/03/10	Nhlanhla Lucky Mhlongo	113 – 116	13. Rubendren Naidoo 15. Anton Lockem	Murder Firearms Control Act Unlawful possession of ammunition Defeating or obstructing the course of justice
Kwadukuza	39/09/08	Lindelani Buthelezi	3 – 7	4. Paul Mostert 6. Neville Eva 8. Phumelela Makhanya 13. Rubendren Naidoo 22. Vincern Auerbach	Housebreaking with intent to commit murder and murder Assault to do grievous bodily harm Defeating or obstructing the course of justice

Police Station	CAS NUMBER	Deceased	Counts	Accused Persons (as per Maema's presentation to NDPP-Nxasana, dated 9 July 2015)	CHARGES
					Firearms Control Act
Kwamashu	698/11/09	Sakhile Prince Thabede	62 – 65	2. Gonasagren Padayachee 3. Adriaan Jakobus Stoltz 4. Paul Mostert	Housebreaking with intent to commit murder and murder Firearms Control Act Unlawful possession of ammunition Defeating or obstructing the course of justice
Kwamashu	116/08/08	Mfanafuthi Zwane	98 - 101	4. Paul Mostert 8. Phumelela Makhanya 10. Thembinkosi Mbhekiseni 11. Thathayiphi Enock Mdlalose 15. Anton Lockem	Murder Unlawful possession of Firearm Unlawful possession of ammunition Defeating or obstructing the course of justice
Kwamashu	314/11/08	Nhlanhla Masondo	104 – 108	5. Eric Alfred Nel 6. Neville Eva 27. Bruce David McInnes	Murder Unlawful possession of Firearm

Police Station	CAS NUMBER	Deceased	Counts	Accused Persons (as per Maema's presentation to NDPP-Nxasana, dated 9 July 2015)	CHARGES
					Unlawful possession of ammunition Defeating or obstructing the course of justice Theft
Kwamashu	629/04/09	Thokozane Njapha	53 – 57	2. Gonasagren Padayachee 4. Paul Mostert 5. Eric Alfred Nel 6. Neville Eva	Murder Unlawful possession Unlawful possession Defeating or obstructi Theft
Mandini	76/08/08 75/09/08	Mzameni Johannes Ntuli (Kopolota) Nkosinathi Wilson Mthembu	13 – 18	3. Adriaan Jakobus Stoltz 4. Paul Mostert 6. Neville Eva 8. Phumelela Makhanya 10. Thembinkosi Mbhekiseni Mkhwanazi 11. Thathayiphi Enock Mdlalose 12. Accused 12 13. Rubendren Naidoo 15. Anton Lockem	Housebreaking with the intent to commit murder Murder Unlawful possession of Firearm Unlawful possession of ammunition Defeating or obstructing the course of justice

Police Station	CAS NUMBER	Deceased	Counts	Accused Persons (as per Maema's presentation to NDPP-Nxasana, dated 9 July 2015)	CHARGES
Melmoth	142/11/08 143/11/08	Velpahi Bongani Biyela Khanyisani Biyela	39 – 52	2. Gonasagren Padayachee 4. Paul Mostert 5. Eric Alfred Nel 7. Adjithsingh Ghaness 13. Rubendren Naidoo 14. Raymond Christopher Lee 19. Thomas Felokwakhe Dlamuka 25. Charles John Smith 27. Bruce David McInnes 28. John Shane Smith 30. Mukesh Panday	Murder Housebreaking with the intent to commit murder <i>Assault to do grievous bodily harm</i> Point with a firearm Malicious damage to property Unlawful possession of Firearm Unlawful possession of ammunition Theft Defeating or obstructing the course of justice
Phoenix	377/08/09	Lindokuhle Phillip Nzuza	58 – 61	4. Paul Mostert 13. Rubendren Naidoo 15. Anton Lockem	Murder Unlawful possession of Firearm Unlawful possession of ammunition Defeating or obstructing the

Police Station	CAS NUMBER	Deceased	Counts	Accused Persons (as per Maema's presentation to NDPP-Nxasana, dated 9 July 2015)	CHARGES
					course of justice
Pinetown	1000/05/09 688/05/09	Sibongiseni Badumele Ndimande	25 – 30	2. Gonasagren Padayachee 3. Adriaan Jakobus Stoltz 9. Willem Cornelius Olivier 13. Rubendren Naidoo 16. Jan Eugene van Tonder	Housebreaking with the intent to commit murder Point with a firearm Malicious damage to property Unlawful possession of Firearm Unlawful possession of ammunition Defeating or obstructing the course of justice
Bhekithemba	113/01/09	Wellington Mbongeleni Zondi			
Rustenburg	1097/09/2009 1098/09/2009	Sifiso Ndimande	31 – 34	2. Gonasagren Padayachee 4. Paul Mostert 6. Neville Eva	Housebreaking with the intent to commit murder Unlawful possession of Firearm

Police Station	CAS NUMBER	Deceased	Counts	Accused Persons (as per Maema's presentation to NDPP-Nxasana, dated 9 July 2015)	CHARGES
					Unlawful possession of ammunition
Tongaat	190/03/2009 linked to 356/03/09	Dan Phiri	109 – 112	5. Eric Alfred Nel 15. Anton Lockem. 25. Charles John Smith	Murder Unlawful possession of Firearm Unlawful possession of ammunition Defeating or obstructing the course of justice
Umkomaas	235/10/2008	Mduduzi Mkhize	19	17. Musawenkosi Ernest Nkabane 18. Nico Crouse	Murder

[76] It bears mentioning that the SAPS had suspended⁷⁴ and initiated disciplinary proceedings against Booysen.⁷⁵ The nub of the complaint against him was that he was, *de facto*, in control of the unit which was involved in the killing of Mkhize despite a High Court interdictory order against the police. It was alleged that although Aiyer was the direct command of the Cato Manor Unit in terms of the organogram, Booysen was, in reality, the one who controlled the unit and

⁷⁴ The suspension was with immediate effect from 30 August 2012. The suspension in terms of Regulation 13(4) of the SAPS Disciplinary Regulations – i.e. a suspension on full pay as a precautionary measure – was triggered by the charges relation to racketeering. See the notice of suspension and return of service at Record, Booysen Bundles, pages 02330 to B 02332.

⁷⁵ Chaired by Adv N Cassim SC. See Record, Booysen Bundle, pages B 01765 to B01792.

undermined Aiyer to the extent that the latter's leadership was rendered ineffective.

- [77] The disciplinary enquiry was chaired by Adv N Cassim SC (Cassim SC), whose findings sought to undermine the expert ballistic findings of Mangena and also critiqued Aiyer's statement.⁷⁶ Cassim SC found that Mangena did not have regard to the objective findings of Stoltz, raising to his mind an improper purpose in seeking to discredit Booysen.⁷⁷
- [78] Cassim SC found that the employer (SAPS) had not discharged the onus of demonstrating wrongdoing on the part of Booysen and recommended that Booysen be reinstated, which recommendation was accepted and implemented by the employer.⁷⁸
- [79] Booysen's suspension was later set aside by the High Court, KZN Local Division, Durban,⁷⁹ per Van Zyl J, following the urgent application challenging his suspension from his employment with the SAPS. Booysen was charged again⁸⁰ after the second racketeering authorisation.
- [80] The detailed expert report of Mangena is important. This is so because the version of the police who were involved in the shootings was that their actions were lawful as they acted in self-defence. In most of the cases, if not all of them,

⁷⁶ Record, Booysen Bundle, pages B 01765 to B 01792.

⁷⁷ Disciplinary Hearing Findings of Adv Cassiem. See Record, Booysen Bundle, page B 01775 at para 31.

⁷⁸ *Id*, page B 01792 at paras 76 and 77.

⁷⁹ Notice of Motion, Record, page B 02333. See also *Booyesen v Acting National Director of Public Prosecutions and Others* 2014 (2) SACR 556 (KZD).

⁸⁰ On 13 February 2014.

the question was whether the police versions could reasonably and probably be true and reconcilable with the physical evidence in respect of each docket case. As will become more apparent later, the evidence presented revealed, among other things, (a) that firearms (and on some occasion high velocity firearms) were used; (b) bullet trajectories, (c) bullet wound locations, (d) blood spatter patterns, post-mortem findings and crime scene gruesome photographs of the deceased. It goes without saying, that such evidence was inconsistent with the version of the police that the shooters acted in self-defence. This suggested that that there was *prima facie* evidence of predicate offences mentioned in the case dockets.

[81] The prosecution team's memorandum referred to similar facts evidence and presented a picture that Booyesen and his co-accused were involved in an on-going pattern of racketeering activities, i.e. the killing of civilians.⁸¹ The team, therefore, believed that there existed a *prima facie* case for Booyesen and co-accused to answer at the trial.

[82] To that end, the ANDPP-Jiba opposed the application. The prosecution team provided the legal representatives with all facts including evidence in the case dockets surrounding the prosecution of Booyesen. It was agreed, during consultation with the legal representatives, that the ANDPP-Jiba would file an answering affidavit on behalf of the NPA and that Maema would file a confirmatory affidavit. That was done. After the filing of the replying affidavit by Booyesen, the

⁸¹ Internal Memorandum from Cato Manor Team to Adv Hodes SC. See Record, Legal Opinions, page LO 00754 at para 52.

team met with Chauke on or about 14 August 2013 to discuss Booysen's replying affidavit.

- [83] The undisputed evidence presented at the Enquiry revealed that Chauke not only finalised the ANDPP-Jiba's answering affidavit but also, instead of Noko,⁸² signed a confirmatory affidavit. It was posited that, in doing so, Chauke did not merely co-ordinate the prosecution team but also played an integral role in the review application challenging the legality of racketeering authorisations issued by the ANDPP-Jiba.⁸³

The review judgment

- [84] In the judgment, per Gorven J (Gorven J's judgment) delivered on 26 February 2014⁸⁴ the racketeering authorisation by the ANDPP-Jiba was set even on "the stringent test for rationality imaginable". It needs mention that at the time of delivery of this judgment, ANDPP-Jiba was no longer the ANDPP. As at that time, Mr Mxolisi Nxasana had assumed the position of NDPP. As regards the contents of the dockets, the court found that the NPA conceded through argument by counsel that no statements contained in such dockets implicated Booysen in any of the offence with which he had been charged.

- [85] The dockets, the court remarked, could therefore not have provided a rational basis for arriving at the impugned decisions.⁸⁵ Based on an inferential reasoning,

⁸² *Id* at paras 81 to 83.

⁸³ The application was launched by Booysen after his arrest and later released on bail.

⁸⁴ SAFLII *Booyesen v Acting National Director of Public Prosecutions and Others* (4665/2010) [2014] ZAKZDHC 1; [2014] 2 All SA 391 (KZD) (26 February 2014)(Gorven J's judgment).

⁸⁵ *Id* paragraph 29.

the court said that none of the information on which the ANDPP-Jiba relied linked Booyesen to the offences in question⁸⁶ and that the decisions were arbitrary, offended the principle of the rule of law and, therefore, unconstitutional.⁸⁷

[86] Importantly, having made its findings, the court further remarked that its findings—

“do not amount to a finding that Booyesen is not guilty of the offences set out in counts 1 and 2 and 8-12. That can only be decided by way of a criminal trial. Setting aside the authorisations and decisions to prosecute also does not mean that fresh authorisations cannot be issued or fresh decisions taken to prosecute if there is a rational basis for these decisions.”⁸⁸

[87] Consequently, Gorven J made the following order:

- “(a) Declaring the decisions taken by the first respondent purportedly in terms of the provision of s 2(4), read with ss 1 and 2 of the Prevention of Organised Crime Act, No 121 of 1998 (POCA), on 17 August 2012 to authorise the applicant’s prosecution on charges of contravening ss 2(1)(e) and 2(1)(f) of POCA inconsistent with the Constitution of the Republic of South Africa, 1996, and invalid;
- (b) Reviewing and setting aside the aforesaid decisions taken by the first respondent on 17 August 2012;
- (c) Declaring the decision(s) taken by the first respondent, alternatively, second respondent, alternatively first and second respondents, to prosecute the applicant on the charges contained in counts 1 and 2 and 8 to 12 of the indictment served upon the applicant on 29 October 2012 (the indictment) inconsistent with the Constitution of the Republic of South Africa, 1996, and invalid;

⁸⁶ *Id* paragraph 34.

⁸⁷ *Id* paragraphs 36-37.

⁸⁸ *Id* paragraph 39.

- (d) Setting aside the first respondent's, alternative second respondent's, alternatively first and second respondents', decision(s) to prosecute the applicant on the charges contained in counts 1 and 2 and 8 to 12 of the indictment ...; and
- (f) Ordering the first respondent and any other respondent who opposes this application to pay the applicants costs of suit, which costs are to include the costs consequent upon the employment of two counsel.”⁸⁹

Steps taken post Govern J's judgment

[88] *What then happened following the review judgment?* It is important to mention the steps taken after the review judgment, particularly regarding the role played by Chauke. The suggestion is that Chauke made a prosecutorial decision by instituting “an appeal” against Gorven J's judgment.⁹⁰ The prosecution team, Mosing and Chauke met at the latter's offices in Johannesburg on 3 March 2014 to discuss the review judgment. The Judge's remark, regarding the alleged concession by Hodes SC – that there was no evidence implicating Booysen with the predicate offences, was discussed. The team considered the Court's attribution of the concession to Hodes SC, as a misunderstanding. They held the view that the concession, if any, was incorrect.⁹¹

[89] At the end of the discussions, the prosecutorial team agreed that although it was not satisfied with the Gorven J's judgment, the door was – at least – still open to

⁸⁹ *Id* paragraph 3.

⁹⁰ See clause 3.1.1.4 of the ToR.

⁹¹ Mosing statement. See Record, Legal Opinions, page LO 00714 at para 16.

bring a new racketeering application as was indicated in the judgment.⁹² It was further agreed that it would not be necessary to appeal the judgment.

[90] Subsequently, on 7 March 2014,⁹³ Chauke seemingly presented a copy of a memorandum to Noko which he intended to present to the NDPP-Nxasana and Ramaite, regarding the appeal. A few days later, consultation with Hodes SC was secured by Chauke to enable the team to hear directly from the Senior Counsel himself what his view on the review judgment was and to get some explanation as regards the unfavourable outcome. That consultative meeting took place on 13 March 2014. The prosecution team, Mosing and Chauke attended.

[91] At that meeting, Mosing explained, Hodes SC raised several issues in respect of which he considered that the High Court erred including its interpretation of the law and the setting aside of the decision to prosecute on counts 8 to 12 as that decision had not been taken by the ANDPP-Jiba but the DPP.⁹⁴ Hodes SC disagreed that he made a concession regarding the lack of evidence implicating Booysen.⁹⁵

⁹² Review judgment at para 39, as quoted above.

⁹³ Although Mosing was not copied the memorandum he received an email to that effect from Maema on 11 March 2014.

⁹⁴ See Mosing statement, Record, Legal Opinions, page LO 00714 at para 17. The counts are reflected in the indictment as defeating the end of justice (count 8), contravention of s 3 read with ss 1, 103, 117, 120 and 121 read further with Schedule 4 of the FCA as well as s 250 of the CPA-unlawful possession of a firearm (count 9), contravention of s 90 regarding the unlawful possession of ammunition (count 10) and murder (count 11).

⁹⁵ As stated in para 29 in Gorven J's judgment.

- [92] After the consultation, Mosing stated, “we [referring to the prosecution team, Chauke and himself] *were satisfied ...that there were merits to appeal as advised by counsel.*”⁹⁶ Those present, the prosecution team, Mosing and Chauke agreed that counsel should in the meantime, therefore, prepare the application for leave to appeal while Chauke would brief the NDPP-Nxasana about the need to appeal the review judgment and to obtain his consent. To recap, during this time, the NDPP-Nxasana had already been appointed on 1 October 2013. Chauke undertook to brief his direct supervisor, then Dr Silas Ramaite (Ramaite) – head of the NPS, and the NDPP-Nxasana, accordingly.
- [93] On 14 March 2014 the prosecution team and Mosing met again to discuss the implication of Gorven J’s Judgment in its entirety. Chauke, Mosing stated, did not attend.
- [94] Thereafter, on 24 March 2014, the NDPP-Nxasana summoned Mosing to a meeting⁹⁷ in his office with the entire file pertaining to the Booysen matter. He enquired about the notice of appeal which he said he had not been briefed about and questioned the merits of the intended appeal. The NDPP-Nxasana seemingly posited that Hodes SC gave the advice “to save his own reputation”⁹⁸ and “to save the reputation of Jiba.”⁹⁹ The spokesperson, Adv Ncube, seemed to have conveyed to the NDPP-Nxasana what had earlier transpired at the

⁹⁶ Statement of Mosing at Silverton CAS688/10/2014. See Record, Legal Opinion, page LO 00703 to LO 00704 at 17.

⁹⁷ Attended by Nxasana, Adv T Duma and Dr Ramaite and the former NPA spokesperson, Mr Nathi Ncube.

⁹⁸ Mosing’s statement at para 18. See fn 96 above.

⁹⁹ *Id.*

meeting¹⁰⁰ with the ANDPP-Jiba, where the latter had agreed that the judgment should be appealed. According to Mosing, it was impossible for the ANDPP-Jiba to have already given an instruction to appeal (on 13 February 2014) as the review judgment was only handed down approximately two weeks later, on 26 February 2014.¹⁰¹

[95] I pause to mention that, from the reading of Mosing's statement, there seemed to have been internal squabbles between the ANDPP-Jiba (who at one stage chaired the National Operations Management Meeting (NOMM) of the NPS which was attended by the DPPs) and the NDPP-Nxasana. The latter questioned why Mosing attended the meeting. He posited that Mosing was loyal to the ANDPP-Jiba (as she then was). The former and current heads of the NPA seemed to have been at loggerheads and Mosing was, seemingly, caught in the middle.

[96] Ultimately, the NDPP-Nxasana decided that the appeal should be withdrawn and the prosecution team was advised of this decision at the meeting on 25 March 2014. That meeting was preceded by an email from the NDPP-Nxasana's Office sent to Chauke for an explanation "why the matter was being dealt with by a DPP of South Gauteng when the matter arose in KZN."¹⁰²

[97] According to Mosing, it was surprising because that question was raised for the first time. Chauke explained his position to the NDPP-Nxasana, that he had been requested by the ANDPP-Jiba (as she then was) to assist to coordinate a team

¹⁰⁰ A meeting on 13 February 2014.

¹⁰¹ Mosing's statement at para 15. See fn 96 above. See also Record, Legal Opinions, page LO 00730.

¹⁰² Mosing statement at para 21.

to prosecute the matter in KZN. Regarding the briefing, Chauke clarified that he had regularly sent memoranda to the head office about the matter and had followed protocol by briefing Dr Ramaite¹⁰³ who was, in turn, expected to brief the NDPP-Nxasana.

[98] Further, according to Mosing, Chauke explained that the notice to appeal had been filed because time within which the notice was due for filing was running out and it was considered that it could always be withdrawn¹⁰⁴ should the NDPP-Nxasana disagree with the decision to appeal. Mosing said that the NDPP-Nxasana was, outwardly, unhappy about the situation and said that he was being undermined. NDPP-Nxasana advised that he had already decided that the appeal should be withdrawn.¹⁰⁵

[99] The day following the meeting,¹⁰⁶ on 26 March 2014, Chauke addressed an email to the State Attorney, instructing Mr Govender to withdraw the notice of application for leave to appeal as decided by the NDPP-Nxasana. He copied Hodes SC. Nonetheless, the withdrawal did not dissuade the prosecution team from executing their function.

[100] On 28 March 2014, Maema emailed Noko, copied Chauke and enclosed the letter for the Mutual Legal Assistance (MLA), supported by an affidavit in the name of Noko and a draft statement of Danikas. The intention was to secure a signed statement from Danikas in Greece. The email recorded that the charges against

¹⁰³ That he, Dr Raimate, confessed to have received. *Id.*

¹⁰⁴ This much is confirmed by Maema's testimony. See Transcript, Day 28, page 210, line 18.

¹⁰⁵ It is said that the ANDPP was not present during the aforementioned discussions.

¹⁰⁶ Meeting on 25 March 2014.

Booyesen were withdrawn and that a Chief Magistrate would be approached to issue the MLA letter. Mosing communicated the NDPP-Nxasana's decision to withdraw the notice of appeal to Jiba, who had then assumed the position of Special Director of Public Prosecutions (SDPP-Jiba), who advised that it was logical to withdraw the charges if the appeal was not pursued.¹⁰⁷

[101] Another briefing session that was scheduled for 7 April 2014 took place and Noko was invited to attend. Nxasana relieved Chauke of his oversight role. Chauke then left the meeting. The prosecution team made a presentation to the NDPP-Nxasana regarding the Cato Manor matter.¹⁰⁸ Nxasana directed that a full prosecution memorandum motivating for the issuance of fresh authorisations be presented by the end of May 2014. He advised that once the memorandum is presented, he would recuse himself and delegate his decision-making function in relation to this matter to his deputy, Dr Ramaite. According to him, he would be perceived to be conflicted because he had previously represented some of the members of the Cato Manor Unit while practising as an attorney in Durban.¹⁰⁹ Later, Maema shared the presentation with Chauke.¹¹⁰

[102] Following the presentation, Chauke wrote to Dr Ramaite confirming that he would no longer be involved in the Cato Manor matter.¹¹¹

¹⁰⁷ Record, Booyesen Bundle, page B 01652.

¹⁰⁸ Record, Booyesen Bundle, page B 01653 to B 01708.

¹⁰⁹ Transcript Day 28, page 227, Lines 1 to 25.

¹¹⁰ Record, Booyesen Bundle, pages B 01717 to B 01718. See also Transcript Day 28, page 227, lines 1 to 11.

¹¹¹ Record, Booyesen Bundle, page B 01717.

Second application for racketeering authorisations

- [103] On 4 June 2014 Noko submitted an application for new racketeering authorisations by the NDPP-Nxasana against Booysen.¹¹² The application was supported by the prosecution team's undated memorandum signed by Maema.¹¹³ Subsequently, Mosing made an input in an internal memorandum addressed to the NDPP-Nxasana and Adv TC Duma SC.¹¹⁴ The input was with reference to new evidential material that was not available when the first authorisations were issued by the ANDPP-Jiba, in August 2012.¹¹⁵
- [104] It appears that the NDPP-Nxasana still had reservations about the legal basis for charging Booysen. This necessitated a response by Maema to Noko, containing a draft response to the NDPP-Nxasana's query and explaining, among other things, the basis for charging Booysen.¹¹⁶ An explanation was given regarding Hodes SC's alleged concession during argument.
- [105] Then, seemingly at the instance of the NDPP-Nxasana, an opinion was sought regarding the available disciplinary procedures against senior personnel at the NPA, namely the ANDPP-Jiba, Adv L Mrwebi (Mrwebi), Adv Sibongile Mzinyathi and Noko. It is not necessary to deal with the charges against them here. Suffice it to mention that the disciplinary action was, primarily, as a result of certain

¹¹² *Id* at pages B 01719 to B01720.

¹¹³ *Id* at pages B01721 to B01732.

¹¹⁴ The memorandum is dated 26 June 2014. See Record, Booysen Bundle, pages B 01735 to B01737.

¹¹⁵ *Id* at pages B01735 to B01737.

¹¹⁶ The response is via the email dated 14 July 2014. See Record B01760 to B01761.

scathing credibility findings made in court decisions¹¹⁷ which will be dealt with later when discussing the matter concerning Mdluli, referred to as the Mdluli matter.

[106] Approximately 30 days following Mosing's internal memorandum, former President Zuma notified the NDPP-Nxasana of his decision to institute an enquiry into the NDPP-Nxasana's fitness to hold office¹¹⁸ and inviting him to make representations. Following the representations, he was relieved of his duties on 1 June 2015.

Appointment of Adv Shaun Abrahams followed by a fresh application for racketeering authorisations

[107] Fast forward, Adv Shaun Abrahams was appointed NDPP on 23 June 2015 by President Zuma (NDPP-Abrahams).¹¹⁹ On 9 July 2015 the prosecution team made a full presentation to him. This was followed by an opinion by Adv MI

¹¹⁷ In *Freedom Under Law v National Director of Public Prosecutions & Others* 2014 (1) SA 254 (**FUL application**) (GNP by Murphy J against the ANDPP-Jiba, *inter alia*, that her conduct was unbecoming and that her attitude signalled a troubling lack of appreciation of the constitutional ethos and principles underpinning the office she held, and on appeal by the SCA per Brandt JA in the case reported as *National Director of Public Prosecutions & Others v Freedom Under Law* 2014 (4) SA 298 (SCA) (**ANDPP's appeal of Murphy's judgment**)) at para 37 where the court remarked that despite the matter involving Mrwebi having been widely covered in the media and despite it being a high profile case resulting in the public outcry, the ANDPP never availed herself of the opportunity to intervene, and in the Gorven's Judgment at para 32 read with paragraph 34 regarding the ANDPP-Jiba's alleged mendacity. Basically, Booysen had alleged in his replying affidavit that the ANDPP-Jiba was mendacious because she took into account information on oath that objectively did not exist at the time of taking the decision.

¹¹⁸ In terms of s 12(6) and (7) read with s 14(3) of the NPA Act. See Record B 01762 to B 01763.

¹¹⁹ See Record, Booysen Bundle, page B 02123- A letter of appointment through the office of the former Minister of Justice and Correctional Services, Adv T M Masutha.

Thenga (Thenga)¹²⁰ regarding the Silverton CAS 622/10/2014¹²¹ in respect of which the ANDPP-Jiba was charged with fraud and perjury and in which Thenga declined to prosecute on the basis that the ANDPP-Jiba was merely performing her functions and that she was, in any event, protected by section 78 of POCA.

[108] NDPP-Abrahams requested an opinion from Adv MP Mokgatlhe (Mokgatlhe). The latter was the Deputy Director of Public Prosecutions (DDPP) serving at the Specialised Commercial Crime Unit (SCCU). The opinion sought concerned the veracity of the prosecutorial decision of Advocates Ferreira and Van Eeden in relation to the impugned conduct of the ANDPP-Jiba.¹²² Implicit from Mokgatlhe's opinion,¹²³ the following sources were considered:

- (a) The evidence as contained in case dockets, Silverton CAS 622/10/2014;
- (b) The charge sheet of State versus Nomgcobo Jiba, Case No. 111/83/2015;
- (c) The NPA Policy Directives;
- (d) The relevant provisions of POCA;
- (e) Gorven J's judgment;

¹²⁰ Witness Statement of Chauke at the State Capture Commission. See Record, Legal Opinions, LO 00403 at 144.6.120.

¹²¹ The case against the ANDPP was for fraud and perjury. Thenga was of the view that this case had to be dealt with in terms of Part 8: Prosecution of Certain Categories of persons –The NPA Policy Directives, para 8(c).

¹²² Prosecutors reporting under him – Mokgatlhe.

¹²³ Dated 17 August 2015.

- (f) The affidavit of Booysen;
- (g) The affidavit of Jiba;
- (h) The legal opinion of Ferreira and Van Eeden; and
- (i) Prosecutorial memoranda in the Cato Manor case against Booysen and Others.

[109] Mokgatlhe endorsed the conclusion of Mokgatla regarding the fraud and perjury charges against the ANDPP–Jiba and stated that the State will not be able to prove that Jiba had the necessary intention to commit the said offences.¹²⁴ As to the racketeering authorisations by the ANDPP-Jiba, Mokgatlhe said that the suggestion that there was no direct evidence linking Booysen to the individual offences was irrational and indicated a lack of understanding of the requirements necessary for managing an enterprise. He further said that the POCA allows the State to charge any individual with managing the activities of an enterprise, even if that person is not at the scene of the crime or his conduct is not directly linked to the offences.¹²⁵

[110] According to Mokgatlhe, Booysen “knew or ought reasonably to have known that these 7 people were killed because they were suspected of having killed a police officer.” The killing of the 7 people, he said, happened in close proximity to the date of the killing of Chonco.¹²⁶ The filing of the answering affidavit in the

¹²⁴ Mokgatlhe’s Opinion – Record, Booysen Bundle, page B 02225, para 33 read with para 45 at page B 02227.

¹²⁵ *Id*, Record, Booysen Bundle, page B 02223, paragraph 22.

¹²⁶ *Id* at page B02224, paragraph 27.

interdictory application by the late Bongani Mkhize, Mokgatlhe said, “clearly indicated that Booysen had knowledge of the activities of the said policemen” but in spite of the Court order in favour of Bongani Mkhize, he was killed by the same Cato Manor SVC Section of the Durban Organised Crime Unit.”¹²⁷ Mokgatlhe concluded that the authorisations of the racketeering against Booysen and the Cato Manor Unit (SVC Section) members could not be faulted.¹²⁸

[111] Immediately after Mokgatlhe’s opinion, Noko applied on 18 August 2015, for fresh racketeering authorisation by the NDPP-Abrahams against Booysen and other accused listed in the Indictment **TABLE 1**. The application¹²⁹ was supported by a fresh prosecution memorandum,¹³⁰ the proposed indictment and draft authorisations for sections 2(1)(e) and 2 (1)(f), respectively. Noko referred to Gorven J’s judgment where the court mentioned that its “setting aside of the [impugned] authorisations and decisions to prosecute does not mean that fresh authorisations cannot be issued or fresh decisions taken to prosecute if there is a rational basis for the decisions.”¹³¹

[112] On 16 October 2015 Noko addressed a supplementary submission regarding her fresh application for racketeering authorisations¹³² also supported by a comprehensive prosecutorial memorandum by Maema, albeit unsigned.¹³³

¹²⁷ *Id* at page B02225, paragraph 31.

¹²⁸ *Idem* at paragraph 32

¹²⁹ Noko’s fresh application for racketeering authorisation – Record, Booysen Bundle, page B 02267 was however signed on the next day, i.e. 19 August 2015.

¹³⁰ Record Booysen Bundle, pages B 02275 to B 02329.

¹³¹ Para 39 of Govern J’s Judgment.

¹³² Record Booysen Bundle, page B 02528.

¹³³ Record Booysen Bundle, pages B 02653 to B 02708 (unsigned).

[113] On 13 February 2016, the NDPP-Abrahams issued the fresh racketeering authorisations sought by Noko in respect of section 2(1)(e) and 2(1)(f).¹³⁴ This was followed by another review application launched by Booyesen.

Booyesen's second review application against NDPP-Abraham's decisions

[114] An email addressed to the State Attorney¹³⁵ by Booyesen's legal representatives¹³⁶ indicated that NDPP-Abrahams was not entitled to reissue the racketeering authorisations and that their client would challenge the said authorisations.¹³⁷

[115] The NDPP-Abrahams addressed an internal memorandum to SDPP-Jiba, Chauke, Noko and Adv JP Pretorius (the Acting Special Director of Public Prosecutions Priority Crime Litigation Unit (PCLU)) on 8 April 2016, advising that the PCLU reports directly to him and that the three DDPPs (seconded to the PCLU, namely: Maema, Mathenjwa and JJ Mlotshwa) will be the prosecutors in the Cato Manor matter. He thanked Chauke for his leadership and assistance during his involvement in the matter and Futshane and Ntlakaza for their sterling work and commitment.¹³⁸

¹³⁴ Record Booyesen Bundle, pages B 02709 to B 02712.

¹³⁵ Dated 31 March 2016.

¹³⁶ Namely, Carl Van Der Merwe and Associates.

¹³⁷ Record Booyesen Bundle, page B 02720.

¹³⁸ Record Booyesen Bundle, page B 02721.

- [116] Subsequently, Booysen launched a second review application against NDPP-Abrahams' authorisations.¹³⁹ Attached to his founding affidavit to the review application is a version of the prosecution memorandum signed by Maema on 17 August 2015. On 17 August 2016, Booysen filed an unsigned affidavit in which he responded to the contents of the Rule 53 record filed by the NDPP-Abrahams.¹⁴⁰
- [117] On 20 February 2017, Booysen filed a "second supplementary founding affidavit",¹⁴¹ seemingly addressing the Rule 53 record which was allegedly supplemented and filed by NDPP-Abrahams. This supplemented record could, however, not be traced during the Enquiry proceedings. In an answering affidavit filed on 17 May 2017, the NDPP-Abrahams opposed the application. NDPP-Abrahams resigned on 13 August 2018 while the application was still pending in the High Court.
- [118] Following the resignation of the NDPP-Abrahams, Dr Ramaite was appointed ANDPP. Around September 2018, a request was made to Noko to approach the Judge President (KZN) to appoint an outside Judge¹⁴² to hear the review application that was scheduled for hearing on 8 October 2018.
- [119] It is not clear what transpired on the said scheduled date. It is, however, undisputed that the NDPP-Abrahams' fresh authorisations remained intact. One hastens to mention, however, that NDPP-Abrahams' authorisations were

¹³⁹ Record Booysen Bundle, page B 02724.

¹⁴⁰ Record Booysen Bundle, pages B 02797 to B 02846 (unsigned).

¹⁴¹ Record Booysen Bundle, page 02856.

¹⁴² Record, Noko Witness Statement, page 5 at para 16.

subsequently withdrawn by his successor, Batohi, in 2019. This aspect will be discussed later.

In relation to the Mdluli matter

[120] A brief discussion relating to the Mdluli matter is warranted.

[121] The terms of reference in clause 3.1.2 refers to Chauke's:

"failure to continue with charges against Lieutenant-General Richard Mdluli for his involvement in the murder of Mr Tefo Abel Ramogibe, in that he... caused the charge of murder relating to the killing of Mr Tefo Abel Ramogibe, and related charges to be withdrawn, notwithstanding that there was strong evidence justifying the institution of a prosecution in the matter, which decision caused a significant delay in proceeding with charges concerned."¹⁴³ This shall be referred to as the "Mdluli matter".

[122] At the centre of this clause is Mdluli and his alleged involvement in the murder of Mr "Oupa" Tefo Abel Ramogibe (Ramogibe).¹⁴⁴ A brief background in relation to this matter will suffice particularly in light of certain pronouncements by Courts on the issue raised in the ToR above.

[123] Mdluli joined SAPS in 1979 and was appointed Head of Crime Intelligence.¹⁴⁵ During March 2011, together with his co-accused he was arrested and charged with 18 counts, including murder, kidnapping, assault and defeating the ends of justice, arising from the alleged killing of Ramogibe.

¹⁴³ ToR Clause 3.1.2.

¹⁴⁴ Record Docket page VR 00042 at 2.

¹⁴⁵ On 1 July 2009.

[124] Mdluli was accused of the murder, with two of his co-accused, Mthembeni Mthunzi-Omhle Mthunzi (Mthunzi) and Samuel Zwelindawo Dhlomo (Dhlomo) – both detectives stationed at Vosloorus SAPS with Mdluli – and another co-accused, Sebastian Nkosana Ximba¹⁴⁶ (Ximba), who was a member of Mdluli's tracing team. A brief summary of events preceding Ramogibe's death are set out below:

- (a) The focal point concerning the events between Mdluli and Ramogibe was Ms Tshidi Buthelezi ("Buthelezi"), with whom Mdluli had a relationship from 1986.¹⁴⁷ Mdluli and Buthelezi bore a child and resided together in Boksburg. During this time, Mdluli was stationed at Vosloorus SAPS as an investigator.
- (b) It seems that in 1998, Buthelezi began a relationship with Ramogibe. This relationship resulted in a civil union on 22 July 1998, between them. Mdluli later came to know of the relationship and his relationship with Buthelezi became strained. Between 1 August 1998 and 1 October 1998, several incidences of alleged kidnapping, intimidation and assault occurred against Ramogibe, Buthelezi and certain associates of Buthelezi.¹⁴⁸
- (c) As a consequence of the conflict between herself and Mdluli, Buthelezi moved to Orange Farm in August 1998 with Ramogibe. It was alleged

¹⁴⁶ Record Docket page VR VR000162.

¹⁴⁷ Allegedly from 1986. See Record, Richard Mdluli Bundle, page RM 000770.

¹⁴⁸ Record Docket page VR RM 00758.

that Mdluli had engaged in acts of intimidation against Ramogibe's family in an effort to separate him from Buthelezi, including threatening to kill Ramogibe if his family did not bring Ramogibe before Mdluli.¹⁴⁹

- (d) Following the civil union of Ramogibe and Buthelezi, as it is alleged, Mdluli procured a copy of the marriage certificate, and began to engage in acts of intimidation against Ms Alice Manana (Manana), a friend to Buthelezi who had witnessed the marriage and signed the certificate.
- (e) Manana provided the residential details of Ramogibe and Buthelezi, whereafter she took Mdluli to the home of Sarah Ramogale (Ramogale), where Ramogale pointed out the current residence of Ramogibe and Buthelezi.¹⁵⁰ Mdluli then took Manana, Buthelezi and Ramogibe back to the Vosloorus SAPS Station, where Manana and Ramogibe were assaulted.¹⁵¹ Manana reported the matter at Dawn Park SAPS station.¹⁵²
- (f) Manana was then attacked on 17 October 1998 at her residence and wrote in her affidavit that she identified Mdluli and his vehicle before being shot but could not identify the shooter as he was wearing a balaclava.¹⁵³

¹⁴⁹ Record Docket page VR 00126.

¹⁵⁰ Record Docket page VR 00099.

¹⁵¹ *Id.*

¹⁵² Record RM 00100.

¹⁵³ Record Docket page VR 000003.

- (g) The various allegations of intimidation were then followed by an allegation of the attempted murder of Ramogibe in December 1998. According to the affidavit of Ramogibe, in the evening of 23 December 1998 while driving the borrowed vehicle of SAPS Officer Ximba, he heard gunshots directed towards him. He drove away from the sound of gunshots and reported the damage to the vehicle to Ximba.¹⁵⁴ Subsequent to this, Ramogibe opened a case at the Vosloorus SAPS Station, to which Dhlomo was assigned as the investigating officer.
- (h) In the course of his investigation, Dhlomo is alleged to have tried to locate Ramogibe,¹⁵⁵ ultimately closing the docket on 11 February 1999 as he was unable to locate him.¹⁵⁶ Mdluli allegedly reopened the attempted murder docket in February 1999, whereafter he instructed Dhlomo to take Ramogibe to conduct a pointing out at the crime scene. Ramogibe attended at Vosloorus SAPS on 17 February 1999, for the said pointing out.
- (i) It is alleged that Dhlomo took Ramogibe to the site in the force vehicle allocated to Mdluli. While conducting the pointing out, Dhlomo alleges that he and Ramogibe were accosted by unknown persons brandishing firearms. According to Dhlomo, the assailants took his firearm and the car keys and forced him to lie on the ground whereafter Dhlomo heard

¹⁵⁴ Record Docket page VR 000028.

¹⁵⁵ Record Docket page VR 000042.

¹⁵⁶ Record Docket page VR 000326.

gunshots. He fled to the neighbouring house for help. Upon his return, he learned that Ramogibe had been shot at.¹⁵⁷ The post-mortem of Ramogibe revealed fatal wounds in the brain, lungs and heart.¹⁵⁸

- (j) A docket into the killing of Ramogibe was opened on 22 February 1999.¹⁵⁹ The investigating officer, Lieutenant Colonel du Plessis, submitted the original docket to the NPA in November 1999 through the Boksburg Magistrate's court, to determine whether it should be prosecuted or sent for an inquest. Attempting to follow up, du Plessis discovered that the dockets had gone missing and did not have copies thereof.¹⁶⁰

The matter remained dormant for 10 years.

- [125] In 2009, the investigation into Mdluli was resuscitated following Mdluli's appointment as the Divisional Commander of Crime Intelligence in the SAPS on 1 July 2009 and a subsequent article alleging his involvement in the killing of Ramogibe. On 19 March 2011, Adv Ziaas van Zyl (van Zyl) was briefed telephonically by Adv Xoli Khanyile (Khanyile) – the then acting DPP South Gauteng – concerning Mdluli's alleged involvement in Ramogibe's death.

- [126] Khanyile was, at that point, presenting to the late Minister Mthethwa and former Minister Radebe regarding the warrants of arrest in relation to the Mdluli

¹⁵⁷ *Id.*

¹⁵⁸ Record Docket page VR 000108.

¹⁵⁹ Record Docket page VR000198.

¹⁶⁰ Record Docket page VR 000200. See also Van Zyl Witness Statement at 68.

matter.¹⁶¹ Khanyile appointed Van Zyl to lead the prosecution team comprising of himself and Advocates Kholeka Gcaleka (Gcaleka) and Deon Barnard (Barnard), collectively referred to as Van Zyl's prosecution team.

[127] On 31 March 2011, Mdluli was arrested and charged with several counts in relation to Ramogibe's death. The charges in the indictment were as follows:

"Contravening Section 1(1)(b) of The Intimidation Act 72 of 1982 (Counts 1-5 and 8.);
Kidnapping (Counts 6 and 10);
Assault (Counts 7 and 11);
Assault with Intent to do grievous bodily harm (Counts 9 and 12);
Attempted murder (read with the provisions of Section 51(2) of the Criminal Law Amendment Act 106 of 1997 (Counts 13 and 14);
Murder (read with the provisions of Section 51(1) of the Criminal Law Amendment Act 105 of 1997, (count 15), alternatively, Contravening Sections 18(2)(a) of the Riotous Assemblies Act 17 of 1958 (Count 15); and
Defeating or obstructing the course of Justice (count16)." ¹⁶²

[128] The Van Zyl prosecution team continued working on the matter until September 2011, at which point the team became satisfied that they had gathered sufficient evidence to indict Mdluli and his co-accused. On 29 September 2011, Van Zyl informed the Magistrate of the decision to arraign all the accused for trial.¹⁶³

[129] Mdluli and his co-accused applied for bail on 7 April 2011. The accused were released on bail following the judgment¹⁶⁴ delivered on 20 April 2011. Mdluli submitted written representations to Chauke requesting that the charges against

¹⁶¹ Record, van Zyl Witness Statement at para 29.

¹⁶² Record, Van Zyl Witness Statement at para 76.2.

¹⁶³ Signed indictment.

¹⁶⁴ On 20 April 2011.

him be withdrawn.¹⁶⁵ Put succinctly, Mdluli's representations asserted, *inter alia*, that there was a conspiracy brewed against him, coupled with a lack of evidence. Van Zyl's prosecution team penned a response to Mdluli's written representations¹⁶⁶ at Chauke's instruction.

[130] In their response, the Van Zyl prosecution team had become aware of the missing dockets in relation to Mdluli being charged more than ten years after the murder. The team further stated that the NPA was not aware that no decision had been made before the lapse of ten years.¹⁶⁷ Regarding the strength of the State's case, the team held a view that the State had strong circumstantial evidence linking Mdluli to the murder of Ramogibe and direct evidence linking Mdluli to the related charges. Therefore, that such evidence constituted *prima facie* proof of the crimes.¹⁶⁸

[131] Chauke considered Mdluli's representations and the Van Zyl prosecution team's response. This was followed by a consultative meeting between Chauke and that team in early 2012. It was at that meeting that Chauke indicated his intention to refer the matter to a Magistrate for an inquest.¹⁶⁹ Disagreeing with Chauke,¹⁷⁰

¹⁶⁵ On 26 October 2011. See Record, Richard Mdluli Bundle, page RM 00338 to RM 00355.

¹⁶⁶ Record, Richard Mdluli Bundle, page RM 00174.

¹⁶⁷ Representations of Van Zyl Prosecution Team to Chauke. See Record, Richard Mdluli Bundle, page RM00175.

¹⁶⁸ Record, Richard Mdluli Bundle, page RM 00176 – See also Record, Van Zyl Witness Statement, page 28 at paras 80 to 81.

¹⁶⁹ In terms of the Inquests Act 58 of 1059 (The Inquests Act).

¹⁷⁰ Record, Richard Mdluli Bundle, page RM 00176 at 85.

Van Zyl was of the view that an inquest was unlikely to resolve evidential impasse.¹⁷¹

- [132] The charges against Mdluli and his co-accused were provisionally withdrawn.¹⁷² This was followed by Chauke's letter¹⁷³ to the Magistrate in which he indicated that he decided to pursue a formal inquest.¹⁷⁴ Magistrate Vivier held the inquest¹⁷⁵ and thereafter submitted the record of the inquest proceedings on 2 November 2012.¹⁷⁶ The Magistrate's findings were that:

“The death was brought about by an act prima facie amounting to an offence on the part of unknown persons. There is no evidence on a balance of probabilities implicating Richard Mdluli, Samuel Dhlomo, Sebastian Ximba or Mthunzi-Omhle Mthembeni Mthunzi in the death of the deceased.”¹⁷⁷

Freedom Under Law's review application

- [133] On 15 March 2012, Freedom Under Law (*FUL*)¹⁷⁸ launched an application in the High Court¹⁷⁹ to review the lawfulness of several NPA decisions, including the withdrawal of criminal and disciplinary charges against Mdluli. The application was launched while the inquest proceedings were underway in the Boksburg Magistrates court. The application was heard by Murphy J.

¹⁷¹ *Id* at 89.

¹⁷² On 2 February 2012.

¹⁷³ On 14 March 2012.

¹⁷⁴ Record, Richard Mdluli Bundle, page RM 00179.

¹⁷⁵ 10 April 2012. See Record, Richard Mdluli Bundle, page RM00727.

¹⁷⁶ Record, Richard Mdluli Bundle, page RM00182.

¹⁷⁷ Record, Richard Mdluli Bundle, page RM 00337.

¹⁷⁸ *FUL* is one of the known Public Interest Litigators.

¹⁷⁹ *FUL* application.

- [134] FUL sought to review Chauke's decision of 1 February 2012 to withdraw the murder and related charges against Mdluli. As mentioned above, Mrwebi's decisions,¹⁸⁰ including the withdrawal of the charges against Mdluli, related to the fraud and corruption charges. They bear no relevance to this Enquiry.
- [135] The proceedings were preceded by an urgent application, in terms of Part A of the Notice of Motion, for an interim interdict, which was granted by Makgoba J.¹⁸¹ Its contents need not be traversed here save to indicate that Part B review was heard almost two years after the application was instituted. This was due to the respondents' delays in filing the record and answering papers. Chauke was not cited as a respondent but his decision to withdraw the charges against Mdluli was addressed through the ANDPP-Jiba.
- [136] In respect of Chauke's decision, the court was required to determine first, whether his decision to withdraw the murder and related charges was lawful for want of proper consultation and second, the rationality of the decision.
- [137] The Court, in its analysis of the ANDPP-Jiba's answering affidavit, found that Chauke did not deal meaningfully with the incriminating evidence against Mdluli, *FUL's* submissions regarding the evidence nor the Inquest Magistrate's finding that Mdluli's involvement in the murder was consistent with the facts provided. It further remarked that Chauke disregarded certain inquest findings but simply said

¹⁸⁰ Taken on 5 December 2011.

¹⁸¹ Makgoba J's Judgment on 6 June 2012.

that the Magistrate had found no evidence implicating Mdluli¹⁸² which, in Murphy J's view, was plainly incorrect.

[138] Moreover, the Court remarked, the Magistrate's decision was not decisive because section 16(2) of the Inquests Act requires only that a magistrate conducting an inquest determine whether the death was brought about by any act or omission amounting, *prima facie*, to an offence on the part of any person and, insofar as possible, identify who the responsible offenders are. In any event, the DPP is not bound by the findings of an inquest.

[139] Murphy J also criticised Chauke's decision to withdraw the related charges on the basis of avoiding a fragmented trial. In his critique, Murphy J finds that the inquest resolved the problem of a fragmented trial and that Chauke had a duty to pursue the balance of the charges.¹⁸³

[140] The court found that Chauke did not consult with the victims and the ANDPP-Jiba despite that the Policy Directives obliged him to seek the advice of the ANDPP-Jiba before withdrawing the murder and related charges but referred only to representations from Mdluli's legal representatives.¹⁸⁴

[141] The failure to consult with affected and interested parties, the court remarked, had the consequence that vital relevant information was ignored, rendering the

¹⁸² Murphy J's Judgment at Record, Case Law Bundle, page CL 00314 at para 89.

¹⁸³ Murphy J's Judgment. See Record, Case Law Bundle, page CL 00315 at para 91.

¹⁸⁴ *Id*, page CL 00336 at para 180: "Accordingly, I accept FUL's submission that the rule of law and the requirement of rationality constrained Chauke to consider representations from the complainants and victims of the alleged crimes. Chauke did not deny the averments made in the founding affidavit and the supplementary founding affidavit that he did not seek input from the victims and other role players."

decision irrational because there was no rational connection between the information available to the official, the purpose of the empowering provision, and the decision taken. The Court accepted FUL's argument that the rule of law and the requirement of rationality constrained Chauke to consider representations from the complainants and victims of the alleged crimes.

[142] In conclusion, Murphy J set aside the impugned decisions and ordered the charges to be reinstated and further that the prosecution of the charges be re-enrolled and prosecuted diligently and without delay.¹⁸⁵ In relevant parts, the Order reads:

"241. . .

(b) the decision made on 29 February 2012 by on behalf of the first respondent in terms whereof the criminal charges of murder, kidnapping, intimidation and assault with intent to cause grievous bodily harm and defeating the ends of justice under case number CAS 340/02/99 were withdrawn, is hereby reviewed and set aside...

...

(e) The first and third respondents are ordered to reinstate forthwith the criminal charges which were instated against the fifth respondent under case number CAS 155/07/2011 and case number CAS 340/02/99 and to take such steps as are necessary to ensure that criminal proceedings for the prosecution of the criminal charges under the aforesaid cases are re-enrolled and prosecuted diligently and without delay.

(f) The second respondent is ordered to reinstate disciplinary charges which had been instituted against the fifth respondent but were subsequently withdrawn on 29 February 2012, and to take such steps as are necessary to institute or reinstate disciplinary proceedings that are necessary for the

¹⁸⁵ *Id*, page CL 00350 at para 241.

prosecution and finalisation of the aforesaid disciplinary charges, diligently and without delay.”¹⁸⁶

The appeal against Murphy J’s judgment

[143] The ANDPP-Jiba’s appeal to Supreme Court of Appeal (SCA) against Murphy J’s Judgment¹⁸⁷ was upheld in part in relation to the orders referred to in para 141 above.

[144] During the appeal proceedings, the ANDPP-Jiba made the concession that some of the charges in the Mdluli matter are bound to be reinstated. This concession would later form part of the SCA Order wherein the Court, per Brand JA, remarked:¹⁸⁸

“FUL’s real argument which found favour with the court a quo (para 183), is that Chauke’s failure to proceed with the murder and related charges after the findings of the inquest became available was irrational. But that decision – or really his failure to apply his mind afresh to the matter after the conclusion of the inquest – was not the subject of the review application. It will be that the review application started in May 2012, while the results of the inquest only became available in November of that year. Stated somewhat more concisely: I do not believe the earlier decision to withdraw the charges – which is the impugned decision – can be set aside on the basis that a subsequent decision, taken in different circumstances, not to reinstate all or some of those charges, was not justified. To that extent, the appeal must therefore succeed.”¹⁸⁹

¹⁸⁶ *Id.*

¹⁸⁷ In the appeal reported as NDPP in *National Director of Public Prosecutions and Others v Freedom Under Law* 2014 (4) SA 298 (SCA) (*The ANDPP’s appeal of Murphy J’s judgment*). See footnote 100, above.

¹⁸⁸ *Id* at para 45.

¹⁸⁹ *Id* at para 44.

[145] Speaking to the issue of Chauke's decisions, Brand JA found that FUL failed to substantiate its contention that Chauke's decisions were irrational. Brand JA specifically said:

"This brings me to the decision by Chauke to withdraw the murder and related charges. It will be remembered that on Chauke's version, he withdrew the murder charge, pending the outcome of the inquest that he had requested, and that he withdrew the 17 other related charges to avoid a fragmented trial. The contention by FUL was in essence that this decision, that the findings at an inquest could perhaps enable [Chauke] to take a more informed view of the prospects of the state's case with regard to the murder charge, was not irrational. It is true that the outcome of the inquest could have no impact on the 17 related charges. But Chauke never thought that it would. As I understand his reasoning, he always intended to reinstate at least some of the charges after the inquest, with or without the murder charge. What he tried to avoid, so he said, was a fragmentation of trials. That line of reasoning I do not find irrational either, particularly since the evidence supporting the related charges would also impact on the murder charge. It is true that he could have asked for a postponement if the 17 related charges pending the inquest, but we know that a postponement is not merely for the asking. It could be successfully opposed by Mdluli, in which event the fragmentation, which Chauke sought to avoid for understandable reasons, may have become a reality."¹⁹⁰
(Underlining for emphasis.)

[146] Brand JA further postulates that while the option to postpone was available to Chauke, pursuing postponement involved the possibility that Mdluli may successfully oppose a postponement application, inextricably leading to the same fragmentation of trials which Chauke sought to avoid.¹⁹¹

¹⁹⁰ at 43.

¹⁹¹ *Ibid.*

[147] Moreover, the SCA found that the decision which FUL had successfully sought to review and set aside in the court *a quo* related to Chauke's failure to apply his mind to the Mdluli matter after the conclusion of the inquest. The Court criticised this argument, distinguishing the impugned decision from those decisions made by Chauke after the inquest. The inquest findings only became available in November 2012, well after the review proceedings and decision *a quo* had become available. On that basis, the decisions of Chauke after the inquest could not actually be the subject of review, and therefore FUL's arguments should not have succeeded in the court *a quo*.¹⁹²

[148] Upholding the appeal partially in respect of paras (b), (e), and (f) of the order of Murphy J (as set out in para 142 above), the SCA set aside Murphy J's order concerning the above orders (made with necessary changes). Basically, these orders refer to Murphy J's decision setting aside Chauke's withdrawal of the charges and ordering that the charges against Mdluli be reinstated.¹⁹³ Put succinctly, the outcome of this appeal is that the SCA did not find Chauke's decisions to be irrational. The Court, however, confirmed orders (a), (c), (d), (g), and (h) which bear no relevance, here.

[149] Additionally, to the extent relevant to the issue pertaining to Chauke in this Enquiry, the SCA ordered:

“3. It is recorded that the following undertaking has been furnished on behalf of the first appellant:

¹⁹² *Ibid* at 44.

¹⁹³ at 54.

- (a) To decide which of the criminal charges of murder and related, that were withdrawn on 2 February 2012, are to be reinstituted, and to make his decision known to the respondent within two months of this order.
 - (b) To provide reasons to the respondent within the same period as to why he decided not to reinstitute some – if any – of those charges
- ...

[150] In effect, the decision that ought to have been taken following the order of the SCA in paragraph 3 of the order above, was the prerogative of the NDPP, and not Chauke.

[151] It is common cause that, following the judgment of the SCA, the NDPP informed Mdluli's legal representatives¹⁹⁴ that a decision had been made not to proceed with the murder and attempted murder charges. Later, Chauke informed Van Zyl that the NDPP had decided to pursue only the related charges.¹⁹⁵ Mdluli's representatives wrote to confirm whether Mthunzi had been included as an accused and inquire whether the proceedings against Dhlomo and Ximba had been withdrawn.¹⁹⁶

[152] Next, the Van Zyl prosecuting team addressed a letter to Chauke seeking clarity on the status of the various accused in the matter and how to proceed with the charges.¹⁹⁷ Chauke provided the requested clarity. The indictment reflected only Mthunzi and Mdluli.

¹⁹⁴ On 17 June 2014.

¹⁹⁵ Record, Advocate van Zyl Written Statement at para 116.

¹⁹⁶ On 1 July 2014.

¹⁹⁷ *Id* at 119.

[153] It is noteworthy that further details of the decisions and conduct of the Van Zyl prosecuting team or Chauke related to the Mdluli matter were not tendered to the Enquiry record.

[154] In 2019, the High Court, per Mokgoathheng J, convicted Mdluli and Mthunzi on charges of kidnapping and assault.

Batohi's appointment and steps taken on assumption of Office

[155] It is common cause that in the wake of Batohi's stint at the International Criminal Court (ICC) in the Hague as a Senior Legal Advisor to the Prosecutor from 1 November 2009, she returned to South Africa about 10 years later and was appointed as the NDPP on 1 February 2019. Before her stint at the Hague, Batohi had served at the NPA as a prosecutor from December 1985 until her appointment as DPP-KZN from 1 April 2002. She remained the employee of the NPA until she officially resigned in 2012. This explains the subsequent appointment of acting DPP's of Advocates S Ramouther,¹⁹⁸ GC Engelbrecht,¹⁹⁹ ADPP-Mlotshwa,²⁰⁰ and Noko.²⁰¹ It is, thus, reasonable to postulate that Batohi may, reasonably, have been aware of the incidents that took place before her departure in 2009 and/or resignation in 2012.

¹⁹⁸ From 1 November 2009 to 30 April 2010.

¹⁹⁹ From 1 May 2010 to 30 November 2010. He has since passed on.

²⁰⁰ 1 December 2010 to 30 November 2011 and from 1 December 2011 until further notice. Mlotshwa resigned on 16 January 2016.

²⁰¹ From 16 July 2012 (until further notice). On 1 September 2013 until 16 July 2019 Noko was appointed DPP-KZN until 16 July 2019 when she was transferred and appointed DPP North West.

- [156] On assuming office, borrowing her own words from her witness statement, she discovered matters that had wracked the NPA and its credibility. These included serious allegations against certain senior prosecutors including ANDPP-Jiba, Mrwebi, and NDPP-Abrahams which led to the establishment of the *Mokgoro Commission* (Mokgoro Enquiry) regarding the fitness of the ANDPP-Jiba and Mrwebi to hold office. The allegations against the former concerned various matters including the Booysen matter.
- [157] This Enquiry relates to the fitness of Chauke to continue holding office as DPP-South Gauteng and, to a large measure, the same issues in the Mokgoro Enquiry, pertaining to Booysen. The investigation concerning Mrwebi related to his decision withdrawing the charges against Mdluli in respect of the fraud charges against him (Mdluli). The Mokgoro Enquiry investigated matters relating to Mrwebi's decision to withdraw such charges. At the risk of being repetitive, but for emphasis, in contradistinction to the Mokgoro Enquiry, the focus of this Enquiry in relation to the Mdluli matter pertains to Chauke's withdrawal of the murder charge against him (Mdluli).
- [158] Almost contemporaneously with the Mokgoro Enquiry, was the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (commonly referred to as the Zondo Commission)²⁰² before which allegations were made against certain members of the NPA including Chauke's alleged involvement in the prosecution of Booysen

²⁰² Established on 9 February 2018 and chaired by Zondo CJ, then former Deputy Chief Justice.

and his withdrawal of the charges against Mdluli. Chauke made a statement responding to allegations levelled against him by Booysen and Mlotshwa at the Zondo Commission, that he was captured for either political or corrupt reasons with the result that he did not carry out his²⁰³ obligations and duties as DPP.

[159] After assuming office, on 1 February 2019, Batohi constituted a panel, known as the De Kock Panel. Its mandate was “Reconsideration of authorisation in terms of section 2(4)” read with section 2(1)(e) and (f) of [POCA]” and to provide her with an opinion and recommendations as to the validity and appropriateness of the racketeering authorisations by NDPP-Abrahams, for the prosecution of Booysen and his co-accused. The De Kock Panel consisted of Advocates RJ De Kock,²⁰⁴ I Thenga,²⁰⁵ S Riley,²⁰⁶ and E Mamabolo.²⁰⁷ This Panel is referred to as the De Kock Panel and their opinion is referred to as De Kock 1.²⁰⁸

[160] Batohi indicated that the request was mainly because the authorisations by NDPP-Abrahams were the subject of the pending review application by Booysen. She was cited as the respondent. The application, she stated, also had implications for the NPA.

²⁰³ Record, ZC 01415 at paras 18.2 and 18.3.

²⁰⁴ The DPP - Western Cape- who is deceased.

²⁰⁵ The DPP- Limpopo.

²⁰⁶ The DDPP-Western Cape.

²⁰⁷ Senior State Advocate-SCCU- Pretoria. (who is deceased).

²⁰⁸ The unanimous De Kock 1, dated 27 June 2019) was, however, signed by two members only, namely De Kock and Mamabolo (both of whom have since passed on) on 28 June 2019. Riley and Thenga did not sign it. There was a copy of the same report also filed of record but signed, only by Kock alone, seemingly on behalf of all Panel members. Riley explained in her evidence in Chief that she had not had a sight of the version signed by both Panel members but only the one in which Deck signed on behalf of all four members.

- [161] According to Batohi, she had taken note of the controversy surrounding NDPP-Abraham's decisions authorising the racketeering prosecution. She further indicated that, as the new NDPP, now the affected party, she needed to be satisfied that the prosecution relating to racketeering charges was justified particularly because the ultimate decision ultimately rested with her.
- [162] It was indeed appropriate for Batohi to satisfy herself, especially as the head of the NPA and the accounting officer. One wonders, however, how she was going to achieve that when, in her saying so, she did not read the case dockets containing critical evidence. Batohi assigned that role to others within the NPA, for example, the De Kock Panel and Broughton, let alone seeking quite a few opinions from Advocates outside of the NPA, for example, Nalane SC and Hulley SC.
- [163] Batohi believed that the review application by Booysen presented certain complexities and dynamics which could also affect racketeering authorisations, in general. She therefore requested the De Kock Panel to assist in perusing all the evidence including other relevant material and thereafter furnish her with an opinion as to the validity and appropriateness of the impugned authorisations of NDPP-Abrahams. She requested the panel to include any factor considered relevant for her attention.²⁰⁹

Methodology and approach of the De Kock Panel

²⁰⁹ Advocate Riley's affidavit, para 38 – 40 and Transcript, Day 35, pp.34 – 45

- [164] The method and approach adopted by the De Kock Panel is important to mention. This is so because much reliance was placed by Batohi on the Panel's findings and recommendations when referring the matter to the President. More importantly, this was confirmed by Riley in her testimony – Riley being one of the authors of De Kock 1 whose findings were based on a selection of evidential material rather than the entire contents of the case dockets that were made available.
- [165] The De Kock Panel was provided with the relevant 23 case dockets and the pleadings in the review application (i.e. founding papers and the answering affidavit by NDPP-Abrahams) and copies of the office files of the DPPs offices, KZN and South Gauteng.
- [166] Each member of the De Kock Panel individually studied and analysed each docket to understand the nature of the evidence contained therein. Initially, the De Kock Panel encountered problems in obtaining all the evidential material necessary to conclude the task. Eventually, all the dockets and files that were in Maema's possession were provided to the De Kock Panel by Adv Chris Macadam (Macadam). The panel held meetings to discuss the issues.²¹⁰ It met on 20 to 22 May 2019 and 20 to 22 June 2019 at the VGM Building in Pretoria.
- [167] The only member of the De Kock Panel who testified at this Enquiry was Riley. As will be remembered, two members of the Panel, namely, De Kock and

²¹⁰ The meetings were held at VGM Building in Pretoria, from 20 to 22 May 2019 and from 20 to 22 June 2019.

Mamabolo, have since passed on. During her testimony, Riley sought to introduce a document marked SSR5 which she had annexed to her affidavit and later sought to supplement while in the witness stand.

[168] The document was introduced as a working document where she allegedly analysed the dockets and the evidential material that she received. The admission of the supplementary document was correctly objected to as it did not form part of the record. Correctly, when asked, Riley confirmed that the document was never submitted to Batohi.

[169] The De Kock Panel had meetings to discuss the matter including questions of law pertaining to racketeering, in particular, the elements which must be proven for successful prosecution on racketeering charges either in terms of section 2(1)(e) or (f). It further deliberated on the evidence, with a view of determining whether the evidence at hand was sufficient to justify the authorisations by the NDPP-Abrahams.

[170] A draft report was circulated amongst the De Kock Panel members²¹¹ for comments. The final report was presented to Batohi on 2 July 2019. At this Enquiry, Riley testified that the presented report entailed a summation of the material and evidence that was available when the authorisations were granted by the NDPP-Abrahams, their analysis of the evidence and unanimous findings

²¹¹ On 25 June 2019.

and conclusion. She testified further that Batohi interrogated the report by asking questions.

[171] Under cross-examination, Riley conceded that the De Kock Panel Members did not take Batohi through each and every case docket. They presented only summaries of what each case dockets entailed.²¹² When quizzed, Riley conceded that Batohi could not have known the contents of the dockets unless she, herself, had read the record, the dockets and all the evidential material because the panel did not take her through the entire contents of the docket themselves. She further admitted that annexure SR5 was not part and parcel of the report that was ultimately submitted to Batohi. This meant that Batohi did not have sight of the analysis.²¹³

[172] The De Kock Panel found that (a) no case was made out on the papers presented regarding the authorisations and the predicate offences and (b) the evidence was insufficient against Booysen and his co-accused. The Panel made the following recommendation which, for reasons that will appear when evidence is dealt with later, need to be mentioned, that:

- “1. The racketeering authorisations issued in terms of sections 2(4) of the Prevention of Organised Crime Act 21 of 1998, by the acting NDPP, advocate Jiba on the 17 August 2012 is invalid.
2. The racketeering authorisations issued in terms of sections 2(4) of the Prevention of Organised Crime Act 121 of 1998, by the NDPP, advocate S Abrahams on the 16 February 2016, is invalid.

²¹² Transcript Day 49, page 64, line 20.

²¹³ Record Riley Witness Statement at para 42 – 53 and Transcript, Day 49, pages 46 to 76.

3. The prosecution instituted against all the Accused the racketeering charges based on the authorisations issued by the acting NDPP N Jiba, and the NDPP S Abrahams as set out above, should be withdrawn.
4. The Director of Public Prosecutions, KwaZulu-Natal should, in compliance with the Prosecution Policy of the National Prosecuting Authority, review the evidence in respect of the remaining charges preferred against the Accused and decide whether or not to proceed with the prosecution against the individual Accused named in those charges.
5. A copy of this memorandum and its annexures should be provided to the DPP, KZN.”²¹⁴

[173] Notably, the De Kock Panel did not deal with the Mdluli matter because it was not part of its mandate.

[174] Before wrapping up on De Kock 1, it is important to mention that its shortcomings had also been identified by Noko in her testimony. She had, seemingly, raised the deficiencies in a letter to the broader NPA staff, responding to allegations that had been levelled against her by Batohi, shortly before her (Noko's) resignation. This letter is dealt with later.

[175] Batohi adopted the recommendation that the authorisations were invalid and therefore that the racketeering charges against Booysen and his co-accused should be withdrawn. Alarming, Batohi testified and conceded many times during her testimony that she had not read the case dockets herself and that her decision was informed by De Kock 1 which, undeniably, does not annex the key

²¹⁴ Record Riley Witness Statement SR 0042.

pieces of material evidence, including the forensic reports of, for example, Mangena, which speak to the question regarding the evidence supporting the issuance of the racketeering authorisations.

[176] That aspect, *vis-à-vis* the omitted crucial evidential material not being part of De Kock 1 (which was, primarily, the basis for withdrawing the entire racketeering and related charges against Booyesen and his co-accused) bears relevance and will be discussed later. It will be considered when determining the issue under the ToR, regarding the appropriateness of the issuance of authorisations by the NDPP-Abrahams “notwithstanding that there was no evidence”.

[177] I must pause to mention that the said authorisations by NDPP-Abrahams were never reviewed by a court – as was the case with the previously impugned authorisations by the ANDPP-Jiba, that were set aside by Gorven J. This aspect may bring to question, the legality of Batohi’s own decision to withdraw such racketeering decisions by NDPP-Abrahams, without approaching a court. Batohi was questioned at length while testifying in chief about this. Although she maintained that she could review the decisions herself, she repeatedly said that she thought that this was a matter that needed careful consideration.

[178] In line with the recommendation in De Kock 1 above (at para 4), Batohi asked the DPP KZN, Adv E Zungu (born Harrison) (Zungu) on 16 July 2019²¹⁵ to evaluate

²¹⁵ Harrison was appointed first as the ADPP: KZN on 17 September 2019 until 31 October 2018 and as DPP: KZN from 1 November 2019 to date.

the evidence in each docket (in relation to the predicate offences) and decide whether to prosecute the individuals who were implicated.

[179] Noko, as DPP, had decided to prosecute the predicate offences on the indictment. Therefore, the power to review those decisions lies with the NDPP. Batohi's referral to Zungu is odd, in that Noko is an equal of Zungu, who is not empowered to review the decisions of another DPP. Zungu had no power to review the decisions of her equal, in the same way that Batohi had no power to review the decisions of her equal (being NDPP-Abrahams). To do so is in the realm of self-review.

[180] Zungu was further asked to contact the next of kin of the deceased persons and explain the implications of the decisions (withdrawing the racketeering charges).²¹⁶ Batohi said that the families should understand that "*the withdrawal did not mean that there will be no justice for victim of the crimes*"²¹⁷ as Zungu will be considering whether there is sufficient evidence to charge any person for the predicate offences, including the murders. Later, Zungu withdrew the predicate charges against Booysen and all the accused. This does not come anywhere close to the prescripts of the law. It appears to be a novel approach by Batohi, which unfortunately does not accord with the legislated processes governing review of decisions of the DPP.

²¹⁶ Record, Batohi Witness Statement, page 65 at para 154.

²¹⁷ Record, Batohi Witness Statement, page SB4 230 at para 5. See also Transcript, Day 5, page 40, lines 10 to 15. See fn 221 above.

Nalane SC Opinion

- [181] After De Kock 1, Batohi engaged²¹⁸ Chauke and requested further information relating to the decisions made by him. In this letter, Batohi referred to Mlotshwa's testimony at the Zondo Commission and sought clarity regarding the decisions relating to the Cato Manor and Mdluli matters, by 31 May 2021.
- [182] Chauke responded to this letter on 28 May 2021, addressing the queries raised by Batohi. In his concluding remarks, he indicated his position is that he should be held accountable for his decisions which he considered neither unethical nor unlawful. Properly understood, Chauke was saying that he is happy to account because his conduct was neither unethical nor unlawful.
- [183] At the request of Batohi, another opinion was provided by Nalane SC on whether Chauke (a) was guilty of misconduct (b) failed to adhere to the Prosecution Policy and (c) on account of his alleged incapacity to carry out his duties efficiently, whether he was fit to hold the office of DPP. He was also briefed, if warranted, to draft the necessary submissions to the President advising on the prospects of success in an enquiry into Chauke's fitness to hold Office.²¹⁹
- [184] Nalane SC expressed views about the overall conduct of Chauke stating, *inter alia*, that he violated a host of provisions of the Prosecutions Policy Directives, Prosecution Policy, Code of Ethics of the NPA, the NPA Act, and section 179 of the Constitution.²²⁰ According to Nalane SC, Chauke failed to uphold

²¹⁸ On or about 13 May 2012.

²¹⁹ Record, Legal Opinions, page LO 00030 to LO 00119.

²²⁰ *Id*, page LO 00112, para 263.

professional standards of exercising his discretion properly. He opined that Chauke brought the NPA into disrepute.²²¹

[185] Furthermore, as regards Chauke's role in the Cato Manor matter, Nalane SC held the view that there were sufficient grounds to proffer charges of misconduct against him because he sought to mislead the employer by stating, in his representations, that he was "merely a coordinator of the Cato Manor Unit prosecution team when the evidence in fact suggested that he was responsible for the prosecution."²²²

[186] Nalane SC's conclusion, as regards the Cato Manor matter, was that:

"279. Chauke has committed possible acts of misconduct in that:

279.1 He misrepresented to his employer the role and extent of his involvement in the Cato Maor prosecution. He clearly was leading the prosecution and was not merely a co-ordinator as he claims. The evidence of Mlotshwa would be necessary to establish this allegation. Other members of the prosecution team who accompanied Chauke on the many occasions that he interacted with them and had meetings with them would also be necessary to establish the extent of his involvement in the prosecution.

..."

(Underlining for emphasis.)

[187] As regards the Mdluli matter, Nalane SC opined that Chauke has contravened the policy directives and consequently the NPA and his terms of employment. Nalane SC advised that Chauke should be charged with acts of misconduct and

²²¹ Id, page LO 00114, para 270.

²²² *Idem.* Record, page LO 00116 to page LO 001177 at para 278.

that an enquiry should be held into his fitness to hold office of DPP South Gauteng.²²³ Chauke disagreed with Nalane SC's conclusion. The disagreement necessitated Chauke's procurement of an opinion by Adv N Maenetje SC (Maenetje SC) which will be dealt with briefly later.

[188] There appears to have been a lull in the progression of the matter after Nalane SC's opinion. This may be explained by the developments in the Zondo Commission, at the time. In this regard, one can reference the letter from De Kock to Chauke, dated 13 May 2022, in which the former acknowledged the representations submitted by the latter up to that stage and confirmed that the NDPP would await the final Zondo Commission report so as to provide Chauke with an opportunity to respond to adverse findings made in that report.

[189] The final Zondo Commission report (the relevant parts appearing at parts 5 and 6), was submitted to the President in June 2022.²²⁴ These developments may explain why Batohi did not immediately react to Nalane SC's recommendations in light of De Kock's advice (in the internal memorandum addressed to her) that she awaits the recommendations of the Zondo Commission.

What then, after De Kock 1 and Nalane SC's opinion?

[190] Supposedly on the strength of De Kock 1 and, particularly, Nalane SC's recommendations, Batohi informed Chauke, on 27 July 2022, that she intended to make a submission to the President to hold an enquiry in terms of s 12(6) of

²²³ *Ibid* LO 00117, paragraph 280.

²²⁴ See Chauke's Witness Statement in this Enquiry at Record – Annexure 6A-31.

the NPA Act. Nalane SC's opinion took into consideration both the findings of Murphy J and Brand JA in their respective judgments and stated that the SCA's finding that Chauke's decision to withdraw the charges was not irrational was not the issue which he (Nalane SC) was asked to consider.

[191] According to Nalane SC, his mandate was to provide an opinion on whether Chauke's conduct was in line with his terms of employment.²²⁵ Nalane SC further pondered on what would have happened had FUL not taken the matter to the SCA. He, assumingly, took the view that Chauke would never have reinstated the charges.²²⁶

Additional opinions with conflicting conclusions

[192] It is not insignificant that there were a number of additional opinions and memoranda (opinions) provided. They contain conflicting conclusions of fact in relation to the Cato Manor and the Mdluli matters. These included the opinions by Maenetje SC dated 31 January 2023 (Maenetje SC's opinion) followed by another memorandum by De Kock dated 15 February 2023 (De Kock 2), an opinion by Broughton dated 23 February 2023 referred to above (Broughton 1), a memorandum/opinion by Broughton dated 21 April 2023 (Broughton 2) supplementing his earlier opinion, an opinion by Hulley SC dated 10 July 2023 (Hulley SC's opinion) and, finally, an opinion by Adv K Moroka SC dated 18 March 2024 (Moroka SC's opinion).

²²⁵ Record, Nalane SC's Opinion, page LO 00069.

²²⁶ Id, at page LO 00081.

- [193] The differences in these opinions are worth mentioning, but the discussion will follow a little while later.

Procurement of Maenetje SC's opinion

- [194] Instructed by Mkhabela Huntley Attorneys Inc at the request of Chauke, Maenetje SC (assisted by Adv Scott) was asked to provide an opinion after Nalane SC's questioned opinion and recommendations. In the view of Maenetje SC, Nalane SC's opinion was flawed.
- [195] Maenetje SC's opinion critiqued Nalane SC's conclusions. He stated that Nalane SC did not consult ADPP-Mlotshwa and did not see the emails between Chauke and ADPP-Mlotshwa. The emails concerned the failure by Chauke to send the prosecution memorandum along with the email. Chauke acknowledged the omission. However, in his conclusions, Nalane SC did not take issue with Chauke's explanation for the omission.²²⁷
- [196] Nalane SC's opinion was the high-water mark of the Mokgoro Enquiry report. He referred to extrinsic factors as was presented in the Zondo Commission and Mokgoro Enquiry. It is widely known that the Zondo Commission was concerned with State Capture. The Mokgoro Enquiry, in so far as it relates to the Mdluli matter, related to Mrwebi's unlawful withdrawal of the fraud charges against Mdluli. Properly understood, it is unclear of what relevance the emails were to the Zondo Commission and Mokgoro Enquiry. Maenetje SC further found that

²²⁷ Maenetje's legal opinion. See Record, Legal Opinions, page LO 00129 at para 29 and 30. (Exhibit 211).

Nalane SC was constrained to rely on the report of the Mokgoro Enquiry whereas Chauke was not a witness and thus his version was not before the Mokgoro Enquiry.

[197] The findings of the Mokgoro Enquiry, therefore, went no further than accepting the uncontradicted testimony of Noko, without regard to Chauke's version that his role was no more than that of a co-ordinator and that he was acting in accordance with the instructions of his superior and exercising powers in terms of section 24(1)(b) of the Act.

[198] Maenetje SC was of the view that Nalane SC's opinion, properly read and without more, cannot be used as a basis to found a charge for misconduct on the ground that Chauke attempted to influence ADPP-Mlotshwa to sign an indictment without the prosecution memorandum, even on a *prima facie* basis.

[199] On the allegation that he misrepresented himself to his employer and underscored his role in the prosecution team, Maenetje SC found that he had been requested by the ANDPP-Jiba to put together a prosecution team which would guide the police and IPID investigation and, eventually, the prosecution of the Cato Manor matters.

[200] According to Maenetje SC, this accorded with Chauke's powers, duties and functions in terms of section 24(1)(b) of the NPA Act — empowering him to supervise, direct and co-ordinate the work and activities of all deputy directors and prosecutors in the office of which he or she is the head. He, nonetheless, recognised that Chauke did not have decision making powers on prosecutorial

matters involving the Cato Manor matter because most of the powers were delegated powers by the ANDPP-Jiba. This is correct. It is consistent with the section 20(1) delegated powers to Maema by the ANDPP-Jiba.²²⁸

[201] Nalane SC's opinion rejected Chauke's version and said that Noko's version before the Mokgoro Commission was correct as it established that:

- (a) NDPP-Nxasana assigned Noko to oversee the Cato Manor case in March or April 2014. Prior to this, Noko testified that Chauke was directly overseeing the case and supervised the prosecution team and that he reported to Chauke as far as the case was concerned.
- (b) Noko was requested by Chauke to sign the covering letter (application for racketeering authorisation) accompanied by a prosecution memorandum for the ANDPP-Jiba. At that stage, Chauke had been overseeing the prosecution team.
- (c) Noko confirmed that she did not sign the cover letter and that it was signed by Chauke.

[202] Insofar as the Mdluli matter is concerned, Maenetje SC opined that although Nalane SC considered Murphy J's and Brand JA's judgments,²²⁹ he nonetheless expressed the view that Chauke should still face a charge for the Mdluli matter

²²⁸ See also Record, Legal Opinions, page LO 00131 at paras 34, 36 and 37.

²²⁹ Nalane opinion at para 55. See Record, Legal Opinions, page LO 00141 (Exhibit 212).

notwithstanding the decision of the SCA. Nalane SC was, nonetheless, unmindful of the fact that the SCA reversed Murphy J's judgment.

[203] The difficulty with Nalane SC's view, Maenetje SC stated, is that the decision of the High Court was reversed by the SCA with respect to Chauke's alleged irrational decision regarding the withdrawal of the charge against Mdluli. The legal effect of this is that there was no basis for the High Court to have made its order in the first place.

[204] Maenetje SC further noted—

“... each of these facts are, in our view, destructive of the two pillars of Nalane SC's reasoning; namely, that it took two judgments for the charges to be reinstated and that it was most probable that Chauke would never have reinstated the charges but for the litigation. The appeal sought at the instance of Chauke [NPA] (not Ful) and succeeded in demonstrating that the High Court decision should not have been granted in the first place at the instance Ful (and not Chauke). In arriving at its conclusion, the Supreme Court of Appeal accepted the correctness of Chauke's evidence which contradicts Nalane SC's assessment of the probabilities.”²³⁰

[205] In his conclusion, Maenetje SC stated that he is, therefore, constrained to disagree with Nalane SC that Chauke's decision to withdraw the charges constituted a misconduct or goes to his fitness to serve as a DPP, as opposed to an exercise of professional value judgment. Chauke's exercise of discretion was ultimately vindicated by the Inquest Magistrate (Magistrate Vivier), the High Court

²³⁰ *Id*, page LO 00143 at para 62.

in the criminal proceedings against Mdluli before Mokgoatlheng J²³¹ and finally the SCA, per Brand JA.

De Kock 2

[206] On 15 February 2023, as mentioned earlier in this Report, De Kock prepared a second opinion (De Kock 2) addressed to Batohi in relation to what would eventually become this Enquiry at her instance.²³² More specifically, the opinion appears to have been intended to evaluate the two conflicting opinions by Nalane SC and Maenetje SC.

[207] The De Kock 2 evaluation of the Mdluli matter relied on the SCA judgment. It did not support pursuing the matter against Chauke in the absence of clear *mala fides* on his part.²³³ De Kock advised Batohi not to make any submission to the President for the establishment of the enquiry against Chauke in relation to this matter and further requested that she should, as a matter of courtesy, inform the President through the Minister of Justice accordingly.²³⁴

²³¹ After a thorough search, the judgment and citation for this case could not be located. Interestingly, Nalane SC refers the same judgment said in which Mdluli was in fact guilty of the related charges which had been “provisionally withdrawn by Chauke” in the past, stating that such findings illustrate that Chauke had acted in violation of the prosecution policy directives. It is also curious that he does not make mention of the reason why the related charges were provisionally: That that was to avoid fragmented trails, an explanation countenanced/sanctioned by the SCA when reversing the decisions of Murphy J. See Record, Legal Opinions, page LO 00147 at para 78.

²³² DeKock’s second memorandum to Batohi titled “Commission of inquiry into fitness to hold office in terms of section 12(6)(a) of the National Prosecuting Authority Act. No. 32 of 1998”. See Record, Legal Opinions, page LO 01039 (Exhibit 24).

²³³ *Id*, page LO 01045 at para 11.4.

²³⁴ Record, Correspondence Bundle, page C 0001 to C 0008.

[208] Manifestly, the advice was not heeded, instead, further legal opinions were obtained which — in addition to Nalane SC’s opinion, it would appear — would fortify Batohi’s stance to recommend the establishment of such an enquiry against Chauke. This proposition is consistent with the findings and recommendations in the subsequent opinions, i.e. Broughton 1.

[209] In her testimony, Batohi states that she had received and considered various opinions, (i.e. Nalane SC, Maenetje SC and De Kock 2) by 15 February 2023. Particularly, she refers to De Kock 2, in which De Kock advised her not to recommend an enquiry against Chauke regarding the Mdluli matter. According to Batohi, it appeared to her that on a reading of De Kock’s memorandum, he had merely accepted the Maenetje SC opinion.²³⁵

Broughton 1

[210] Broughton 1 was based on relevant reported decisions which pertain to the Cato Manor and Mdluli matters, respectively.²³⁶ Broughton ’s view, in relation to Cato Manor, concluded as follows—

“... that the NDPP ought to consider making a submission to the President for the institution of an enquiry in terms of Section (12)(6)(a) of the NPA against Chauke pertaining to his involvement and handling of the Booyesen (Cato Manor) case.”²³⁷

²³⁵ Record, Batohi Witness Statement, page 71 at para 171. See also Transcript Day 10, Page 61, lines 21 to 25.

²³⁶ See fn 86.

²³⁷ Record, Legal Opinions, page LO 00163 at para 45.

[211] As regards the Mdluli matter, Broughton refers to Brand JA's judgment which found that Chauke's decisions were not irrational.²³⁸ Broughton 1 concludes:

"In light of the findings in the SCA FUL decision, as referred to above, no recommendation is made herein that a section 12(6)(a) enquiry be instituted against Adv. Chauke relating to his withdrawal decision in the Mdluli case and referring the murder charge to an inquest instead."²³⁹

(underlining added for emphasis)

Broughton 2 (Supplementary Opinion)

[212] Next, was yet another opinion dated 21 April 2023 (Broughton 2) supplementing Broughton 1. It was requested by Batohi for the purpose of setting out the relevant evidence and information regarding Chauke's involvement in relation to his handling of the Cato Manor matter, to assist Batohi in her recommendation to the President to suspend Chauke pending the establishment of an enquiry into his fitness to hold office. Broughton relied on the evidence presented by the NPA at the Zondo Commission and the Mokgoro Enquiry, as was relied upon by Nalane SC, despite the fact that the evidence presented by Booysen and ADPP-Mlotshwa at the Zondo Commission was never tested against Chauke. In relation to the Mokgoro Enquiry, Chauke was not even a witness.

[213] Moreover, Broughton 2 relied heavily on Nalane SC's opinion and findings that also accepted the evidence that was submitted by the NPA before both the Zondo Commission and the Mokgoro Enquiry which evidence remained untested.

²³⁸ Record, Legal Opinions, page LO 00150.

²³⁹ Record, Legal Opinions, page LO 00163 at para 45.

These aspects were uncovered by Maenetje SC in his opinion which was later confirmed in De Kock 2 (on 15 February 2023).

[214] Consequently, Broughton 2 concluded that Chauke took a prosecutorial decision, to prosecute Booysen.²⁴⁰ This conclusion was based on, among other things, that:

- (a) Chauke made an entry that on 5 August 2012 he had a meeting with the prosecution team and edited the indictment and memorandum to the ANDPP-Jiba.
- (b) Chauke had a meeting with the Judge President-KZN and ADPP-Mlotshwa. The purpose of the meeting was to arrange for a hearing date. Broughton further finds that the impression created is that Chauke, not Noko, was in charge of the Booysen prosecution. He opined that it would seem that Noko was simply on the periphery to give a veneer of legitimacy to the process that it, *de jure*, did not have.
- (c) Chauke was involved in the process of filing the indictment with the KZN High Court when the prosecution team in terms of the special delegation were required to be reporting to Noko through whom the indictment was supposed to be filed.²⁴¹
- (d) In the memorandum dated 5 March 2014, the Cato Manor prosecution team did not recommend the lodging of an appeal against Gorven J's

²⁴⁰ Broughton 2, Record, Legal Opinions, page LO 00178 to LO 00180 at paras 25 to 28.

²⁴¹ Record, Legal Opinions, pages LO 00188 to LO 00189 at para 55 - Broughton 2.

judgment in light of the concession made in the matter. Broughton said that there were no statements that implicated Booysen in any of the offences with which he had been charged. According to Broughton, the forwarding of the memorandum to Noko and Ramaite showed, in and of itself, that Chauke effectively endorsed the recommendation of the prosecution team to the NDPP-Nxasana to issue the racketeering authorisations.²⁴²

- (e) Chauke's actions are more than simply putting together and co-ordinating a prosecuting team to conduct a prosecution in another DPP's jurisdiction.²⁴³

[215] Broughton questioned Chauke's signing of the application for racketeering authorisations to the ANDPP-Jiba, instead of Noko – "the sole DPP vested with the jurisdiction to institute criminal proceedings against Booysen and the other accused against Section 20(1)(3)(a) of the NPA." This, in itself, seems to disregard the intervention by the DPCI and IPID and also that the racketeering authorisations fell squarely within the remit of Batohi as NDPP. Sight should also not be lost of the fact that Noko was neither the ADPP nor DPP-KZN when the racketeering authorisations were issued and the prosecution of the Cato Manor Unit started. ADPP-Mlotshwa was. Broughton 2 seems to disregard this aspect.²⁴⁴

²⁴² Record, Legal Opinions, page LO 00205 at para 102 and 103.

²⁴³ Record, Legal Opinions, page LO 00206 at para 104 and 105.

²⁴⁴ Record, Legal Opinions, page LO 00177 to LO 00188 at para 53.

[216] Reliance is placed on many other factors which, together with those mentioned above, will be traversed later in relation to the issues for determination and the evidence tendered at the Enquiry.

[217] Of significance, is what is stated in Broughton 2 as regards the Mdluli matter, that:²⁴⁵

“7. In my legal opinion, no recommendation was made as to the institution into an enquiry in terms of Section (12)(6)(a) of the NPA against Chauke relating to his decision to withdraw the matter and related charges in the case involving the Lieutenant Richard Mdluli, who was the head of Crime Intelligence within the South African Police Service (SAPS) and refer the murder charge to an inquest instead. This stance is based on pertinent findings contained in the judgment of the Supreme Court Appeal (SCA) in National Director and Prosecutions and Others v Freedom Under Law as discussed in my legal opinion.”

[218] Unmistakably, both Broughton 1 and 2 did not support the setting up of an enquiry for Chauke in relation to the Mdluli matter. Nonetheless, Batohi seems to have thought otherwise despite the SCA’s pronouncement on the matter. Batohi then went ahead and requested the President to suspend Chauke and set up an enquiry to investigate both the Cato Manor and Mdluli matters.

[219] Broughton comes to this conclusion by looking at the dates of meetings that were furnished by Chauke per an e-mail dated 30 September 2015 and included, in his affidavit, filed in the State Capture Commission. These dates indicated meetings

²⁴⁵ *Id* at page LO 00173 at para 7.

where Chauke met the prosecution team and to Broughton, this showed a direct involvement with the investigation in the Cato Manor case.²⁴⁶

[220] Broughton further opined that Chauke attempted to have the ADPP-Mlotshwa sign the Booysen indictment without providing the evidence and/or relevant information to him on which the decision to indict was to be made. This, as already indicated, was the evidence that was extracted from the affidavits of witnesses in the State Capture Commission and the Mokgoro Commission without such evidence being tested. Had this evidence been tested against Chauke, Broughton would have seen the exchange of e-mails between the ADPP-Mlotshwa and Chauke then realised that there was no instance where Chauke purported to force the ADPP-Mlotshwa to sign an indictment without the necessary prosecutorial memorandum.²⁴⁷

[221] Broughton's conclusion and recommendations were that—

- (a) Chauke misled not only the employer (the NPA) but also the Zondo Commission as to the extent of his role and involvement in the Cato Manor case;
- (b) Chauke committed perjury by misrepresenting in the affidavit what his involvement in the prosecution and the Booysen review case was;

²⁴⁶ Record, Legal Opinions, LO 00219 at 147.

²⁴⁷ Dr Broughton's Supplementary Opinion, Record, pages LO-00221 to LO 00225, paras 149 to 163.

- (c) Chauke brought the NPA into disrepute and this calls into question whether he is a fit and proper person to hold office of DPP;
- (d) the evidence and information show that Chauke's involvement with the Cato Manor case was not, as claimed, the putting together and simply co-ordinating a prosecution team to conduct a prosecution in another DPP's jurisdiction but that Chauke took key prosecutorial decisions in the matter whereas he was not the DPP having jurisdiction and the *de jure* responsibility over the Booysen case;
- (e) Chauke assumed the leadership and responsibility for the prosecution of the Cato Manor Unit members and his opposition of Booysen's review application;
- (f) it was irregular for Chauke to exercise and perform powers in terms of section 24(1)(a)(b) of the NPA Act in another DPP's area of jurisdiction relating to the institution of criminal charges against the accused in the Cato Manor matter in KZN and leading, overseeing, supervising, directing and co-ordinating the work and activities of the prosecutors assigned to handle the case;
- (g) it was also improper for Chauke to have exercised a leading role dealing with the Booysen review application instituted and concluded in KZN where he had no lawful jurisdiction;

- (h) Chauke recommended the issuing of racketeering authorisations signed by the ANDPP-Jiba on the 27 August 2012 in the Cato Manor matter, whilst there was no evidence implicating Booysen on the racketeering charges and predicate offences concerned;
- (i) there was *prima facie* evidence that Chauke committed the crime of defeating or obstructing the course of justice and submitted that this constituted misconduct and brought the NPA into disrepute. This called to question whether Chauke was fit and proper to hold the office of DPP;
- (j) Chauke endeavoured to have the ADPP-Mlotshwa act unlawfully by signing the indictment without affording him the opportunity to read the case docket, prosecution memorandum or report;
- (k) related to the above sub-paragraph, there was also no lawful basis for Chauke to threaten to report the ADPP-Mlotshwa to the Minister and it was submitted that that conduct on the part of Chauke constituted misconduct and called into question his fitness to hold office;
- (l) Chauke finalised the ANDPP-Jiba's affidavit in the Booysen review application and was a liaison between Hodes SC and the prosecution team, which means that Chauke would have to account for the untrue statements contained in the affidavit filed in that review application as pointed out by two High Courts. The answering affidavit has given rise to the fraud and perjury allegations against the ANDPP-Jiba;

- (m) the evidence uncovered and discussed showed that Chauke was determined throughout to have the prosecution against Booysen proceed despite inadequate or lack of evidence as seen from (1) the interaction between Chauke and the ADPP-Mlotshwa regarding the signing of the indictment, (2) the recommendation of the application for the racketeering authorisations, (3) opposing the Booysen review application and (4) the meeting of 16 July 2015 with SDPP-Jiba and other NPA officials where they discussed the reinstitution of the case against Booysen;
- (n) Chauke played a leading role in the prosecution of the Cato Manor Unit members and Booysen's review application;
- (o) the case dockets in the Cato Manor matter held by the DPCI and IPID would demonstrate a complete lack of evidence or inadequate evidence when key prosecutorial decisions were taken in the matter. This would show that there was a gross failure to properly direct the investigation; and
- (p) given the evidence illustrating misconduct on the part of Chauke as discussed in Broughton 1 and the related factors calling into question Chauke's fitness to hold office of DPP, he recommended to Batohi make

submissions to the President to institute an enquiry into Chauke's into his fitness to hold office as his DPP.²⁴⁸

- [222] Concerning Mdluli, Broughton reiterates his earlier viewpoint that he does not recommend an enquiry. He does so in a single paragraph confirming that the stance he took is based on the SCA judgment.²⁴⁹

Hulley SC's Opinion

- [223] In the subsequent opinion by Hulley SC and Adv S Wentzel at the request of Batohi, dated 10 July 2023, a recommendation was made supporting an investigation of the Mdluli matter by an enquiry.²⁵⁰ This opinion was procured, seemingly, because Broughton 1 and 2 as well as De Kock 1 and 2 did not support the institution of an enquiry in relation to the Mdluli matter.
- [224] Hulley SC opens the opinion with reference to a draft letter he had settled for Batohi, on 4 July 2023. The purpose of the letter was to recommend that the President institute an enquiry into Chauke's fitness to hold office. At paragraph 4 of the opinion, Hulley SC states:

"The NDPP is satisfied that Adv. Chauke has committed misconduct in relation to the Cato manor matter. She has requested us, however, to provide her with a brief memorandum explaining the process of reasoning regarding the Ramogibe matter, and to provide her with whatever evidence is available to support our process of reasoning..."²⁵¹

²⁴⁸ Record, page LO 00236 to LO 00237, paras 200 to 216.

²⁴⁹ Record, page LO 000173 at 7.

²⁵⁰ Record, page LO 001048 at 2.

²⁵¹ Record, page LO 001049 at 4.

[225] Hulley SC's opinion reiterates the position that the decisions constitute misconduct.²⁵²

[226] Clause 3.1.2 of the ToR should be borne in mind: Chauke is alleged to have failed to continue with the charges against Mdluli for his involvement in the murder of Ramogibe and the related charges. Further, Chauke is alleged to have withdrawn the charges, notwithstanding that there was strong evidence justifying prosecution. The decision by Chauke is said to have caused a significant delay in proceeding with the charges concerned.

[227] Hulley SC concluded that Chauke's withdrawal of the charges against Mdluli and referral of the death of Ramogibe to a formal inquest constituted misconduct. The conclusions expressed in the opinion are as follows:

- (a) That no purpose was served by referring the death of Ramogibe to an inquest and that by doing so the State's case was likely to be weakened.
- (b) The murder charge and all other charges were intimately interwoven.
- (c) Despite the SCA's findings and order, Hulley SC expressed the view that he was satisfied with the strength of the State's case relating to the charges with the exception of the murder and attempted murder charges. He posited that it did not make sense for Chauke to refer the issues relevant to the murder charge to an inquest to begin with and after having done so to withdraw the murder and attempted murder

²⁵² Record, page LO 01054 at 9.

charges. Hulley SC held that it does not matter how strong or weak the case was in respect of the murder charge as it should have been pursued because the evidence relating to the other charges was relevant to and supported the evidence regarding the murder and attempted murder charges. If the murder and attempted murder charges had stood on their own, the decision would have made sense.

- (d) Hulley SC further opined that Chauke should have proceeded with the remaining charges as soon as the SCA judgment was delivered.
- (e) Hulley SC questioned why Chauke needed two months to make up his mind on how to proceed with the murder charge since the findings of the inquest Magistrate as far back as November 2012 and to make matters worse, he never proceeded with the murder charge;
- (f) Hulley SC found that had Chauke not been compelled to do so, he would not have proceeded with any of the charges in respect of the Mdluli matter, not the murder and attempted charges and all the other charges. Hulley SC indicated that he had drawn this evidence from the delay in prosecuting the matter.

[228] The findings and recommendations by Hulley SC illustrate that he was oblivious to order 3 of the SCA judgment in respect of which the NDPP-Nxasana (the first appellant) undertook to decide which of the criminal charges of murder and related charges are to be reinstituted and to report to FUL (the respondent) as well as provide reasons why he did not reinstitute some, if any, of the charges.

The order, as properly understood, obliges the NDPP, not Chauke, to implement the SCA order. It is puzzling that as at the time this opinion was penned on 10 July 2023, the SCA order had already been implemented by the NDPP-Nxasana.²⁵³

The upshot of the series of opinions

[229] Relying on the opinions of Nalane SC, Broughton 1 and 2 (regarding the Cato Manor matter) and Hulley SC (regarding the Mdluli matter), Batohi addressed a letter to Chauke on 11 August 2023, referring to a meeting held between herself and Chauke on 3 August 2023 in which she communicated her decision to request the President to suspend him provisionally pending an enquiry into his fitness to hold office.

[230] Batohi informed Chauke that she did not intend to engage Chauke any further regarding the merits of her decision to do so in relation to the Cato Manor and Mdluli matters, but invited Chauke to—

"bring to [her] attention any other matter [she] may consider including in the memorandum by no later than 17h00 on 13 August 2023."

[231] Chauke responded to Batohi's letter on 14 August 2023 dealing, *inter alia*, with the recommendation regarding his suspension, and separately, the recommendation regarding the establishment of an enquiry into his fitness to hold office.

²⁵³ Record, Chauke Witness Statement, page 6-90 at 325.

- [232] Insofar as his suspension was concerned, Chauke indicated that the proposed suspension was, at that stage, unreasonable and irrational on the basis that it would be premature for him to be suspended pending a decision to institute an enquiry. Moreover, Chauke took the view that there would be no prejudice to the NPA if he remained in office while the president considered Batohi's recommendation given that the matters, at that point, had occurred over nine years prior.
- [233] Addressing the Mdluli matter, Chauke referred to Brand JA's judgment. He noted that ultimately, it was the NDPP-Nxasana (on the same reasoning as Chauke himself) who instituted the charges which were preferred against Mdluli, noting also that Batohi was still able to pursue a murder charge against Mdluli, presumably in light of the SCA's pronouncements.
- [234] With regard to the Cato Manor matter, Chauke reiterated that his role was that of a co-ordinator and not a decision maker, indicating that he was instructed during NDPP-Nxasana's tenure that he was no longer to be involved in the matter. Chauke indicated that he believed that NDPP-Nxasana's decision bound the office of the NDPP and urged Batohi to reconsider her stance.
- [235] Finally, Chauke implored Batohi to consider the representations objectively, postulating that the decisions she takes may have—

"a chilling effect on others in the same position as [him], who may refrain from exercising their discretion promptly, objectively and decisively for fear of reprisals if those above them and the public do not like their decisions."²⁵⁴

[236] On 12 March 2024, Batohi addressed a letter to Minister Lamola in response to the letter addressed to Mr Sarela from Mr Mphaphudi, Principal State Law Advisor and Acting Head of Legal and Executive Services in the Presidency. The letter sought to address alleged delays by the NPA and the Ministry of Justice in acting on the serious allegations against Chauke.²⁵⁵

[237] On 18 August 2023, Batohi addressed a ministerial memorandum to Minister Lamola. The purpose was to report the involvement and conduct of Chauke in relation to the Cato Manor and Mdluli matters and recommend that Chauke be suspended provisionally and an enquiry be established into his fitness to hold office. The letter refers to the opinions of Nalane SC, the responding legal opinion of Maenetje SC, the Broughton opinion and the Hulley SC opinion. Notably, the recommendations do not appear to refer to or attach the De Kock 1 report, which favoured Chauke.

[238] The recommendations in the ministerial memorandum were approved by Minister Lamola on 26 September 2023 and issued to the President on the same day.

Moroka SC's opinion

²⁵⁴ Record, Correspondence Bundle, page C 00015 at para 18.

²⁵⁵ Record, Batohi Witness Statement, page 79 at para 189. See also Transcript Day 11, page 8, where reference is made to Annexure SB10 to Batohi's Witness Statement (pages 266 to 276 thereof)(Exhibit 41).

[239] After the NDPP had written to the President requesting that the President set up an enquiry in terms of Section 12(6)(a) of the NPA into the fitness of Chauke to hold office as DPP South-Gauteng, Moroka SC was requested to provide a further opinion, seemingly by the Presidency through the Minister of Justice, on whether to proceed with an enquiry or not. Moroka SC's opinion is dated 18 March 2024.²⁵⁶ It is worth mentioning that Moroka SC was part of the panel in the Mokgoro Enquiry that found that the ANDPP-Jiba and Mwrebi were not fit, respectively, to hold their offices within the NPA.

[240] It is not clear what documents were provided to Moroka SC, to enable her to complete the task. What is apparent, however, especially from the reading of her opinion in relation to the facts, appears to be a regurgitation of the background and some of the findings in Broughton 2.

[241] Based on those facts, Moroka SC concluded that an enquiry into the fitness of Chauke to hold office in terms of s 12(6)(a) of the NPA Act must be held. She listed the following matters, which she considered important to be enquired into by the Enquiry, whether Chauke—

- (a) properly exercised his discretion in discontinuing criminal proceedings against Mdluli;

²⁵⁶ Record, page LO 001064 to LO 001098 at paras 5 to 8.

- (b) exercised his powers and performed his duties and functions in accordance with the Prosecution Policy and Policy Directives as determined in the NPA;
- (c) acted at all times without fear, favour or prejudice when he was unduly pressured by the ANDPP-Jiba to be involved in the Cato Manor prosecution when he knew that the matter fell outside his area of jurisdiction;
- (d) violated the provisions of section 179(1) of the Constitution and section 6(20)(3) and (4) of the NPA Act when he assumed responsibility in a case which fell outside his area of jurisdiction; and
- (e) is a fit and proper person to hold office of DPP.

[242] Moroka SC acknowledged Brand JA's judgment which reversed the decision by Murphy J²⁵⁷ but distinguishes the courts' finding on the matter of rationality from the actual merits of Chauke's decision making. She specifically states that while the reasons provided by Chauke for referring the matter to an inquest may have been rational, "... this does not prove the truthfulness of the reasons provided to the Court."²⁵⁸

[243] What may be stated as a fact is that the SCA had accepted the correctness of Chauke's evidence hence its conclusion. It is, thus, not clear from Moroka SC's opinion what and whose evidence would, in the circumstances, be necessary to

²⁵⁷ Record, Legal Opinions, page LO 001093.

²⁵⁸ *Id*, at para 92.

prove Chauke's truthfulness. Moroka SC concluded that there is *prima facie* evidence that Chauke misrepresented facts when he said that his involvement in the Cato Manor matter was merely that of a co-ordinator. According to her, Chauke went as far as misleading the Zondo Commission, thereby committing perjury.

[244] According to Moroka SC, Chauke's involvement in the Cato Manor was not simply one of co-ordinating the prosecution team. She opined that Chauke committed acts of misconduct when he took key prosecutorial decisions in the matter, thereby exercising powers when he did not have jurisdiction.²⁵⁹

The Presidential correspondence with Chauke

[245] On 18 February 2025, the President issued a notice of intention to suspend and institute an enquiry in terms of s 12(6) of the NPA Act into Chauke's fitness to hold office as DPP. The notice set out the allegations made against Chauke as they have come to be set out in the ToR.²⁶⁰

[246] The notice details that the allegations, on a *prima facie* basis, raise serious questions with regard to Chauke's fitness and propriety to hold his office.²⁶¹ It further confirms that the President held the view that an enquiry in terms of s 12(6) of the NPA Act was necessary, as was the need for Chauke to be suspended pending the finalisation of said enquiry.²⁶² The President requested

²⁵⁹ Record, Legal Opinions, page LO 001088 at para 69.

²⁶⁰ Record, Correspondence Bundle, page C 00031.

²⁶¹ Record, Correspondence Bundle, page C 00033 at para 7.

²⁶² Record, Correspondence Bundle, page C 00033 at para 9 to 10.

Chauke to make written representations as to why he should not be suspended pending the institution and finalisation of the enquiry.²⁶³

[247] On 25 March 2025, Chauke addressed a letter to Batohi requesting copies of the opinions in De Kock 1, Broughton 2 and of Hulley SC.²⁶⁴ Thereafter, Chauke addressed his written representations to the President on 7 April 2025, identifying various reasons for the lateness of his representations. Those reasons include that he had only taken receipt of the President's request for representations on 25 February 2025 and had experienced difficulty in recalling the information and compiling the relevant documents as the matter had occurred over a decade prior.²⁶⁵

[248] Chauke confirmed that he had only had sight of the opinions in De Kock 1, Broughton 2 and of Hulley SC for the first time on 27 March 2025. Mention needs to be made that these opinions had, seemingly, been included in the referral documents to Minister Lamola for consideration by the President.²⁶⁶ That begs the question why these documents, particularly De Kock 1, were not provided to Chauke in the first place when Batohi communicated her intention to refer the matter to the President, as far back as about August 2023.

²⁶³ *Id.*, at para 11.

²⁶⁴ Record, Chauke Witness Statement, page 6A-40.

²⁶⁵ Record, Correspondence Bundle, page C 00037.

²⁶⁶ Record, Correspondence Bundle, page C 00037 at 14.

- [249] Chauke's letter squarely submits to the President that the recommendations made by Batohi should be declined. He also tendered his full cooperation and explained that suspension would not be appropriate in the circumstances.²⁶⁷
- [250] Batohi wrote to Minister Kubayi on 2 May 2025, regarding the impending enquiry into Chauke's fitness to hold office. She submitted De Kock 2 (dated 15 February 2023) for submission to the President. Substantiating the request, Batohi stated that De Kock 2 had not formed part of the documents previously submitted to the President.²⁶⁸
- [251] It is curious that Batohi, nonetheless, sought to distinguish De Kock 2 from the opinions on the basis that it is not a "legal" opinion – as in the case of Nalane SC's and Maenetje SC's opinions. Yet, she considered not only De Kock 1 but also De Kock 2 to be relevant for the Presidential appraisal of whether an enquiry should be established or not.
- [252] More strangely, having confirmed that Chauke had been provided with De Kock 2, following his request on 25 March 2025, Batohi reiterated that nothing turns on it (i.e. De Kock 2). It is not correct that nothing turns on De Kock 2. In any event, that proposition begs the question why Batohi considered it necessary, particularly at that stage. The evaluation in De Kock 2, below, is obviously revealing. It reads:

"E. Evaluation

²⁶⁷ Record, Correspondence Bundle, page C 00052 at 52.

²⁶⁸ Record, Correspondence Bundle, page C 00059 at 5.

11. It is respectfully submitted that Adv Chauke has overall provided a satisfactory response to the allegations levelled against him for the employer not to proceed with a formal inquiry into his conduct or fitness to hold office in terms of the NPA Act.

11 .1. Adv Chauke denies trying to influence Adv Mlotshwa improperly in the Cato Manor prosecution. It was critical, in my view, for Adv Nalane SC to interview Mlotshwa with a view to establish the existence of any malicious attempt on the part of Chauke to pressurise Mlotshwa to sign the indictment in the Cato Manor matter.

[Moreso, Mlotshwa did not seemingly lay any complaint with the employer, as an expression of discontent, at the time of the occurrence of the alleged offending incident. It is also a well-established principle that issues of discipline ought to be dealt with timeously for purposes of achieving procedural fairness.

That Chauke apologised to Mlotshwa about an omission by him to provide Mlotshwa with a prosecution memorandum and that there is no bad blood between the two relatively settles, it is respectfully submitted, the matter and further underlines the need for Nalane SC to have interviewed Mlotshwa for the purpose of his report. It also fortifies the principle that discipline must be progressively applied.

It is also important to take note that Chauke got involved in a KZN matter at the instance of his senior and supervisor, Adv Jiba, and, therefore, the employer. As a matter of practice and the law, NDPP(s) have in the past assigned prosecutors, and even DPPs, matters that fell outside their jurisdiction for one reason or the other].

...

F. Recommendation

12. It is recommended, on account of the shortcomings identified in the Nalane SC's report, as per the legal opinion of Adv Maenetje SC and Adv Scott, that the NDPP make no submissions to the President for the holding of a formal inquiry against Adv Chauke in terms of section 12 (6)(a) of the National Prosecuting Authority Act, No. 32 of 1998 [and that the NDPP, as a matter of courtesy, inform the President, through the Ministry of Justice, accordingly].²⁶⁹
- (underlining for emphasis.)

Establishment of the Enquiry

[253] Following the communication between the President and Chauke, the President ultimately decided to establish the Enquiry. The ToR were gazetted in Government Gazette No 53444 on 30 September 2025.

[254] Clause 6 of the ToR empowered the Chairperson to determine the Rules of Procedure to be followed in the Enquiry. On 28 October 2025, the Procedural Rules²⁷⁰ were published. These Rules form part of the record of this Enquiry.

The Terms of Reference [ToR]

[255] The core issue at the heart of this Enquiry may be distilled from the ToR, themselves. It is whether Chauke is fit to hold office as DPP South Gauteng. As may be observed from the extensive general background facts above, there are wide-ranging allegations relating to Chauke's unfitness to continue holding office. These allegations, insofar as they relate to the Cato Manor and Mdluli matters,

²⁶⁹ Record, Legal Opinions, page LO 001044 to LO 001045.

²⁷⁰ The Procedural Rules appear at Record Rules and Directives Bundle at RD013. The Rules and Directives bundle also includes all written directives issued by the Panel throughout the Enquiry Proceedings.

call for a determination of the core issues together with the ancillary issues in terms of the ToR.

[256] The issues concerning the Cato Manor matter are somewhat expansive whilst those concerning the Mdluli matter are narrower and easily resolvable, in light of the reflections of the parties.

[257] It, therefore, follows that the determination of Chauke's fitness to hold office must, accordingly, be confined to his alleged—

3.1 “...direct or indirect conduct ...but not limited to matters related to ...allegations [regarding]”:

3.1.1 The institution of the racketeering charges in terms of section 2(4) of the [POCA] against [Booyesen] and members of the Cato Manor Unit and the defence of those actions in subsequent proceedings by [Booyesen] to have the racketeering certificates set aside, in that he, [Chauke]—

3.1.1.1 supported a decision to prosecute the accused notwithstanding that there was no evidence justifying the decision, and he sought to improperly have the Acting Director of Public Prosecutions of KwaZulu-Natal sign the case dockets and/or prosecution memorandum detailing the alleged evidence implicating the accused on which the decision to indict had to be made;

3.1.1.2 recommended to the then [ANDPP-Jiba] ... [to issue] ... a racketeering authorisation in terms of section 2(4) of [POCA] whereas there was no evidence justifying the institution of racketeering charges against the accused;

3.1.1.3 sought to defend the institution of the aforementioned racketeering charges in the review proceedings brought by

Major-General Booysen to have the said racketeering charges set aside, and that he finalised the answering affidavit of the then [ANDPP-Jiba], in the Booysen review proceedings in opposing the review application, notwithstanding that there was no evidence justifying the institution of racketeering charges against the accused;

3.1.1.4 instituted an appeal against [Gorven J's review judgment] ... without the approval of the then [NDPP-Nxasana], notwithstanding that there was no evidence justifying the institution of racketeering charges against the accused, and thus no justification for lodging an appeal against the judgment; and

3.1.1.5 attempted to have [the said] racketeering charges ... reinstated by NDPP- Nxasana, notwithstanding that there was no evidence justifying the institution of racketeering against the accused.

3.2.1 failure to continue with charges against Lieutenant-General Richard Mdluli for his involvement in the murder of Mr Tefo Abel Ramogibe, in that he, Adv Chauke, caused the charge of murder relating to the killing of Mr Tefo Abel Ramogibe, and related charges to be withdrawn, notwithstanding that there was strong evidence justifying the institution of a prosecution in the matter, which decision caused a significant delay in proceeding with charges concerned."²⁷¹

(Underlining for emphasis.)

[258] The additional issues raised, as per the ToR, entail whether, in fulfilling his responsibilities as DPP, Chauke—

(a) complied with the Constitution and the NPA Act;

²⁷¹ Enquiry ToR.

- (b) properly exercised his discretion in relation to instituting and conducting criminal proceedings on behalf of the State;
- (c) carried out “necessary” functions incidental to instituting and conducting such criminal proceedings;
- (d) discontinued criminal proceedings against Mdluli;
- (e) respected court processes and proceedings before the Courts;
- (f) exercised his powers and performed his duties and functions in accordance with the Prosecution Policy and Directives under section 21 of the NPA Act;
- (g) acted without fear, favour or prejudice; and
- (h) displayed the required competence and capacity in fulfilling his duties by, objectively engaging with facts impartially and in good faith, subject to the Constitution and without bringing the NPA into disrepute by any of his alleged actions.²⁷²

[259] Recognisable from the issues mentioned above, the relevance of the applicable provisions of the Constitution, the NPA Act, the Prosecution Policy and Directives, is implicit. It is, thus, necessary to set out the relevant legislative framework, before dealing with the issues.

²⁷² See in this regard clause 3.2 of the ToR.

The relevant legislative framework

Constitutional provisions

[260] The starting point is the supreme law of the Republic — the Constitution — in terms of which any law or conduct inconsistent therewith is invalid. Section 179 of the Constitution establishes a single national prosecuting authority, the NPA, including the topmost components of its structure, namely: the NDPP, DPPs and prosecutors as determined by an Act of Parliament (the NPA Act).²⁷³

[261] The further sub-provisions of section 179 are apposite. They read:

- “(2) The prosecuting authority has the power to institute criminal proceedings on behalf of the state, and to carry out any necessary functions incidental to instituting criminal proceedings.
- (3) National legislation must ensure that the Directors of Public Prosecutions —
 - (a) are appropriately qualified; and
 - (b) are responsible for prosecutions in specific jurisdictions, subject to subsection (5).
- (4) National legislation must ensure that the prosecuting authority exercises its functions without fear, favour or prejudice.
- (5) The National Director of Public Prosecutions —
 - (a) must determine, with the concurrence of the Cabinet member responsible for the administration of justice, and after consulting the Directors of Public Prosecutions, Prosecution Policy, which must be observed in the prosecution process;
 - (b) must issue policy directives which must be observed in the prosecution process;

²⁷³ S 179(1) of the Constitution.

- (c) may intervene in the prosecution process when policy directives are not complied with; and
- (d) may review a decision to prosecute or not to prosecute, after consulting the relevant Director of Public Prosecutions and after taking representations within a period specified by the National Director of Public Prosecutions, from the following:
 - (i) The accused person.
 - (ii) The complainant.
 - (iii) Any other person or party whom the National Director considers to be relevant.
- (6) The Cabinet member responsible for the administration of justice must exercise final responsibility over the prosecuting authority.
- (7) All other matters concerning the prosecuting authority must be determined by national legislation.”

[262] Also pertinent to this Enquiry are the provisions of the Constitution that deal with “Police service”. Section 205 (1) of the Constitution refers to the structuring of the national police service to function, *inter alia*, in the national and provincial spheres of government. Sub-section (2) provides:

“National legislation must establish the powers and functions of the police service and must enable the police service *to discharge its responsibilities effectively*...”²⁷⁴

[263] More importantly, in so far as the alleged conduct of the implicated police officers is concerned, subsection 3 bears mentioning. It reads:

“(3) The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.”

²⁷⁴ See also s 199 of the Constitution, which deals with establishment, structuring and conduct of security services. Such security services shall, in terms of s 199(1) “consist of a single defence force, a single police service and any intelligence services established in terms of the Constitution.” (Underlining for emphasis.)

[264] Also of relevance, are the provisions of section 206 of the Constitution that empowers an independent police complaints body (which must be established through section 205(2)) to investigate alleged misconduct or offences committed by a member of the police in a particular province on receipt of a complaint lodged by a provincial executive.

The NPA Act

[265] Section 5 of the NPA Act deals with the office of the NDPP, created by section 5(1) and hierarchically consisting of—

- (a) the NDPP, who serves as both the head of the office and exercises control over it;
- (b) DPPs, appointed in terms of section 13(1);
- (c) SDPPs; and
- (d) other officials, including investigating directors, special directors and other members of the Prosecuting Authority appointed to or assigned to the office.

[266] The NPA Act also provides for offices of the prosecuting authority, which are distinct from the office of the NDPP.²⁷⁵ Section 6(1) of the NPA Act establishes such offices at the seat of each Division of the High Court. As permitted by

²⁷⁵ NPA Act s 6(1)(a).

section 6(1)(b), there is an office established at the seat of the South Gauteng Division, the current head is Chauke, who is provisionally suspended.

[267] The NPA is split into several divisions. For the purpose of this Report, the relevant divisions are the NPS and PCLU. The leadership of the NPS is comprised of the relevant DNDPP assigned to the division, as well as DPPs assigned across the nine provinces. DPPs serve, in those provinces, each as the head of the designated office of the prosecuting authority.

[268] Section 20(1) of the NPA Act vests the power to institute and conduct criminal proceedings on behalf of the State and discontinue such proceedings in the prosecuting authority.²⁷⁶ As will be recalled, this is a provision which was invoked by the ANDPP-Jiba, authorising Maema, among other things, to exercise the prosecutorial powers set out in terms of the NPA Act in the lower and High Courts within the area of jurisdiction of the KZN Division in all offences committed by the members of the SAPS in the province of KZN, act on behalf of the State in any appeal and review or other applications arising from such criminal proceedings within that province.²⁷⁷

[269] Specific to this Enquiry, are the constraints within which a DPP may act. In terms of section 20(3) of the NPA Act—

"any Director shall, subject to the control and directions of the National Director, exercise the powers referred to in subsection (1) in respect of

(a) the area of jurisdiction for which he or she has been appointed;

²⁷⁶ NPA Act S 20(1).

²⁷⁷ See in this regard, for example, the authorising letter by Jiba to Maema referred to at para 35, above.

- (b) any offences which have not been expressly excluded from his or her jurisdiction, either generally or in a specific case, by the National Director."

[270] Section 20(5) speaks of the competency of prosecutors and provides:

- "(5) Any prosecutor shall be competent to exercise any of the powers referred to in subsection (1) to the extent that he or she has been authorised thereto in writing by the National Director, or by a person designated by the National Director.
- (6) A written authorisation referred to in subsection (5) shall set out-
 - (a) the area of jurisdiction;
 - (b) the offences; and
 - (c) the court or courts,
 in respect of which such powers may be exercised."

(Underlining for emphasis.)

[271] The NDPP, as the head of the NPA, has authority over exercising all of the powers conferred by the Constitution and relevant legislation. Similarly, the NDPP is conferred with the functions and duties imposed on any member of the NPA.²⁷⁸ Subject to the limitations set out in section 20(3), a DPP may institute and conduct criminal proceedings, and carry out functions incidental thereto, supervise, direct and co-ordinate specific investigations and carry out all duties and perform all functions imposed or assigned to them under any law which is in accordance with the NPA Act.²⁷⁹

[272] Section 22(3) specifically provides:

²⁷⁸ NPA Act S 22(1).

²⁷⁹ NPA Act S 24(1)(a) to (d)

"Where the National Director ... deems it in the interest of the administration of justice that an offence committed as a whole or partially within the area of jurisdiction of one Director be investigated and tried within the area of jurisdiction of another Director, he or she may, subject to the provisions of section 111 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), in writing direct that the investigation and criminal proceedings in respect of such offence be conducted and commenced within the area of jurisdiction of such other Director."

(Underlining for emphasis.)

[273] Section 22(8)(b) specifically permits the NDPP to authorise, in writing, any competent person in the NPA to conduct prosecutions, subject to her/his control and directions or a person designated by him or her, in respect of such statutory offences.²⁸⁰

[274] Section 24(8) provides for the powers conferred upon a Director under section 20(1), which shall include the authority to prosecute in any court any appeal arising from any criminal proceedings. As mentioned above, Maema was empowered in terms of this sub-provision by ANDPP-Jiba to carry out the functions referred to in the authorisation letter.²⁸¹

The NPA Prosecution Policy

[275] Section 21 of the NPA Act makes provision for the determination of the Prosecution Policy by the NDPP and issuance of policy directives as provided for in the Constitution. In terms of section 21(1), the Prosecution Policy and policy

²⁸⁰ S 22(8) NPA Act.

²⁸¹ See fn 290.

directives issued by the NDPP must be observed in the prosecution process.²⁸²

The Prosecution Policy must also determine the circumstances under which prosecutions shall be instituted in the High Court as a court of first instance, in respect of offences referred to in Schedule 2 to the Criminal Law Amendment Act, 1997.

[276] The latest and applicable NPA Prosecution Policy²⁸³ came into effect in June 2013. It was revised in 2006 after a country-wide consultation process. It was reviewed again in 2010 and amended in June 2013. The Enquiry has not been furnished with a version of the 2010 Prosecution Policy.

[277] The purpose of the Prosecution Policy, as per the Record, is to set out the manner in which the NPA and its individual prosecutors should exercise their discretion.²⁸⁴ In terms of the Prosecution Policy, the discretion to make decisions affecting the criminal process can be made at specific stages, for example, the decision—

- (a) whether or not to institute criminal proceedings against an accused person;
- (b) whether or not to withdraw charges or stop the prosecution;
- (c) whether or not to oppose an application for bail or release;

²⁸² The National Director shall, in accordance with section 179(5)(a) and (b) and any other relevant section of the Constitution (a) with the concurrence of the Minister and after consulting the Directors, determine prosecution policy; and (b) issue policy directives, which must be observed in the prosecution process, and shall exercise such powers and perform such functions in respect of the prosecution policy, as determined in this Act or any other law.

²⁸³ Record, Policies and Directives, PD 00056.

²⁸⁴ Record, Policies and Directives, PD 00058.

- (d) whether or not to appeal to a higher court in connection with a question of law; and
- (e) about which crimes to charge an accused person with and in which court the prosecution should be instituted.²⁸⁵

[278] The Prosecution Policy further states that—

"resources should not be wasted pursuing inappropriate cases but must be used to act vigorously in those cases worthy of prosecution. In deciding whether or not to institute criminal proceedings against an accused person, prosecutors must assess whether there is sufficient and admissible evidence to provide a reasonable prospect of a successful prosecution. There must indeed be a reasonable prospect of a conviction, otherwise the prosecution should not be commenced or continued."²⁸⁶

(Underlining for emphasis.)

[279] Relevant to this Enquiry, the Prosecution Policy sets out an entirely separate section addressing the issue of Case Review, including stopping of proceedings and restarting of a prosecution, and critically, the consent required for certain categories of prosecution.²⁸⁷

[280] Certain statutes require the consent of either the NDPP or DPP before a prosecution may be commenced or continued. These requirements serve to prevent prosecutions in inappropriate circumstances and to ensure that, in

²⁸⁵ Record, Policies and Directives, page PD 00059.

²⁸⁶ Record, Policies and Directives, page PD 00060.

²⁸⁷ Prosecution Policy under Chapter 4 (c).

sensitive or controversial areas, important public policy considerations are considered.²⁸⁸

NPA Code of Conduct

[281] The NDPP is required, in consultation with the relevant Minister, to frame a code of conduct for members of the NPA.²⁸⁹ In terms of section 22(6) of the NPA Act, the Code of Conduct for such members (Code of Conduct) was published on 29 December 2010, in Government Notice No. 33907. The Code of Conduct appears to have been in effect from 18 October 2010.

[282] The Code of Conduct is drafted in line with the values and principles of the Constitution, as well as the United Nations Guidelines on the Role of Prosecutors and the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors which are developed by the International Association of Prosecutors. It refers to the Prosecution Policy, providing that prosecutorial discretion to institute and to stop criminal proceedings should be exercised independently, in accordance with the Prosecution Policy and the Policy Directives.²⁹⁰

[283] The Code of Conduct sets out the role of a prosecutor in the administration of justice and states that prosecutors should—

"... give due consideration to declining to prosecute, discontinuing criminal proceedings conditionally or unconditionally or diverting criminal cases from the

²⁸⁸ Record, Policies and Directives page PD00064.

²⁸⁹ NPA Act S 22(6)(a).

²⁹⁰ Code of Conduct Section B.

formal justice system, particularly those involving young persons, with due respect for the rights of suspects and victims, where such action is appropriate."²⁹¹

The NPA Code of Ethics

- [284] The NPA Code of Ethics applies to all NPA employees²⁹² and annexes the Code of Conduct²⁹³ which, among other things, refers to credibility,²⁹⁴ giving honest and impartial advice,²⁹⁵ and protecting the NPA's name and reputation.²⁹⁶
- [285] The Senior Management Service Handbook²⁹⁷ finds applicability insofar as the disciplinary processes for senior public service employees is concerned.

The POCA

- [286] The POCA is the keystone legislation about which much of the conduct of the Cato Manor Unit is concerned. As its long title shows, it was enacted, among other things, to introduce measures to combat organised crime, money laundering and criminal gang activities, and to prohibit certain activities relating to racketeering. Section 2 addresses offences relating to racketeering activities.
- [287] To come to grips with the factors that are required to prove racketeering activities, two important phrases in the definition section of POCA must be considered.
- [288] The first is "enterprise", defined to include—

²⁹¹ Code of Conduct Section D(1)(c).

²⁹² Record, Policies and Directives, page PD 00026.

²⁹³ Record, Policies and Directives, page PD 00049.

²⁹⁴ Code of Ethics, clause 4.2, Record, page PD 00028.

²⁹⁵ *Id*, clause 4.2.1, Record, Policies and Directives, page PD 00029.

²⁹⁶ *Id*, clause 4.2.3, Record, Policies and Directives, page PD 00029.

²⁹⁷ Second edition, 2024.

"any individual, partnership, corporation, association, or other juristic person or legal entity, and any union or group of individuals associated in fact, although not a juristic person or legal entity."

[289] The second phrase is "pattern of racketeering activity", defined as—

"the planned, ongoing, continuous or repeated participation or involvement in any offence referred to in Schedule 1 and includes at least two offences referred to in Schedule 1, of which one of the offences occurred after the commencement of this Act and the last offence occurred within 10 years (excluding any period of imprisonment) after the commission of such prior offence referred to in Schedule 1".²⁹⁸

[290] POCA makes it an offence of acquiring or maintaining, directly or indirectly, any interest in or control of any enterprise through a pattern of racketeering activity. Going to the heart of the allegations against the Cato Manor unit, are sections 2(1)(e) and 2(1)(f). They are reproduced for ease of reference and completeness:

"2 Offences

(1) Any person who

...

- (e) whilst managing or employed by or associated with any enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity;
- (f) manages the operation or activities of an enterprise and who knows or ought reasonably to have known that any person, whilst employed by or associated with that enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity..."

²⁹⁸ Schedule 1 of POCA lists the several offences, including murder, kidnapping, arson, public violence, robbery, assault with intent to do grievous bodily harm, malicious injury to property, theft, perjury and defeating or obstructing the course of justice.

[291] Section 2(2) gives a court discretion, *inter alia*, “to hearsay evidence and similar facts evidence” relating to the racketeering offence “notwithstanding that such evidence might otherwise be inadmissible, provided that such evidence would not render a trial unfair.”

[292] Section 2(4) specifically provides—

“[a] person shall only be charged with committing an offence contemplated in subsection (1) if a prosecution is authorised in writing by the National Director.”

This section severely constrains the prosecution of this nature of allegations, which illustrates the complexity and nuances involved in navigating allegations of racketeering.

[293] Section 2(1), read with section 2(4), is an example of the offence referred to in the Prosecution Policy requiring the consent of the NDPP.²⁹⁹ The section implies that the NDPP should apply their mind to an allegation of racketeering in order to issue written racketeering authorisations.

Interlocutory applications

[294] Before the issues are dealt with it is important to mention, in passing, that the Panel was inundated with requests for postponements and interlocutory applications since the commencement of the Enquiry.³⁰⁰ Of these postponements, the prolonged postponement of the proceedings was from 15

²⁹⁹ Discussed in paras 279 and 280 of the Report.

³⁰⁰ The rulings and recommendations in relation to these applications are compiled and referred to as “Bundle RD”.

December 2025 until 26 January 2026. It was occasioned by Batohi's unfortunate walking out on the Enquiry whilst under cross-examination.

[295] The prolonged postponement period was exacerbated by the unreadiness of the Evidence Leaders to consult, procure statements and lead the next listed witnesses. It caused unavoidable delays in the proceedings of the Enquiry and ultimately necessitated the Chairperson's written and motivated request for an extension of the four months period which was initially allocated for the Enquiry. Favourably, the President agreed and accordingly extended the period to end of June 2026.³⁰¹ On resumption, the Evidence Leaders were still not ready to lead witnesses. One of the witnesses (in their list of witnesses) Noko, elected to be a witness either of Chauke or of the Panel.

Amendment application

[296] The first application was brought by the Evidence Leaders³⁰² requesting an amendment of the ToR. This application was lodged consequent to allegations being made (during the testimony of Batohi) that the ToR were not reflective of the correct terms and that they were crafted by the President. This was incorrect: The ToR originated from the NPA. They were crafted from a draft document that had been sent to the Presidency by Batohi.

³⁰¹ The adjournment period was utilised by the NPA to produce and compile volumes of the relevant documents and by the Panel to read the documents.

³⁰² On 10 December 2025.

[297] The proposed amendments were contained in a document attached to the application as annexure “BT2(a) and BT2 (b)”

[298] Annexure BT2(a) is a letter from Batohi to Minister Kubayi³⁰³ in which Batohi requests to amend the ToR. The letter refers to the following issues:

- “6.1. The NPA’s understanding of the [ToR].
- 6.2. The perceived shortcomings in the existing [ToR].
- 6.3. The authority of the President to amend the [ToR] and proposed process.
- 6.4. The proposed amendments to the [ToR].”

[299] The letter further refers to two possible interpretations, being whether the TOR entitles the Panel to enquire into acts of misconduct by Chauke or also entitles the Panel to enquire into the conduct of Chauke incidental to the Cato Manor and Mdluli matters, with the NPA taking the view that both interpretations are correct. On this basis, the application is merely to clarify the ToR, to address the “*perceived shortcoming*” that the ToR do not permit the Panel to enquire into Chauke’s incidental conduct.

[300] The proposed amendments to the ToR are set out in annexure BT2(b).

[301] Put briefly, the proposed amendments sought to amend clause 3.1.1 covering the Cato Manor unit to include that Chauke had purported to act as DPP KZN.³⁰⁴ More specifically, where the ToR referred to Chauke’s conduct “notwithstanding that there was no evidence” to support Chauke’s conduct, the NPA sought to

³⁰³ Dated 4 December 2025.

³⁰⁴ Record, Amendment Application, Annexure BT2(b), page 4.

amend those clauses to introduce the phrase “alternatively insufficient” evidence.³⁰⁵

[302] The NPA sought to amend, further, clause 3.1.2, addressing the Mdluli matter by introducing sub-clauses which include Chauke’s failure to reinstate the murder and attempted murder charges against Mdluli after the receipt of the SCA Judgment.

[303] The amendment application was decided on the papers in a Ruling in which the Panel made a recommendation to the President not to accede to the requested amendment. The Ruling was transmitted to Minister Kubayi (for a decision by the President) through her office on 19 December 2025.

[304] It is important to mention that the existing ToR may be amended by the President in terms of clause 7 thereof, in the event of “new matters” emerging during the course of the Enquiry. Also importantly, is to highlight that, in consequence of the dispute of facts that had arisen from the matters raised and the import of certain court decisions as well as the Respondent’s alleged role in the cases mentioned, the President established this Enquiry to, among other things, assess the correct facts regarding the issues raised in the ToR and submit a Report to the President, together with all documents filed of record.

[305] The relief sought in paragraph 1 of the notice of motion read:

³⁰⁵ Record, Amendment Application, Annexure BT2(b), pages 4 to 6.

“1. That the proposed amendment to the [ToR] dated 19 September 2025 ... be and is supported and recommended by the Honourable Panel for referral by the Minister to the President ... for his approval.”

[306] Having carefully read the papers and considered the written submissions by the Parties and due regard being had to the entire context of the evidence already presented, the Panel was not convinced that the matters raised do constitute new matters to warrant the amendment sought.

[307] The Panel recommended that the amendment sought should, therefore, not be granted. An undertaking was made to provide further reasons in the Report. For convenience, an extract of the recommendation is set out below:

- “5. In the amendment sought, the Applicant seeks to add, replace, expand and introduce certain phrases into the ToR. As stated by the Applicant itself, the proposed amendment essentially seeks to clarify the existing ToR. Explicitly from the Applicant’s papers, including its written submissions, the proposed amendment does not introduce any new matters or new charges.

6. In his opposition, the Respondent contended mainly that the proposed amendment is prejudicial to him as it fundamentally alters the scope of the matter to which he was invited to answer, had prepared for and which matter unfolded and continues to unfold before the Panel. Differently put and properly understood, the Respondent’s contention is that the application to amend the ToR is procedurally and substantively defective in that it was brought after the commencement of the Enquiry, specifically after the evidence in chief of the National Director of Public Prosecutions – Adv S Batohi, was led and concluded and when cross-examination was ongoing. It is contended further that the proposed amendment, which in

the words of the Applicant itself, seeks to clarify the existing ToR does not warrant any such proposed amendment."³⁰⁶

[308] The further reasons are, briefly, that the application was flawed because, procedurally, an amendment of a charge cannot be allowed after an accused has pleaded. Frankly put, the application was procedurally wanting.

[309] Clause 7 of the ToR describes the circumstances under which an amendment may occur, firstly, the purview of the President and secondly, only warranted by a new matter. Clause 7 reads:

"In the event of new matters emerging during the course of the enquiry, the President may include these matters as part of the enquiry, by way of amendment to these terms of reference."

(Underlining for emphasis.)

[310] The amendment sought by the Evidence Leaders pertained to clarifying the interpretation of the ToR. This did not arise from a novel and distinct matter relating to Chauke's conduct. It is instead, rooted in the testimony of Batohi in relation to the version of the ToR which were, ultimately gazetted.

[311] Moreover, the clarification of the ToR was not raised by the Panel. Chauke correctly noted that at no stage did the Panel indicate confusion on its mandate or understanding of the ToR.³⁰⁷ By their own proposed amendment, it is clear that the proposed changes sought to broaden the scope of the charges against Chauke as formulated in the ToR.

³⁰⁶ Ruling dated 19 December 2025 at paras 5 and 6.

³⁰⁷ Record, Amendment Application, Chauke's Answering Affidavit at pages 21 and 22.

- [312] Chauke correctly argued that the procedure for proposed amendments would unduly prejudice him as the amendment is sought after Batohi has concluded evidence-in-chief and after cross-examination has already commenced. The application was launched on 10 December 2025, i.e. two calendar days after Batohi started her cross-examination. This, despite being on the cards as early as 2 December 2025, when the Evidence Leaders addressed a letter to the Enquiry Panel requesting to make an amendment. The said letter was addressed at the opening of proceedings on 3 December 2025, when the Evidence Leaders were advised to follow due process and file a substantive application.³⁰⁸
- [313] The Evidence Leaders had sufficient time to file the application while Batohi was still undergoing examination in chief.³⁰⁹ The passage of time doubtlessly placed the NPA in a position to phrase the ToR to accommodate any criticism it may have endured. Moreover, an amendment of that nature (i.e. not involving a new matter) places Chauke in a position where he is required to supplement his own answer to existing allegations, where such answer has already been developed and prepared in the two months since the gazetting of the ToR.³¹⁰
- [314] On 26 January 2026, following the resumption of the Enquiry after the December break, the Evidence Leaders were anticipated to resume leading the evidence of Batohi or guide the Enquiry as to their intended next steps. It came to light during

³⁰⁸ Transcript, Day 11, page 2, Line 8.

³⁰⁹ At least 3 days, in light of the fact that no hearings were held from 5 to 7 December 2025.

³¹⁰ Record, Amendment Application, Chauke Answering Affidavit at paras 66 and 67.

these proceedings that, according to the Evidence Leaders, a number of their witnesses had collapsed and there were no readily available witnesses to call.³¹¹

Chauke's application in relation to Noko as a witness

[315] This application from the Bar³¹² was made by Chauke, to call Noko as witness either of the Enquiry or himself. This application was triggered by an exchange between the Evidence Leaders and Panel in relation to the postponement application discussed above.

[316] Following this, Noko addressed an email to the Panel³¹³ attaching correspondence between herself and the Evidence Leaders (being Skhosana SC) in which she detailed that she had already indicated that she was willing to be called as a witness for Chauke or as a witness of the Panel rather than as a witness for the NPA.

[317] Thereafter, the Evidence Leaders addressed a letter to Chauke indicating that they would not oppose the application. The application was, nonetheless, placed on record on 29 January 2026, on the basis that the relief sought was to call Noko as a witness of the Enquiry rather than a witness of Chauke.

³¹¹ Transcript Day 18, Page 86, Line 12.

³¹² On 28 January 2026.

³¹³ On 27 January 2026.

[318] The Panel issued an *ex tempore* Ruling³¹⁴ in terms of which Noko would be called as a witness of the Panel. It appointed Khooe to lead Noko as she had not interacted with her before.

Postponement application

[319] The Evidence Leaders applied³¹⁵ for a postponement after their unsuccessful informal application, from the Bar.³¹⁶ The reason for the postponement was the unavailability of witnesses. The application was, initially, opposed by Chauke who filed a counter-application seeking to open his case and call witnesses to testify on his behalf.³¹⁷ The Evidence Leaders opposed the counter-application.³¹⁸

[320] The matter was considered on the papers, but prior to the issuing of the order, the Parties came to an agreement which was presented to the Panel on 9 February 2026. An *ex tempore* Ruling in relation to this application was read into the record on the same day, in terms of which Chauke would lead his evidence before the Evidence Leaders closed their case.³¹⁹

[321] The consequence of the agreement was that the Evidence Leaders' application to postpone the proceedings was dismissed while Chauke's counter-application to lead his witnesses was granted, on condition that the Evidence Leaders may

³¹⁴ Record, Panel Rulings Bundle, page PR005.

³¹⁵ On 7 February 2026.

³¹⁶ On 6 February 2026.

³¹⁷ On 8 February 2026.

³¹⁸ On 9 February 2026.

³¹⁹ Record, Panel Rulings Bundle, page PR007.

provide notice to lead further evidence once Chauke's case would have been closed.³²⁰

The NPA's decoupling application

[322] The next, (fourth) application was filed ³²¹ by the NPA through the Evidence Leaders. It was a "decoupling" application. In essence, the NPA sought leave to appear independently of the Evidence Leaders.

[323] The launching of this application had actually reared its head for the first time on 5 December 2025, when the NPA raised concerns regarding the extent of its role and rights in the Enquiry, indicating that the Enquiry's procedure prevents a proper and fair ventilation of the issues. Amongst the grounds advanced was that the approach adopted in the Enquiry was adversarial and that Evidence Leaders were not sufficiently *au fait* with the factual matrix of the allegations against Chauke given the volume of the record to be digested.³²²

[324] The NPA sought, *inter alia*, to:

"...participate in the proceedings of the Enquiry, as a separate and independent party from the Evidence Leading Team...

[...]

- 2.1. adduce evidence that the Evidence Leaders has elected not to adduce...
- 2.2. Question witnesses (including witnesses called by Adv. Chauke and Adv. Chauke himself) on any issue not raised by the Evidence Leaders
- 2.3. Raise objections to questions put in cross-examination to any witness

³²⁰ *Id*, page PR011.

³²¹ On 12 February 2026.

³²² Record, Panel Rulings Bundle, page PR12 at para 1.

2.4. Generally, to make submissions and address the Panel... on equal footing with the Evidence Leaders and Counsel for Adv Chauke...”

[325] The application was opposed by Chauke³²³ whilst the Evidence Leaders confirmed their intention to abide with the outcome of the application. The two-month delay in bringing the application was attributed to the fact that Batohi was tendering oral evidence (while at that stage still the NDPP) and the NPA sought not to be perceived as attempting to influence her testimony.

[326] During oral argument, the NPA conceded that the application was, in fact, anticipatory and that it was *“simply that [the NPA] should be allowed to lead evidence if [the Evidence Leaders] choose not to lead evidence.”*³²⁴ The application was ultimately dismissed, with full reasons.³²⁵

Batohi’s application for leave to consult with and obtain advice

[327] The fifth application was lodged by Batohi.³²⁶ She sought a declaratory relief that she—

“does not require the leave or consent of the Panel to consult with and receive advice from her appointed legal representatives regarding her rights and obligations in relation to her participation in the Enquiry and its proceedings.”.

[328] In the alternative, she asked that she be granted leave to consult with and receive advice from appointed legal representatives of her choice regarding her rights

³²³ On 10 March 2026.

³²⁴ Transcript, Day 35, page 84.

³²⁵ The Ruling is dated 10 March 2026.

³²⁶ On 17 February 2026.

and obligations in relation to her participation in the Enquiry and its proceedings.

This was subject to the proviso that the—

“legal advice given to the applicant shall not seek to revise, tailor or change the evidence already given by the applicant and subjected to cross-examination, nor address the evidence to be given by the applicant if she resumes her evidence to the Enquiry.”

[329] The application was made against the backdrop of Batohi’s unilateral departure from the Enquiry on 15 December 2025. At the adjournment of proceedings on that day, the Panel directed that it would resume proceedings on 26 January 2026. During the December recess, a series of correspondence was sent in relation to the matter, summarised hereunder:

- (a) On 9 January 2026, Batohi addressed a letter to the Panel through the NPA in which she sought to consult with a legal team while under cross-examination. This request was objected to by Chauke in a letter dated 15 January 2026;
- (b) At the hearing on 26 January 2026, the NPA legal representatives placed on record the potential conflict of interest which they faced if they were to in fact consult with Batohi (being that Batohi’s tenure as the NDPP was in its denouement, and her best interests may then no longer be the best interests of the NPA).
- (c) On 9 February, Batohi’s newly appointed attorneys of record, Harris Nupen Molebatsi Attorneys (HNM) addressed a letter to the Chairperson, requesting permission to consult with Batohi. On 12

February 2026, Chauke wrote to HNM, maintaining their opposition to Batohi's request to consult and obtain advice while under cross examination.

- (d) The correspondence, above, culminated in a formal application by Batohi and, as would be expected following that exchange, was opposed by Chauke.

[330] The Ruling to this application is extensive and addresses the merits of the application. In essence, the issue in the application was not whether Batohi was entitled to legal representation, but rather whether she was entitled to consult her legal representatives while under cross-examination.³²⁷

[331] In the Ruling³²⁸ the application was dismissed because Batohi failed to make a case for the relief sought.

Batohi's application to file written submissions

[332] In the sixth, and yet again, meritless, application,³²⁹ Batohi sought leave to file written submissions, as a witness. This application was launched after the Parties had closed their respective cases. It was opposed by Chauke and the Evidence Leaders and was determined on the papers. The circumstances under which this application was brought are lengthy and convoluted and are set out fully in the related Ruling, beginning with Batohi's departure from the Enquiry on

³²⁷ Record, Panel Rulings, page PR028.

³²⁸ Dated 17 April 2026.

³²⁹ Dated 5 May 2026.

15 December 2025 until the final day of hearings on 23 April 2026. In essence, the events of reference are her departure from this Enquiry, her dismissed application to consult legal counsel dealt with at paragraph [332]above, her ultimate refusal to return to complete her testimony and her attempt to have her reasons for her conduct read into the record, on 23 April 2026.

[333] Batohi sought leave to file written submissions and have such written submissions, which were annexed to the application, admitted into the record.

[334] As a basis for the admission of her written submissions, Batohi submitted that fairness demanded the admission of her written submission given her evidence remains only partially tested.³³⁰ Moreover, she noted that the Panel may wish to comment on her decision to discontinue testimony, and to do so fairly, ought to consider her reasons for that decision.³³¹ Batohi further submitted that the admission of her written submissions would ensure that her incomplete evidence is contextualised³³² and that the written submissions would be assistive to the Panel in its fact finding mandate.

[335] Batohi contended that the written submissions do not adduce evidence in relation to the conduct of Chauke and the admission thereof would not prejudice him. She also conceded that she is not entitled as of right to file written submissions because she was only a witness. Furthermore, she conceded that her submissions will not take the issues contained in the ToR any further. Finally,

³³⁰ Record, Batohi Application to File Written Submissions, Batohi's Heads of Argument, page 9 at para 24.

³³¹ *Id*, at para 26 and 27.

³³² *Id*, at para 38.5.

her application notes that the Evidence Leaders declined to make submissions on her behalf.

[336] The Evidence Leaders opposed the application on the basis that if admitted, Batohi's written submissions would undermine the distinction between tested evidence and *post facto* explanatory narrative, thereby weakening the integrity of the evidential process followed in this Enquiry.³³³ The Evidence Leaders further contended that Batohi is not a party to the proceedings with rights to file submissions and that she is the author of her own misfortune in that the application arises from her own abscondment from the Enquiry.³³⁴ Reference is also made to the fact that Batohi departed from the country after appearing at the Khampepe Commission after the ruling in relation to her application to consult legal counsel was issued, despite having knowledge that she ought to indicate her intention to return to the stand.³³⁵

[337] Chauke opposed the application labelling the application as "an abuse of process" because it attempted to admit into the record that which has already been declined.³³⁶ His contentions were similar to those of the Evidence Leaders, referring to her self-created problems. Chauke also submitted that the admission of written submissions will in fact be prejudicial to him as they present a curated, untested and self-justifying narrative of her credibility, conduct and evidence

³³³ Record, Batohi Application to File Written Submissions, Evidence Leaders answering affidavit, pages 21 to 22 at para 64.

³³⁴ *Id.* at paras 47 to 54.

³³⁵ Transcript Day 53, Page 173.

³³⁶ Record, Batohi Application to File Written Submissions, Chauke answering affidavit, page 3 at para 8.

tendered at the Enquiry.³³⁷ Referring to the relief sought as asymmetrical,³³⁸ Chauke submitted that Batohi seeks to escape cross-examination which gives her a procedural advantage.³³⁹ Chauke highlights that the substance of the written submissions that Batohi seeks to submit are the same as the contents of the reasons she had sought to be read into the record.

[338] In the Ruling³⁴⁰ full reasons are set out to support the finding that the application lacked merits. The application was dismissed.

³³⁷ Record, Batohi Application to File Written Submissions, Chauke heads of argument, page 4 at para 13.2.

³³⁸ *Id.*, at para 29.

³³⁹ *Id.*, at para 28.

³⁴⁰ Record, Panel Rulings, PR0

REPORT: VOLUME 2 OF 2

**ENQUIRY INTO THE FITNESS OF ADV. MASENYANE ANDREW
CHAUKE, THE DIRECTOR OF PUBLIC PROSECUTIONS' FITNESS TO
HOLD OFFICE IN TERMS OF SECTION 12(6)(a) OF THE NATIONAL
PROSECUTING ACT, 1998 (ACT 32 OF 1998)**

Determination of the issues

[339] The issues in the ToR are simplified, characterised and dealt with below. These issues must be understood against the context under which they were formulated seemingly, as will become apparent below, on the basis of Broughton 2, dated 21 April 2023.

[340] Although this said foundational parts of Broughton 2 may, somewhat regurgitate certain parts of the general background above, it is important to reproduce the relevant parts regarding the findings of fact and conclusions in Broughton 2 word by word and which, on their reading, appear to be the underlying foundation of the formulation of the issues in the ToR. Broughton said the following:

“102. While in the memorandum of 5 March 2014 (Annexure "T"), the Booysen prosecution team did not recommend the lodging of an appeal against Gorven J's judgment in light of the concession made in the matter that there were no statements in the dockets which implicated Booysen in any of the offences with which he had been charged. It would seem that the memorandum which Adv. Chauke forwarded to Adv. Noko, as well as Dr.Ramaite and Adv. Jiba, per his email of 7 March 2014, must have been the memorandum of 5 March 2014 (Annexure "T"). I say this because the email was dated two days after the date of the memorandum (Annexure "T"), and the purpose of this memorandum, entitled: "JUDGEMENT - BOOYSEN versus THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS", was reflected as updating the NDPP and the Head of NPS on the matter following the judgment of Gorven J. The purpose of the memorandum (Annexure "T") was also reflected as informing the NDPP on the prosecution team's intended course of action in light of Gorven J's judgment. The memorandum was also prepared on the same day of the

Exco meeting, referred to above, where it was resolved that Adv. Chauke would report to Mr. Nxasana on the developments in the Booysen case.

103. Why is this important? It is submitted that the significance of these developments is that Adv. Chauke effectively endorsed the recommendation of the Booysen prosecution team contained in the memorandum of 5 March 2014 (Annexure "T"), namely that:

"The prosecution team intends to apply to the NDPP for the reissuing of the [racketeering (POCA)] certificates. We shall prepare a new memorandum which outlines in detail the evidence against the applicant [Booyesen]. We are still firmly of a strong view that there are sufficient facts which justify the re-issuing of the racketeering authorisations."

104. As such, it is submitted that Adv. Chauke exercised a decision-making power on a prosecutorial matter. It is indeed evident from para 11 of the memorandum (Annexure "T") that the new application for racketeering authorisations would be submitted through Adv. Chauke, where reference was made to *"an intended application to you, Sir for a new authorisation."* In these respects, Adv. Mosing in his affidavit (A12 - Annexure "F"), wrote as follows:

"After judgment was delivered on 26 February 2014, we all acquired a copy thereof and perused it. I requested a meeting with the prosecuting team and Adv. Chauke to discuss the judgment and it was agreed to meet on 3 March 2014 at the DPP's offices in Johannesburg. During the meeting we discussed the judgment in detail and we came to the conclusion that the court arrived at its judgment mainly on the basis of the concession attributed to our counsel that there was no evidence that implicated Booysen with the predicate offences, coupled with the problems regarding the annexures to Jiba's answering affidavit and the corresponding silence to address the shortcomings thereof. Adv. Chauke, who was present during the hearing in court, explained to us what

transpired when this concession was made and indicated that it was during counsel's address to court. It was apparent to us that there may have been some misunderstanding between counsel and the court. The entire team felt that it was in any event an incorrect concession, if it was indeed made consciously and we could not understand how counsel could have made it in the light of all the evidence presented to him by the prosecution team... "We concluded by agreeing as a team that, though not satisfied with the outcome of the matter, at least the door was still open to bring a new racketeering application as indicated in the judgment and it would therefore not be necessary to appeal the judgment. The team would prepare a memorandum for the NDPP informing him accordingly."

105. ...

106. Nonetheless, Adv, Mosing proceeded in his affidavit (A12 – Annexure “F”) to indicate as follows:

“A few days after this meeting I received an e-mail from Chauke informing that a consultation with counsel had been secured to hear from counsel first-hand what his opinion on the judgment was and to get some explanation for the unfavourable outcome. I naturally attended this meeting on 13 March 2014 and so did the entire prosecuting team, including Adv. Chauke. Counsel raised a number of issues with us that he felt the court had erred, including, interpretation of case law. He took us through the entire judgment, pointing out instances where he disagreed with the judgment. Also that court erred in setting aside the decision to prosecute on counts 8 - 12, as that was not taken by the Acting NDPP, but the DPP. Counsel also indicated that he did not believe that he made the concession regarding the lack of evidence implicating Booysen as stated at para 29 of the judgment of Gorven, J. The result was that we were satisfied as a team that there were merits to appeal" as advised by counsel. It was agreed that counsel should therefor in

the meantime prepare the application for leave to appeal, while Chauke would brief the NDPP, Nxasana, who in the meantime had been appointed NDPP, about the need to appeal the judgment and to obtain his consent. After the meeting with counsel, Chauke again reiterated to us that he will call Dr Ramaite, the Head of NPS and his direct supervisor, and also brief the NDPP accordingly. I was not made aware of further developments thereafter concerning the appeal process."

107. Here again, with respect, Adv. Chauke exercised a decision-making power on a prosecutorial matter, namely in relation to the decision to appeal the Gorven J judgment and accordingly to approach the NDPP on the matter. Also, the observation by counsel that it was the "DPP" who took the decision to prosecute on **counts 8-12** (the predicate offences) against Booysen, is of significance. It is submitted that counsel must have been referring to Adv. Chauke, as it was not Adv. Noko who signed the recommendation (Annexure "E") and prior to the signing of this recommendation, she had not studied the case dockets – as indicated above, she did not know anything regarding the merits of the Booysen (Cato Manor) case, as per the case dockets.
108. Adv. Mosing in his affidavit (A12-Annexure "F") then referred to a meeting he had with Mr. Nxasana on 24 March 2014. Dr. Ramaite was also in attendance at this meeting, but during the course thereof he excused himself to attend another appointment. At this meeting, Mr. Nxasana enquired about the notice of appeal in the Booysen matter, saying that he had not been briefed about it, but learnt about the appeal in the media. Mr. Nxasana questioned the merits of an appeal and Adv. Mosing's role in the matter. Mr. Nxasana advised that the appeal was to be withdrawn.
109. Adv. Mosing in his affidavit (A 12 - Annexure "F") notes that on the following day, 25 March 2014, he was again called to Mr. Nxasana's office before a meeting was to take place later that day between Mr. Nxasana, Adv. Chauke, and the Booysen prosecution team, at which meeting Mr. Nxasana would inform Adv. Chauke and the prosecution team that the

appeal in the Booysen review matter was to be withdrawn. Mr. Nxasana stressed that he did not receive any memorandum on the Booysen matter, was not briefed and only received a media query about the appeal. When Adv. Chauke and the prosecution team arrived, the meeting between them, Mr. Nxasana, Adv. Mosing and Dr. Ramaite proceeded. At this meeting Mr. Nxasana referred to an email he sent to Adv. Chauke requesting a written brief or explanation as to why the Booysen matter was being dealt with by the DPP: South Gauteng, Adv. Chauke, whereas the matter arose in KZN. This, with respect, is the first time we have it on the evidence and information gathered, that the top leadership of the NPA questioned how it was that the Booysen case was being handled by Adv. Chauke, whereas Adv. Noko was the DPP of KZN. Adv. Mosing states that Adv. Chauke "explained that he attended a meeting in 2012 with the then Acting NDPP, Jiba and the former Acting DPP of KZN, Adv. Mlotshwa and that he was requested to assist with a team to prosecute the matter." However, on the evidence and information gathered, as dealt with in this supplementary legal opinion, Adv. Chauke grossly misrepresented to Mr. Nxasana what his role was with the Booysen case.

110. Adv. Mosing in his affidavit (A12 -Annexure "F") notes further that at the meeting of 25 March 2014, between Mr. Nxasana, himself, Dr. Ramaite, Adv. Chauke and the prosecution team, Mr. Nxasana raised concerns over him not having been briefed as to the question of appealing the Gorven J judgment. He felt therefore that he was being undermined. Adv. Chauke stated that he had briefed Dr. Ramaite about the appeal, whom he expected in turn would brief the NDPP on the matter. Mr. Nxasana stressed that he was angry on learning about the notice of appeal and that he had taken the decision to withdraw the notice of appeal. Dr. Ramaite confessed that he had received the documents from Adv. Chauke, but he said that *"it [sic] was detailed and he did not look at the documents, though he said he raised his view with the NDPP not to go ahead with the appeal."* The meeting was then adjourned with the understanding that the team would prepare a detailed briefing for Mr. Nxasana of the entire Booysen case that would take place on 7 April 2014.

111. Adv. Mosing then points out in his affidavit (A 12 - Annexure "F") that on the following day, 26 March 2014, it was Adv. Chauke who wrote an email to the State Attorney conveying the decision of the NDPP to withdraw the appeal in the Booysen review matter. This email communication was attached to Adv. Mosing's affidavit as annexure "M", and is appended to Annexure "F" hereto. It is striking that Adv. Chauke notified the State Attorney of the withdrawal of the appeal, thereby underscoring that he played a leadership role with regard to the review case, as with the Booysen prosecution. And this after the trailing email to the email of 26 March 2014 (annexure "M") shows that Adv. Hodes submitted a copy of the leave to appeal to Adv. Chauke on 17 March 2014, notifying that it would be served on 18 March 2014.
112. On the last-mentioned aspect, evidence has been provided to me by Adv. Macadam (attached hereto in the Evidence Bundle as Annexure "U"), which is comprised of email exchanged between Adv. Chauke and Adv. Hodes on 16 and 17 March 2014 relating to finalising the application for leave to appeal in the Booysen review matter. In the email of 17 March 2014 from Adv. Chauke to Adv. Hodes, the former stated as follows appertaining what had to be included in the application for leave to appeal: "I suggest that counsel should also place more emphasis on the fact that Booysen made a memo of the rewards indicating his direct involvement. May be this must also be canvassed during the argument at the application for leave hearing." Adv. Chauke hereby made a prosecutorial decision as to how the application for leave to appeal was to be dealt with, upon receiving from Adv. Hodes on 16 March 2014, and perusing, a first draft of the application for leave to appeal. It is to be noted that the NDPP would had to have been cited as the applicant in the application for leave to appeal, but by the submission of the draft of the notice of appeal, Mr. Nxasana had not been briefed thereon and had not approved the filing of the leave to appeal.
113. I have not been successful in establishing what precisely transpired in April 2014 with regard to the briefing session that the Booysen prosecution team was required to provide to Mr. Nxasana on the Booysen case, as instructed

by Mr. Nxasana. However, it was found in the Mokgoro Enquiry that around March or April 2014, Mr. Nxasana instructed Adv. Noko to start directly dealing with or overseeing the Booysen case. This instruction was given to her during a meeting when the prosecution team was briefing Mr. Nxasana on the developments of the case.⁹³ This finding was based on Adv. Noko's affidavit of 31 March 2015 (Annexure "A"), as referred to above.

114. Moreover, evidence has been provided to me by Adv. Macadam (attached hereto in the Evidence Bundle as Annexure "V"), which is comprised of (i) an email from Adv. Maema dated 8 April 2014, (ii) a response email from Adv. Chauke on 11 April 2014, (iii) a reply email from Mr. Nxasana dated 11 April 2014, noting the contents of Adv. Chauke's email, and (iv) a PowerPoint presentation dated 7 April 2014 regarding the Booysen (Cato Manor) case.
115. The PowerPoint presentation (Annexure "V") was sent by Adv. Maema to Adv. Chauke and the fellow members of the Booysen prosecution team in the email of 8 April 2014. The subject of this email was noted as: "Cato Manor Prosecution Presentation 7 April 2014". In this presentation, entitled: "CATO MANOR PROSECUTION PRESENTATION 7 APRIL 2014", the prosecution team and Adv. Chauke were requesting the re-issuing of racketeering authorisations In the Booysen (Cato Manor) case. On the covering page of the presentation, the names of the Booysen prosecution team members were reflected, as well as the name of Adv. Chauke, DPP: South Gauteng, as the "Supervisor" of the case. Adv. Macadam informs me that misrepresentations were made in this PowerPoint presentation as to alleged evidence or facts of the case, and that accordingly attempts were being made to mislead Mr. Nxasana into re-authorising the racketeering charges *in casu*. This aspect, with respect, would need to be fully explored and ventilated in a section 12(6)(a) enquiry. The aspect has nevertheless been discussed in email from Adv. Macadam to Adv. Hulley, as aforesaid, dated 11 August 2022 and 29 December 2022. This email is attached hereto in the Evidence Bundle as Annexure "W".

116. The fact of the matter is that Adv. Chauke along with the prosecution team took a prosecutorial decision in reapplying for racketeering authorisations to be issued against Booysen and the other accused in the Cato Manor case.
117. Evidence has been provided to me by Adv. Macadam (attached hereto in the Evidence Bundle as Annexure "X"), which is comprised of email-exchanged between Adv. Maema and Adv. Chauke on 28 and 31 March 2014. This email was also sent to Adv. Noko, and pertained to mutual legal assistance with Greece in respect of a witness in the Booysen (Cato Manor) case. What is relevant for present purposes is that in the email of 28 March 2014 from Adv. Maema to Adv. Chauke and Adv. Noko. Adv. Maema proposed that Adv. Noko also had to be part of a "briefing session" of Monday, 7 April 2014. Adv. Maema noted that Adv. Noko would benefit from the "presentation" or any of the issues that were raised there. He then stated that he was, however, unsure whether he had the authority to invite Adv. Noko to the briefing session. Adv. Chauke then replied to Adv. Maema, per the email of 31 March 2014, forwarding the response email also to Adv. Noko, that the latter was to be present at the briefing session of 7 April 2014. It would seem therefore, given that Adv. Noko indicated in her affidavit (Annexure "A") that Mr. Nxasana instructed her, during a briefing session with the prosecution team, to directly deal with the Booysen case as the DPP of KZN, that the briefing session referred to in the aforesaid email (Annexure "X") and the PowerPoint presentation dated 7 April 2014 (Annexure "V"), indeed took place with the NDPP on such date. It is striking that even though Adv. Noko was included in this briefing meeting with the NDPP, her name did not feature in the PowerPoint presentation. This is further evidence that the Booysen prosecution, up to that point, was being controlled and directed by Adv. Chauke. It is also striking that Adv. Maema had to request from Adv. Chauke authority to invite Adv. Noko to a briefing session with the NDPP on the case, whereas all along he was *de jure* required to report to Adv. Noko on the case since she was the DPP who had jurisdiction over the matter.

118. In the response email from Adv. Chauke dated 11 April 2014 (Annexure "V"), seemingly addressed also to Mr. Nxasana and following on the email of 8 April 2014 from Adv. Maema (enclosing the PowerPoint presentation), Adv. Chauke stated as follows:

"I refer you to the comments and reservations of both the NDPP and yourself regarding my involvement in the Cato Manor matter. I also refer to a subsequent meeting that I held with the NDPP on 8 April 2014.

I hereby confirm that I will no longer take part in anyway regarding the management and prosecution of this matter. I have accordingly informed the team leader Adv Maema and the DPP KZN, Adv Noko."

119. Adv. Chauke hereby affirmed that his role with the Booyesen (Cato Manor) case was not simply putting together and co-ordinating a prosecuting team to conduct a prosecution in another DPP's jurisdiction."³⁴¹

(Underlining for emphasis)

- [341] Therefore, the mentioned parts of Broughton 2, (the supplementary opinion), seem to have been the point of reference for the formulation of the ToR. Also, Batohi, seemingly, relies on Broughton 2 and refers in her statement to certain parts which are a point of reference to the formulation of the ToR.

What are the issues?

- [342] The first issue may properly be identified and summarised as whether Chauke instituted racketeering charges against Booyesen and his co-accused in relation

³⁴¹ Broughton 2 – Record, Legal Opinions, page LO 00205 to LO 00211.

to the Cato Manor matter.³⁴² Put differently, the issue is whether Chauke made a prosecutorial decision in the Cato Manor matter.

Did Chauke take prosecutorial decisions in relation to the Cato Manor matter?

[343] The issue regarding Chauke having taken a prosecutorial decision is based on the allegation that he supported and recommended a decision to prosecute Booysen and co-accused, sought to defend the review proceedings by finalising the answering affidavit of ANDPP-Jiba, and instituted an appeal against Governor J's Judgment.

[344] It is important to highlight that, in her statement before the Enquiry, Batohi accepted that —

“141. In early 2012, Jiba ... decided to set up a team of prosecutors from Gauteng and North West to conduct the prosecution of police officials in KwaZulu Natal. These police officials were in the main from the "Serious and Violent Crimes Unit"....

142. Adv. Chauke ... was for all intents and purposes appointed as the leader of the prosecution team, and unlawfully acted as the *de facto* DPP in this regard, as his conduct will demonstrate.”³⁴³

(Underlining for emphasis).

[345] Further, in her statement, Batohi makes mention of the essence of the allegations against Chauke. In particular, she refers to Chauke having acted outside of his jurisdiction. According to Batohi, Chauke—

³⁴² As per the ToR clause 3.1.1.

³⁴³ Record, Batohi Witness Statement at para 141 and 142.

“156.1. ... assumed the *de facto* as the DPP in the prosecution of ... crimes committed in KwaZulu-Natal, over which he had no jurisdiction.

156.2. ... exercised prosecutorial powers and functions in circumstances where he had no authority to do so and no such powers.

156.3. ... undermined or attempted to undermine the authority of Mlotshwa.

156.4. ... settled the affidavit of Jiba and allegations contained in Jiba’s affidavit were found to be false.”³⁴⁴

(Underlining for emphasis).

[346] The narrative that Chauke took a prosecutorial decision emerged, for the first time in Broughton 2,³⁴⁵ from which Batohi’s statement seemed, in great measure, to have relied upon. To recapitulate, Broughton 2 was prepared at the instance of Batohi to determine whether an Enquiry into Chauke’s fitness to hold office should be established.

[347] That narrative was further perpetuated during Batohi’s testimony. The extracted relevant parts are these:

“CHAIRPERSON: He explains his role there as the coordinator of the team.

ADV BATOHI: That is correct...

CHAIRPERSON: Recommending a prosecutorial charge in the letter ...[intervenes].

ADV BATOHI: Racketeering, in this instance. That is correct.

CHAIRPERSON: That he purportedly signed, he said that 10 he took that decision. He recommended.

ADV BATOHI: He does, paragraph 2: *“I have perused the documents and recommend the application.”*

CHAIRPERSON: Let me, let us unpack that. A recommendation is a recommendation. A decision, taking a decision per se is a decision. Am I correct

³⁴⁴ *Id* at para 156.

³⁴⁵ Record, LO 00171 to LO 00293 at paras 28 to 30.

that the two concepts and the legal meaning thereof might differ? In other words, you recommend for someone to take a decision.

ADV BATOHI: I understand, Chairperson. In the context of prosecutions, a DPP, when there is a case that involves racketeering and the DPP then makes a recommendation to the National Director, the DPP cannot take a decision to prosecute racketeering without – it is the National Director's authority. But when a DPP recommends a prosecution, that DPP is taking a prosecutorial decision to recommend the prosecution. In that sense, you must be satisfied that the evidence supports your recommendation and prosecutorial decisions. There is a range of decisions that prosecutors take in the course of a prosecution process that are prosecutorial decisions. And in this case, although it is a recommendation, it is a decision to recommend, a prosecutorial decision to recommend to the National Director and also saying that, by saying I have perused the documents and recommend the application, you are satisfied that there is sufficient evidence to support the application. So that is the distinction, Chairperson.”³⁴⁶

[348] Further questions were asked with a view to clarify Batohi’s testimony in relation to the alleged recommendations as distinct from decision making. To the further questions, followed the highlighted answers—

“MS RAMAGAGA: May I just come in here? ...

...

ADV BATOHI: ... I said that it was a prosecutorial decision that was taken by Chauke ... Chauke says ... he did not take prosecutorial decisions. And in this case, the point is that making a decision that there is sufficient evidence in a matter to recommend a prosecution to the National Director is a prosecutorial decision.

MS RAMAGAGA: So just to have a clear distinction for my own better understanding, [there is a] distinction between the prosecutorial ... decision and ... a recommendation...

ADV BATOHI: That is absolutely correct.”³⁴⁷

³⁴⁶ Transcript, Day 6, Page 110 to 111.

³⁴⁷ Transcript, Day 6, Page 114.

- [349] The basis of the narrative is that Chauke's attempted application under section 2(4) of POCA to the ANDPP-Jiba on 10 July 2012, for racketeering authorisations in terms of section 2(1) of POCA (the unsigned cover letter) bears his name. It is speculated (in Broughton 2) that a signed version of the application could be located and must have been submitted to Mosing. Coupled with this issue is the discussion regarding the role of Chauke in the Cato Manor matter
- [350] The unsigned application refers to the attached draft indictment and draft authorisations for the section 2(1)(e) and (f) racketeering authorisations. More importantly, as emphasised in Broughton 2, reference is made to what Chauke states in the cover letter, that "I have perused the documents and recommend the application." Mention is further made of the accused having appeared in the Regional Court-Durban and that the matter having been postponed for the racketeering authorisation and further that the accused were all on bail and also that other accused still needed to be added to the indictment.
- [351] According to Broughton, the cover letter presented *prima facie* evidence, that Chauke took a prosecutorial decision to have the criminal prosecution against Booysen proceeded with. By so doing, it is suggested, by Broughton, that Chauke aligned himself with the prosecution of Booysen and (as a DPP) "took ownership of and responsibility for the prosecution."
- [352] It emerged from the evidence of Maema that there was a query directed at Chauke's application instead of it being in the name of Noko, hence a new application being drafted by the prosecutorial team on 16 August 2012. This

application was in the name of Noko but was signed by Chauke. In this regard Broughton stated that although the application was in the name of Noko, the “rub” was that it was signed, irrefutably, by Chauke. That created a “spurious impression” that the proper process in terms of NPA practices and policy had not been followed in the lodgement of the racketeering authorisation by the ANDPP-Jiba.

[353] Broughton emphasised that “the fact of the matter is that Chauke signed the cover letter of the racketeering authorisations on 15 August 2012.” Clearly, this is a classic finding that Batohi relied upon when drafting the ToR and referring the matter to the President. Moroka SC also relied on Chauke’s having signed the application and making a statement to the effect that “I have perused the documents and recommend the Application”.³⁴⁸

[354] This aspect was canvassed at length during the Enquiry hearing, especially during Maema’s testimony. In his statement, Maema, who was the lead prosecutor of the Cato Manor prosecution team, explained the circumstance in respect of which the cover letter was signed by Chauke. He stated that:

“404. A cover letter dated 15 August 2012 was initially prepared under the name of the DPP: KwaZulu-Natal and PP-signed by Adv Chauke in his coordinating capacity. The cover letter is attached hereto as annexure “GSM 77”. At that stage, I had communicated by email that the cover letter could appropriately be issued in Adv Chauke's name given his coordinating role. My email is attached as annexure “GSM78”.

³⁴⁸ Record, Legal Opinions, LO 00297 at 3.

405. When the matter was subsequently raised with Adv Mosing, he advised that the request for racketeering authorisation was required to emanate formally from the DPP: KwaZulu-Natal. Adv Mosing thereafter addressed a memorandum to the Acting NDPP explaining that the initial transmission had been made in error and attaching a corrected cover letter signed by the then DPP: KwaZulu-Natal, Adv Noko. The corrected cover letter constituted the operative request. The underlying prosecution memorandum and draft indictment, which reflected the collective evidential assessment of the prosecution team, were signed by me as the responsible prosecutor and remained unchanged. A copy of Adv Mosing's memorandum is attached as annexure "GSM79".³⁴⁹ (Underlining for emphasis).

[355] The following exchange arose regarding this aspect. This was to clarify certain aspects regarding Chauke's role:

ADV MAEMA: Chairperson, on the 15th of August 2012 at 12:02 in the afternoon, it is myself, Sello Maema, sending an email to Advocate Mosing

...

Subject, re-final Cato Manor indictments as modified by Advocate Mathenjwa:

"Dear colleagues, Anthony."

...

I will make contact with you today or tomorrow to bring hard copies. I have also done the prosecution memo on the KZN letterhead, although our DPP will sign as arranged with the acting DPP, KZN."

So when I say our DPP, I was referring to Chauke, who would sign as it was arranged with the acting DPP in KZN\

...

ADV NGCUKAITOBI SC: It seems this email in particular discloses at the time that you yourself have drafted the letter and made a decision to do it in the name of Noko.

ADV MAEMA: That is correct.

³⁴⁹ Record, Maema Witness Statement, pages 1-107 to 1-108.

ADV NGCUKAITOBI SC: And that Chauke would sign as arranged.

ADV MAEMA: Yes.

ADV NGCUKAITOBI SC: So does that explain then this document that a big issue has been made out of, which is the fact that Chauke has PP'd it with the arrow. That is its source.

ADV MAEMA: Chairperson, he had PP'd it because we anticipated we were going to court the next week. Otherwise, what would have happened is that I would then have to carry all these documents, travel to KZN, wait for the DPP and then engage with the DPP there. When we have a DPP in the South Gauteng office, it was more for convenience that Chauke signs and then it gets transmitted to the National Director.

ADV NGCUKAITOBI SC: So when I first examined Advocate Noko on this, she said, look, at the time I was not even fully familiar with the facts of this case because I had just started.

ADV MAEMA: That is correct, yes.

ADV NGCUKAITOBI SC: Was that a factor?

ADV MAEMA: That was a factor. The person who was more fully conversant to whom most of the reports were done with was Chauke. ³⁵⁰

(Underlining for emphasis).

[356] Chauke's signing of the new application on behalf of Noko, Broughton stated, was compounded by Mosing's advice to the prosecution team that Chauke has no jurisdiction to submit the application for authorisation and that the application should be signed by the DPP-KZN. Chauke is, therefore, said to have recommended to the ANDPP-Jiba to issue the racketeering authorisations in harmony with the ToR.³⁵¹

³⁵⁰ Transcript, Day 28, pages 189 to 192.

³⁵¹ Clause 3.1.1.2 of the ROR.

- [357] The issue of Chauke's signing the statement was clarified by Maema in his testimony before the Enquiry. His evidence remained unchallenged.
- [358] Noko's dealing with this aspect in the Mokgoro Enquiry is not helpful. She seems to have taken no issue about Chauke having been asked to sign on her behalf.
- [359] A lengthy cross-examination regarding this took place during Noko's testimony in this Enquiry:

ADV MTSWENI: Noko, that is an application that was submitted to Advocate Jiba on the 15th of August 2012 for authorization in terms of section 2(4) of POCA.

...

ADV MTSWENI: Now, the question I asked you was the submission of this application, because the authorization must be granted by the National Director, am I correct?

ADV NOKO: Yes, you are correct.

ADV MTSWENI: Now, the submission of this application or the making of this application, is that an oversight or is it a prosecutorial [decision]?

ADV NOKO: This is oversight."

...

CHAIRPERSON: When you wrote to Advocate Jiba applying for authorization, ... had there been a decision by the prosecutorial team as regards this matter?

ADV NOKO: I did not write this, Chair.

CHAIRPERSON: Oh, because I see Noko-Mashilo. Who is Noko-Mashilo?

ADV NOKO: It is me, Chair, but this is the document that the evidence leader from the Zondo Commission asked me about and I said I had not seen it. I mean, that is not my signature. So, I did not compile this [referring to the cover letter dated 15 August 2012 signed by Chauke and compiled by Maema].

...

ADV NOKO: ... I do not know ... I do not have my diaries... So, I do not know what was happening really on the 15th of August 2012. ...

ADV MTSWENI: But, the document purports to come from your office. Do you see that?

ADV NOKO: Yes, in terms of having my letterhead and my name.

...

ADV MTSWENI: Now, when this application was submitted, were you briefed about the application that is going to be submitted?

ADV NOKO: I do not remember being briefed, but I had had a meeting with Chauke the previous week when we were going to meet the NDPP. I mean, the Acting Judge President in Durban.³⁵²

...

ADV MTSWENI: Okay, now let me ask then ...*[intervenes]*.

ADV NOKO: Ja.

ADV MTSWENI: Was there an arrangement between yourself and Chauke, that he would sign documents on your behalf?

ADV NOKO: No, I did not have that arrangement with Chauke in that respect.³⁵³
(underlining for emphasis.)

[360] The correct position is that it was the DPP-KZN who was the repository of the power to apply under section 2(4).

[361] In the final analysis, it cannot safely be said that in his attempt to apply and signing on behalf of Noko, Chauke took a prosecutorial decision first because he was never issued with a section 20(1) authorisation by the ANDPP-Jiba which she had issued to Maema and Mathenjwa. This section 20(1) authorisation enjoined Maema (and not Chauke) to exercise prosecutorial powers in the conduct of criminal proceedings.

³⁵² Transcript Day 21, Page 161

³⁵³ Transcript Day 21, Page 166,

[362] Second, Maema clarified the position as to the circumstances that resulted in Chauke signing the cover letter. Noko testified that she did not arrange with Chauke to sign “PP” but does not take issue with the fact that Chauke had been asked to sign by Maema based on the stated circumstances. In fact, Noko said she did not remember if an arrangement had been made regarding Chauke signing on her behalf. She testified that these things happened a while ago and that she did not have her diary.

[363] The exchange between Adv Mohlamonyane and Chauke elucidates and corresponds to the version put forward by Maema:

“ADV MOHLAMONYANE SC: The document, Madam Chair, is an application for authorisation in terms of the provisions of POCA addressed to Advocate Jiba, the then Acting NDPP, and it is dated 15 August 2012 and it is signed by Advocate Chauke.

...

Do you agree that an application in terms of these provisions of POCA is a prosecutorial decision?

ADV CHAUKE: Yes.

ADV MOHLAMONYANE SC: By signing on this document, you are taking a prosecutorial decision?

ADV CHAUKE: No. I was signing on behalf of Noko....

ADV MOHLAMONYANE SC: Who prepared this document?

ADV CHAUKE: Advocate Maema.

...

ADV MOHLAMONYANE SC: Ja. Advocate Chauke, whilst you are still on this document, the application, the POCA application, did you ask permission from Advocate Noko before you could sign it as a DPP, as an Acting DPP in KZN?...

ADV CHAUKE: No.

....

ADV MOHLAMONYANE SC: Thank you, Madam Chair. The document is addressed to Advocate N Jiba, the NDPP then, stated, it is from yourself, Advocate Chauke, it is dated 15 August 2012, where you are making an application for centralisation of charges in terms of section 111 of Act 51 of 1977 in the *State v Booyesen, Johan Wessel and 4 Others* in the Rustenburg CAS.

...

ADV CHAUKE: If we go through where Advocate Maema was testifying when it was before this Panel, where he dealt with and then gave an explanation that that was a mistake and that mistake was corrected.

....

MS RAMAGAGA: Yes, that covering letter that Advocate Mohlamonyane has asked you about, you say that you signed without having obtained consent or permission from Advocate Noko?

ADV CHAUKE: I discussed that with Advocate Maema and said he arranged with Advocate Noko that I should PP sign that application.

...

MS RAMAGAGA: Yes, so you arranged or you took Advocate Maema's word that he had discussed with Advocate Noko, and you could then go ahead and sign the document?

ADV CHAUKE: Indeed, Chair.

...

ADV MOHLAMONYANE SC: I said I have no further questions to put to the witness.

CHAIRPERSON: You do not have further questions?

ADV MOHLAMONYANE SC: No further questions, Madam Chair.

CHAIRPERSON: Yes, thank you. Should I understand your response to be an acceptance that although Advocate Chauke says that his signing of the decentralisation application signalled that he took a prosecutorial decision, but then he corrects that and says that was a mistake, and that mistake was corrected by Mr Maema in his testimony? Meaning, if I am correct, he did not make a prosecutorial decision. That which he did was an error.

ADV MOHLAMONYANE SC: I cannot quarrel with that. It is on record.

CHAIRPERSON: You cannot quarrel with that.

ADV MOHLAMONYANE SC: Yes, it is on record.

CHAIRPERSON: This exercise sought to demonstrate that there is evidence that Advocate Chauke took a prosecutorial decision. Now with this answer, it means there was no evidence or there is no evidence in the record showing that Advocate Chauke took any prosecutorial decision. Is my understanding correct?

ADV MOHLAMONYANE SC: Yes, it is correct.

...³⁵⁴

- [364] In the view I take of the matter, Chauke had no power to apply for the racketeering authorisations (as he first attempted to do so on 12 August 2012). He was not authorised in terms of section 20(1). The evidence demonstrates that his attempt to do so was an error. However, the circumstances surrounding the signing of the cover letter dated 15 August 2012 have been clarified by uncontested evidence and have been considered. It was at the instance of the lead prosecutor, Maema, that Chauke signed the cover letter.
- [365] Broughton sought to deduce certain facts from the statement from the letter of Chauke where he confirmed that he will no longer take part in the management of the team and prosecution in the matter. He said that Chauke affirmed that his role in the Cato Manor matter was not simply putting together the team, but he also had direct involvement in the racketeering prosecutions. The contents of the letter referred to by Broughton should not be read in isolation but must be read in the context of the background facts and the evidence as a whole. Broughton seemed to have read the letter in isolation.
- [366] As it so happens, a separate and distinct covering letter in relation to the centralisation of the prosecution of charges was also sent on 15 August 2012.

³⁵⁴ Transcript, Day 47, pages 16 to 25.

One of the killings by a member of the Cato Manor Unit was in Rustenburg. On 15 August 2012, the prosecution team applied to the DPP North-West for consent to consolidate the case involving the killing that took place in Rustenburg with the others that were being prosecuted in KZN. This application was sent under the cover of the letterhead of the South Gauteng DPP. The DPP North West consented to the consolidation and addressed such consent to the ADPP-KZN.³⁵⁵ Upon picking up the erroneous use of the South Gauteng letterhead, Mosing requested the NDPP to issue a new centralisation directive.³⁵⁶ The NDPP accordingly issued fresh directions in terms of section 111 of the CPA.³⁵⁷ Linked to this erroneous covering letter, is a suggestion that use of this letterhead constitutes a material prosecutorial decision by Chauke in relation to the prosecution of Booysen.

[367] In the conspectus of all the evidence presented at the Enquiry, it cannot safely be said that, in signing the cover letter, Chauke took a prosecutorial decision. In any event, the assertion by Batohi regarding the essence of the allegations against Chauke, that he “unlawfully acted as the *de facto*” DPP KZN and that he exercised or purported to exercise prosecutorial powers, was left untested as Batohi walked out of the Enquiry during her cross-examination. That said, the question arises: precisely what was Chauke’s role?

Chauke’s role in the Cato Manor matter

³⁵⁵ Record, Booysen Bundle, page B 01239.

³⁵⁶ Record, Booysen Bundle, page B 01254.

³⁵⁷ Record, Booysen Bundle, page B 01256.

- [368] According to Chauke, on or around 8 March 2012, ANDPP-Jiba contacted him telephonically to instruct him to arrange for prosecutors to engage with DPCI investigators,³⁵⁸ and he was subsequently appointed to co-ordinate and oversee the prosecution team, as well as managing the daily administrative and logistical details required for the team to function. This much is common cause.
- [369] Chauke confirmed the execution of this instruction on the same day by way of email to ANDPP-Jiba.³⁵⁹ On 9 March 2012, he attended a meeting with ANDPP-Jiba as well as the prosecutors he had appointed (being Mlotshwa and Ntlakaza). In the same meeting, ANDPP-Jiba informed Chauke that she had identified Maema to lead the prosecution team. This accords with the version of events set out by Maema in his witness statement.³⁶⁰
- [370] Chauke states that following this, the prosecution team convened several times to consider the dockets, whereafter the team travelled to Durban on various occasions to obtain additional dockets.³⁶¹ He attended a meeting with the ANDPP-Jiba, on 3 May 2012, with regard to a formal project update that was to be held, on 18 May 2012. As mentioned above, it is undisputed that Chauke attended several meetings with the prosecution team and others concerned during his appointment as a co-ordinator.
- [371] His involvement included convening some meetings, for example, a meeting with the prosecution team, the DPCI and IPID staff. The purpose of the meetings was

³⁵⁸ Chauke Witness Statement, page 6-30 at para 107.

³⁵⁹ Record, Booysen Bundle, page B 00448.

³⁶⁰ Record, Maema Witness Statement, page 1-17 at para 59.

³⁶¹ Chauke Witness Statement at 6-31 at para 111.

to review the investigative process. On 24 May 2012, Mathenjwa presented the potential charges and highlighted security concerns at a briefing meeting at the NPA Head Office.³⁶²

[372] Indubitably, Chauke dealt with some of the correspondence for the prosecution team. He also met with the KZN Regional Court President, on 19 June 2012, to arrange for a Magistrate to hear the bail applications.³⁶³

[373] According to Chauke, none of the actions taken by him during this time constituted prosecutorial decisions. Rather, the explanation continued, he played a coordinating and oversight role. Properly understood, the evidence made it clear that Chauke's role included putting together the prosecution team, managing the daily administrative and logistical details required for the team to function and liaising between the team and the ANPDD-Jiba. It would have been interesting to hear from those who suggested otherwise.

[374] None of the witnesses who testified at the Enquiry refuted Chauke's evidence. As it happened, it seemed to have been accepted that Chauke acted upon the instructions of the ANDPP-Jiba. Maema corroborated Chauke's evidence in his evidence in chief. He confirmed, when asked by Ngcukaitobi SC, that the "classical prosecutorial decisions were taken by ourselves as a prosecution team".³⁶⁴

³⁶² Record, Chauke Witness Statement, page 6-32 at para 115.

³⁶³ Record, Chauke Witness Statement, page 6-33 at para 121.

³⁶⁴ See Record, Transcript, Day 24, page 53, lines 1 to 22. See also Record, Chauke Witness Statement, page 6-35.

[375] As lead prosecutor Maema testified, in chief, that he drafted all documents pertaining to the racketeering prosecution. Explaining Chauke's role, Maema, euphemistically, said:

"Those decisions were taken by ourselves as a prosecution team. ...I was the one drafting the documents and he was my mouthpiece, so to say.

...

But I must emphasise that the decisions that were taken [were] the decisions of the prosecutors. All that Chauke did was a conduit to convey what we had decided to the upper echelon of the NPA. At no stage did he [sit] in any deliberations or at no stage did he question any of our decisions.

...

What he did was if I communicate to the National Director I will do a prosecution memo or do a covering letter in the name of a DPP and the nearest DPP was Chauke who had offered us a boardroom from his office ...where we were working. So he was just a conduit to convey any message that he wanted conveyed to the upper echelon of the NPA, to the National Director.

...

Now myself as a leader I was coordinating the functions and activities of the prosecution team and our relations with the team led by the DPCI as well as the team led by the DPCI. Chauke's role was strictly to update him so that he can update the National Director, the command structure of the NPA, a deputy, prosecutors, chief prosecutors, everybody communicated through the DPP [Chauke]. So all he did was just you know a conduit through which our decisions or any hurdles or any challenges were, that we had, were channelled through him."³⁶⁵

(Underlining for emphasis.)

[376] To the further question by Ngcukaitobi SC, that "... if you say that decisions that were made in relation to the Cato Manor matter were all made by the

³⁶⁵ See Transcript, Day 24, page 53, lines 1 to 22; page 5, lines 6 to 24; and Day 24, page 52, lines 5 to 15.

prosecutorial team, including yourself as the leader of that team, that seemed to exonerate Chauke insofar as the prosecutorial decisions, the impugned prosecutorial decisions are concerned? Am I correct?", Maema responded:

"You are hundred percent correct, Chairperson. Those decisions were taken by me and the prosecution team to the exclusion of Chauke. Those decisions are ascribed to us. They cannot be ascribed to anyone other than the decision-maker who is us, the prosecution team."³⁶⁶

(Underlining for emphasis.)

[377] On the unchallenged evidence presented, including the evidence of Maema and Chauke, with regard to Chauke's exact role in the Cato Manor prosecution, one is constrained to conclude that his role was limited to that of a co-ordinator and overseer. The next question arising from the ToR is whether Chauke defended the review application.

Did Chauke defend the Booysen review application?

[378] The second issue, as distilled from the ToR,³⁶⁷ is whether Chauke defended the racketeering authorisations in the proceedings instituted by Booysen to have the said authorisations reviewed and set aside. The proposition is that Chauke defended the review application because he finalised the answering affidavit of the ANDPP-Jiba in her opposition to the review application. **This is apparent from Batohi's statement as referred to in paragraph 344 above.**³⁶⁸

³⁶⁶ Record, Transcript, Day 24 page 55, lines 5 to 19.

³⁶⁷ As per the ToR clause 3.1.1.

³⁶⁸ See in this regard paragraph 156.4 of Batohi's Witness Statement referred to in paragraph 345.

[379] Chauke was not cited as a respondent in the review application. It is unclear how the settling of the answering affidavit could, in the circumstances, be attributed to Chauke himself having defended the review application. He was not cited as a party. If anything, he only signed a confirmatory affidavit to the opposing answering affidavit.³⁶⁹ Next, is whether Chauke decided to appeal against Gorven J's judgment.

Did Chauke take a prosecutorial decision to appeal against Gorven J's judgment?

[380] It is posited that Chauke instituted an appeal against the judgment of Gorven J, without the approval of the new head of the NPA, NDPP-Nxasana. The circumstances relating to the filing of leave to appeal are set out in the background facts, above.³⁷⁰ A summary of the salient facts will suffice in assessing whether Chauke himself was the protagonist in instituting the appeal against Gorven J's judgment.

[381] As can be discerned from the quoted passage at paragraph 344 above, Broughton refers to the memorandum dated 5 March 2014. This memorandum was addressed by the prosecution team to Chauke. Its purpose was to update the NDPP-Nxasana and the head of NPS (Ramaite) of the developments following Gorven J's judgment.³⁷¹

³⁶⁹ Transcript, Day 44, Page 100, Line 24 to Page 101, Line 3: "**ADV NGCUKAITOBI SC:** Now, why are you complicit? Because you signed a confirmatory affidavit to this affidavit.

ADV CHAUKE: Yes."

³⁷⁰ See para 340 above.

³⁷¹ *Id* at para 2.

- [382] In the memorandum of 5 March 2014, Broughton, correctly, remarked that the prosecutorial team did not recommend the lodging of an appeal. However, mention needs to be made of the fact that the prosecution team had (in that memorandum) referred to the alleged “incorrect concession” attributed to Hodes SC in Gorven J’s judgment.
- [383] It is curious that, based on speculation, Broughton attributed the memorandum in question to Chauke. This is not borne by the evidence. As mentioned, the memorandum was from the prosecution team to Chauke. In that memorandum, the prosecution team decided that it will not appeal against the review judgment but intended to apply for reissuing of the racketeering authorisations.
- [384] Following this memorandum, Chauke scheduled a meeting with Hodes SC so that the prosecution team could hear from the SC himself regarding the alleged concession which the court relied upon in concluding that there was no evidence against Booysen. The meeting was attended by the prosecution team, Hodes SC, Chauke and Mosing.
- [385] It was at that meeting that a decision to note an appeal was taken following the clarification by Hodes SC and his views regarding the prospects of success on appeal. A decision was further taken that Chauke will update his senior, Ramaite, who will in turn update the NDPP-Nxasana. Furthermore, it was decided that in the meantime, a notice of appeal should be filed without delay to circumvent the time lapse in the Appeal Rules regarding the filing of the appeal notice.

[386] Broughton also relied on the email from Chauke dated 17 March 2014 (which email has not been provided to the Enquiry) that Chauke suggested to Hodes SC that more emphasis should be placed on Booysen's memo of rewards indicating his (Booyesen's) direct involvement.³⁷² He therefore concluded that Chauke made a prosecutorial decision. Oddly, Broughton suggested that Chauke's communication to the State Attorney to withdraw the notice of appeal underscored his leadership role regarding the lodging of the appeal against Gorven J's judgment.³⁷³ If a mere communication by Chauke of the decision of the NDPP-Nxasana to withdraw the appeal constitutes a prosecutorial decision by Chauke himself, one wonders what co-ordinating role entails.

[387] On the facts above, it cannot be said that Chauke was the central character in deciding to file the notice of appeal. It cannot, therefore, be gainsaid that the matter was handled by the prosecution team after consultation with Hodes SC. Chauke only arranged a consultative meeting between the prosecution team and Hodes SC to discuss Gorven J's judgment. Mosing's and Chauke's attendance at the meeting cannot, in and of itself, be properly understood to constitute taking a decision.

[388] At the risk of being repetitive, Maema was bestowed with the section 20(1)³⁷⁴ powers by the ANDPP-Jiba to—

³⁷² See also Provincial Good Work Committee Minutes dated 18 November 2018, Record, Batohi Cross-Examination Bundle, pages 34 to 42.

³⁷³ See paragraph 111 of Broughton's opinion.

³⁷⁴ Section 20(1) must be read in conjunction with ss 21, 22, and 24 of the NPA Act.

“institute and conduct criminal proceedings in the Lower and High Courts within the area of jurisdiction of the KwaZulu-Natal Division in all offences committed by the members of the South African Police Services in the province of KwaZulu-Natal, [a]nd to act on behalf of the State in any appeal, review or other applications arising from such criminal proceedings within the Province of KwaZulu-Natal”

[389] No such bestowment was made to Chauke. It, thus, boggles the mind how, in the circumstances, Chauke could have exercised the said powers. The evidence presented during the Enquiry including the testimony of, at least, Batohi and Riley, was not helpful and compelling to substantiate the allegation.

[390] Apart from the speculation made by Broughton which has no factual basis and Batohi's unsupported allegations in her statement, there is no direct evidence tendered at the Enquiry to suggest that Chauke took a decision to lodge the notice of appeal.

Did Chauke attempt to reinstate the racketeering charges under NDPP-Nxasana?

[391] The proposition that Chauke attempted to reinstate the racketeering charges against Booysen and his co-accused under the leadership of DNPP-Nxasana, has its origin from the detailed supplementary opinion by Broughton (Broughton 2), the relevant part of which have been referred to above.

[392] Regarding this issue, i.e. the allegation of Chauke having attempted to reinstate the racketeering charges, Broughton relied entirely on the memorandum dated 5 March 2014 which he wrongly attributed to have been Chauke's memorandum. It is in that memorandum in which the prosecution team said the following:

“C. RE-APPLICATION FOR AUTHORISATION CERTIFICATE

12. The prosecution team intends to apply to the NDPP for the reissuing of the certificates. We shall prepare a new memorandum which outlines in detail the evidence against the applicant.
13. We are still firmly of a strong view that there are sufficient facts which justify the re-issuing of the racketeering authorisations.”

(Underlining for emphasis.)

[393] There can, therefore, be no doubt that the prosecution team itself, and not Chauke, took a decision to reinstate the racketeering charges under the NDPP-Nxasana. Consequently, what remains for determination following the issues as defined in the ToR, is whether there existed evidence to justify the racketeering charges against Booysen and his co-accused. As would have been seen from the summary of the opinions presented above to Batohi, specifically the opinions of Nalane SC and those in De Kock 2 and in Broughton 1 and 2, it was taken as a fact that there was no evidence to justify the racketeering charges. This requires attention.

The “no evidence” proposition

[394] The common thread that runs through the issues in the ToR was that there was “no evidence” justifying the institution, recommendation, and supporting of the racketeering authorisations against Booysen and his co-accused and the opposition of the review application, as well as the appeal against Govern J’s judgment. This notion that there existed “no evidence” necessitated a search and

exposé of a panoply of critical, and in some instances, disheartening evidential material to disprove that proposition and that the “shooters” acted in self-defence.

[395] Maema, as a lead prosecutor, presented a statement and testified at the Enquiry about the various prosecution memoranda outlining, in detail, the evidence supporting the racketeering authorisations. We need not repeat the contents of such memoranda as they form part of this record. It is, however, important to refer to the evidence tendered at the Enquiry by witnesses who had a direct involvement in the investigation relating to the case dockets under consideration.

[396] The evidence in relation to some of the case dockets (**TABLE 2**) mentioned above, sheds light on whether there was “no evidence” justifying the institution of racketeering charges against Booysen and co-accused.

[397] It should be mentioned, *en passant*, that it is striking that the uncovered material evidence or portions of it, had not been included in the documents provided by the NPA, neither to the Ministers concerned nor to the President by the NPA, and no plausible explanation was forthcoming from Batohi regarding the omission of, at least, some of the case dockets referred to in **TABLE 2**. This is despite the fact that the NPA is the repository of all the evidential material most, if not all, was made available at the request of Chauke and the direction of the Panel during the Enquiry proceedings.

[398] Still in my view, the various prosecution memoranda presented by the prosecution team, first to the ANDPP-Jiba, second to the NDPP-Nxasana and

finally to the NDPP-Abrahams ought to have been included in the referral documents to the President. This might have shed light on whether there was evidence regarding the racketeering charges.

[399] From the documentary material provided to me after appointment, as Chairperson of the Enquiry, it does not appear that such material was included in the referral dossier. As mentioned earlier in this report, the evidential material presented comprises of voluminous records. In fact, during a meeting, on 27 October 2025, to determine the start date of the Enquiry hearing, the NPA legal representatives indicated that the record ran to tens of thousands of pages. The detail relating to the contents of the dockets under consideration was only presented by the witnesses during the hearings. It seems that the NPA selectively presented information when the referral was made.

[400] It is now necessary to consider, later, the evidence tendered by various witnesses, which establishes that there was evidence supporting the challenged racketeering authorisations. However, it is important to deal first with the issues regarding challenges pertaining to availability of witnesses.

Witnesses in the Enquiry and challenges

[401] Much can be said about the witnesses in this Enquiry, and the challenges encountered in bringing the witnesses to testify. Ordinarily, such context would not be provided in a report. However, to contextualise the evidence tendered,

and specifically, the written submissions tendered at the conclusion of the Enquiry, a summary of the witnesses is provided.

[402] As one would ascertain from reading the ToR, this Enquiry was not empowered to subpoena witnesses. On that basis, all the witnesses before this Enquiry appeared voluntary, either at the behest of the Evidence Leaders, Adv Chauke or the Panel. The table below (**TABLE 3**) delineates the witnesses whose evidence/statements were presented before and the duration of their testimonies (where relevant).

TABLE 3

(List of witnesses appearing at the Enquiry and length of appearance)

	WITNESS	WITNESS DESCRIPTION
1	Shamila Batohi	Batohi is a retired advocate who held the position of the National Director of Public Prosecutions from 1 February 2019 to 31 January 2026. She provided oral evidence from 19 November 2025 to 15 December 2025.
2	Moipone Noko	Noko is a non-practising advocate who was appointed as the Acting Director of Public Prosecutions KwaZulu-Natal in July 2012. She was permanently appointed to this position in July 2013 and held this role up to July 2019. She thereafter held the position of Director of Public Prosecutions North-West from July 2019 until her resignation in March 2021. She provided oral evidence from 4 February 2026 to 6 February 2026 as a witness called by the Panel.
3	Sello Gladstone Maema	Maema is a practising advocate at the Johannesburg Bar. He was appointed as a Deputy Director of Public Prosecutions North West on 1 May 1999 and held this position until his retirement on 4 December 2024. He provided oral evidence from 12 February 2026 to 20 February 2026.

	WITNESS	WITNESS DESCRIPTION
4	Christiaan Mangena	Mangena is an employee of the South African Police Service ("SAPS"), employed from 1995 and attached to the Ballistic Section of the Forensic Science Laboratory since then. He provided oral evidence from 24 February 2026 to 27 February 2026.
5	Sharmilla Williams	Williams is a former Senior Investigator of the Independent Police Investigative Directorate having assumed the role in June 2006 when IPID was known as the Independent Complaints Directorate. She resigned from IPID in August 2014. She tendered oral evidence from 2 March 2026 to 6 March 2026.
6	Aristides "Ari" Danikas	Danikas is a former police reservist, joining the SAPS in 1999. Danikas emigrated from South Africa to Greece in 2008. He gave oral evidence from 9 March 2026 to 10 March 2026.
7	Siphamandla Mhlongo	Mhlongo is the incumbent Chairperson of the Kwa Maphumulo Taxi Association. Mhlongo was arrested and detained in police custody at the Cato Manor Police Station. He tendered oral evidence from 23 March 2026 to 24 March 2026.
8	Andrew Masenyani Chauke	Chauke is the suspended DPP South Gauteng whose fitness to hold office is the subject of this Enquiry. He tendered oral evidence from 26 March 2026 to 31 March 2026.
9	Ntebo Jan Mabula	Mabula is a retired officer of SAPS, having previously served as the Deputy Provincial Commissioner: Crime Detection in the North West Province. He gave oral evidence on 31 March 2026.
10	Shareen Riley	Riley is the incumbent DPP Western Cape. She tendered oral evidence on 9 April 2026 and 10 April 2026.
11	Cyril Simphiwe Mlotshwa	Mlotshwa is a practising advocate at the Pietermaritzburg Bar. He was appointed as a prosecutor in 1998. He was appointed as DDPP in 2008 and from May 2010 he acted as DPP in KwaZulu Natal, until 9 July 2012. Adv Mlotshwa provided oral evidence on 22 April 2026.

	WITNESS	WITNESS DESCRIPTION
12	Adv Van Zyl (No Oral Evidence)	van Zyl is a retired DDPP. He did not give oral evidence at the Enquiry, but his witness statement was filed of record on 20 April 2026.

[403] A little context concerning the witnesses listed in the final list of witnesses referred to, above, as **TABLE 3**, is necessary to highlight the witness who freely volunteered to testify to assist the Panel in its task and those who, despite having initially volunteered to do so, unfortunately backed out, thus heightening the previous challenges that confronted the Evidence Leaders in securing witness attendance at the Enquiry, which the Panel had no choice but to put up with.

[404] As we deal with this aspect, we must not lose sight of the fact that this Enquiry, unlike a Commission of Enquiry established under the Commissions Act,³⁷⁵ does not have the powers of subpoena (i.e. require of command) anyone, including any identified witness, present his or her testimony before it.

[405] The final list is, but, a fraction of witnesses whom the Evidence Leaders and Chauke had intended to call. The Evidence Leaders had, initially, provided the Enquiry Panel with a list of potential witnesses they intended to call on 16 December 2025. The list included Noko and Booysen both with regard to the Cato Manor matter, and Van Zyl regarding the Mdluli matter.

[406] Insofar as Noko is concerned, the granular detail surrounding the circumstances in which she came to testify is dealt with above at paragraph 314 of this Report. It is, therefore, not necessary to regurgitate the details of what resulted in her

³⁷⁵ 8 of 1947.

testifying at the instance of the Enquiry Panel. Suffice is to mention that she did so following a well-considered application by Chauke's legal representatives.

[407] The evidence of Van Zyl, contained in a sworn statement filed of record on 20 April 2026, was uncontested. He did not, therefore, appear to tender oral evidence. The statement is contained in the Record as Van Zyl Witness Statement.

[408] Booysen's evidence was, ultimately, not presented before this Enquiry. This is despite the fact that it had been considered relevant by the Lead Evidence Leader who had consulted with him, supposedly, in light of the role allegedly played by him in relation to the racketeering and related charges.

[409] Booysen's attendance at this Enquiry had been mentioned, many times, by the lead Evidence Leader, Mohlamonyane SC after his first consultation with him during November 2025. As it was understood, the consultation resulted in Mohlamonyane SC drafting Booysen's witness statement.

[410] On 19 December 2025, Booysen, through his legal representative, Tania Koen Attorneys and Conveyancers, addressed a letter to the Chairperson in response to the statements made by the Evidence Leaders on 15 December 2025. The letter outlines that he had met with the Evidence Leaders – namely Mohlamonyane SC. It further states that:

“(17) It appeared from proceedings on Monday the 15th, that this information was not communicated, alternatively withheld from the panel, which places the panel at a disadvantage and also causes our client unnecessary

distress. A dishonest narrative is projected in the public domain, namely that he committed an offence and ultimately his human rights are violated, including his right to dignity.

- (18) Our client has been prejudiced and is alarmed that he has not received any prior notification that he may be incriminated during the inquiry.
- (19) Our client was not notified of the envisaged incriminating 'evidence' or that he may respond thereto to give effect to his right to exercise his right of *audi alteram partem*.³⁷⁶

[411] On 20 January 2026, the State Attorney, on behalf of the Evidence Leaders, responded to Booysen's letter, indicating that they too were not prepared in advance for certain evidence handed up by Chauke, being certain media including footage and pictures, during Batohi's cross-examination.

[412] On several occasions throughout the proceedings, the delays in producing the affidavit of Booysen became the subject of the contention between the parties.³⁷⁷

[413] Mohlamonyane SC also placed on record that although he had initially been drafting the statement of Booysen, the latter had since preferred to draft his own statement which would be settled by his legal representatives.

[414] On 8 April 2026, Booysen's legal representatives, Adv W Trengove SC and his junior, Adv Theart-Hofmeyr placed themselves on record after raising his pending statement and question of presenting oral evidence with the Enquiry Panel in Chambers.

³⁷⁶ Letter Tania Koen to Enquiry Panel dated 19 December 2025.

³⁷⁷ Transcript Day 48, page 1, line 2 to 8

- [415] On 14 April 2026, the Evidence Leaders addressed a letter to the Panel and Chauke noting that Booysen has elected that he will not be submitting his statement as previously undertaken by his legal representatives.
- [416] It is important to stress that the mandate of the Enquiry Panel is restricted to the issues raised in the ToR and nothing more. The issues involve, no more than questions of fact. They have nothing to do with the guilt or otherwise of those implicated in the racketeering charges, as set out in the indictment **TABLE 1**, and delineated in the case dockets **TABLE 2**. I mention this in light of what is contained in the letter from Booysen's Attorneys, Tania Koen Attorneys, suggestive of the fact that Booysen has "committed an offence" and postulating that his guilt is also matter for consideration in this Enquiry. Far from it!
- [417] Having temporarily strayed, somewhat but importantly, from the main subject regarding the "no evidence" proposition, I now return to that topic. Mention should be made right away that there was no convincing evidence that Chauke, *inter alia*, took prosecutorial decisions regarding the racketeering authorisations. That said, it is still necessary to deal with the notion that there was no evidence to support the racketeering authorisations.
- [418] The evidence of witnesses Mangena, Danikas, Williams, Mhlongo, and Mabula is relevant in relation to some of the case dockets as referred to in **TABLE 2**, above. Such evidence will demonstrate that there was and there is, still, a case for the accused to answer. It should be underscored that the mandate of this

Panel, as per the ToR, is not to determine the guilt or otherwise of the Cato Manor Unit members.

[419] I now turn to deal with the evidence of the witnesses, *seriatim*, below.

Danikas' evidence

[420] Danikas' evidence was not meant to address the issues in the ToR, except for the question regarding similar fact evidence and a pattern of racketeering. He testified on incidents that happened while he was a member of the Cato Manor Unit, as a police reservist. His involvement was limited to certain incidents some of which will be dealt with below. Therefore, this Report, as regards his testimony, will not follow the same pattern in relation to the discussion concerning the testimony of other witnesses.

[421] *Who is Danikas and how did he get involved with the Cato Manor Unit?* Danikas is a naturalised male citizen of South Africa and of the Hellenic Republic (Greece). He currently resides in Athens. He fled South Africa in 2008 after receiving death threats following his whistleblowing about, *inter alia*, the criminal activities, torture, cruelty and racist comments, attributable to the members of Cato Manor Unit.

[422] Danikas had an electronics store at 76 Broad Street, Durban. His friendship with Booysen began on or about 1996 or 1997, when the latter visited his store to

purchase a family computer. The two families started socialising together. Later, Booysen's family travelled to Europe to visit Danikas, who hosted them.³⁷⁸

[423] As the friendship developed, Danikas was invited to visit the offices of the Durban murder and robbery unit, at the behest of Booysen.

[424] Approximately three years later, Danikas was invited by Booysen to apply to become a police reservist. He testified that Booysen assisted him with all the paperwork that was needed in order for him to apply to become a reservist. He was formally appointed as a SAPS reservist in November 1999, and he was allocated to Mayville Police Station.³⁷⁹

[425] Around October 2001, Danikas applied for a transfer from Mayville Police Station to the Cato Manor Unit under Booysen's command. Danikas was subsequently registered to the Cato Manor Unit. As already mentioned, in the preceding paragraphs, being recruited into the reservist program and in particular in 1998, Danikas had already experienced and witnessed the way the Cato Manor Unit tortured and assaulted the suspects.³⁸⁰

[426] With the approval and assistance of Booysen, Danikas was transferred to the Cato Manor Unit.³⁸¹ The alleged role played by Booysen, seems to illustrate that he was the leader and in charge of the Cato Manor Unit at least at the time when

³⁷⁸ Record, Danikas Witness Statement, page 4-4 and 4-5 at paras 18 and 19.

³⁷⁹ Record, Danikas Witness Statement, pages 4-4 to 4-7 at para 24 and 25.

³⁸⁰ Record, Danikas Witness Statement, at paras 20 – 23. See also Transcript Day 40, Pages.7, 12, 15 and 16.

³⁸¹ Record, Danikas Witness Statement, at paras 26 – 28. See also Transcript Day 4, Pages 17 to 19.

he assisted and recruited Danikas to firstly become a reservist and secondly when he joined the Cato Manor Unit.

[427] Members of the Cato Manor Unit, Danikas said, possessed extensive firearms knowledge and were frequently in possession of numerous firearms used to substitute weapons after shooting incidents. This may explain why it was necessary for him to attend specialised training courses in Specialised Weapon and Tactics (SWAT), crime scene investigation proceedings and firearms handling and to be issued with police tools such as pepper spray, cable ties, a police siren, blue lights, a police radio and a standard crime scene kit.³⁸² He stated that members of the Unit were often in possession of stolen firearms which could be planted on deceased suspects following extra-judicial killings.

[428] Danikas observed the *modus operandi* employed by the Cato Manor Unit and how its members conducted themselves during certain specific incidents he had witnessed and documented. These specific incidents included crimes committed by unit members in the execution of their duties and the systematic racial profiling of suspects.

[429] According to Danikas, being associated with the Cato Manor Unit carried a certain advantage because the unit had a notorious reputation and that the unit was widely feared.³⁸³ The preferential treatment members of the unit received several benefits, including preferential treatment at, for instance, nightclubs, casinos and

³⁸² Record, Danikas Witness Statement, at paras 29 – 30.

³⁸³ Transcript Day 40, Page 26, Line 21.

restaurants throughout the province, seemingly illustrating the influence the Unit had.³⁸⁴ He gave examples which need not be mentioned here.

[430] To the extent relevant here, Danikas' testimony is that he had personally witnessed several criminal acts by members of the Cato Manor Unit, including Booysen, up to 2008. His evidence showed a direct knowledge of how the members of the Cato Manor Unit operated, including their incidents of torture, inhuman treatment of dying suspects, scene tampering, tampering with bodies at crime scenes, removal of spend cartridges on Booysen's instructions, racist dehumanisation of African suspects and normalised violence in the Unit. His evidence went directly to the *modus operandi*, pattern, knowledge and the alleged enterprise's method of operation.

[431] In his testimony, Danikas explained that he was frequently permitted to take photographs of deceased suspects and the aftermath of shootings before crime scene processing commenced by the relevant officials. He testified that members of the Cato Manor Unit often visited his computer shop for repairs, upgrades or to download their private collection of "*trophy photos*" from phones and cameras to compact disks and computers. Danikas explained that a trophy photo denotes photos of shootings by members of the Unit and, in some instances, photos of the officers themselves at the crime scene. He testified that the members of the Unit routinely took these pictures to share among themselves and praise

³⁸⁴ Record Danikas Written Statement, para 33 – 43 and pp.26 – pp.36 day 40 of the Transcript

themselves of their success. Footage of one of these incidents was displayed at the hearing.³⁸⁵

[432] Danikas testified that he was provided with a list of specific journalists from various media outlets, such as Daily News, Beeld and the Daily Sun. He was instructed to provide crime scene and deceased suspect photos exclusively to those journalists and he described these actions as reciprocal where journalists ran favourable stories about the Cato Manor Unit in return for exclusive access to crime scene photographs. An example is a photograph that forms part of this Record. It is attached as AD5 to Danikas' witness statement.³⁸⁶

[433] As regards the Cato Manor unit's operations and *modus operandi*, Danikas testified to a number of incidents which establish a further pattern of racketeering allegedly by Booysen and his co-accused. These incidents, which happened before 2008 and are only mentioned to demonstrate a pattern and similar facts in relation to the said operations are, comprehensively, dealt with in Danikas' testimony including his written statement that form part of this Record.³⁸⁷ The incidents regarding the conduct of Booysen and his co-accused, for example, the alleged racist remarks – if they are proven to be true – may be relevant elsewhere (probably at the criminal trial) but have no relevance to the issues under consideration in terms of the ToR. It is, therefore, not necessary to expound on

³⁸⁵ This footage has been provided by way of a memory stick.

³⁸⁶ Danikas Witness Statement, page x, paras 33 to 43. See also Transcript Day 40, pages 26 to 36.

³⁸⁷ Danikas' witness statement and the transcription of his oral evidence appear at Record Days 40 and 41.

them in this Report. Having said that, Danikas' involvement in the Berea Case of 2008, just before fleeing South Africa, calls for attention.

Berea CAS 288/05/2008

- [434] Most notably, Danikas was a witness at one of the Cato Manor Unit operations in relation to the Berea CAS 288/05/2008. The Berea matter forms part of the dockets referred to in the case docket **TABLE 2**, above. The incident involved Mr Thabo Msimango, the deceased. The Berea docket is also discussed later in relation to the ballistics reports compiled by Mangena.
- [435] On 24 May 2008, Danikas was requested to assist at the crime scene located at Fifth Avenue, Morningside, Durban by Mostert. Danikas was informed that the suspect had been shot and had fallen to his death from the fourth floor of a building while Inspector Mostert and other members were attempting to arrest him.
- [436] Upon arrival at the scene Danikas observed the body of the deceased lying on the ground. He was refused entry into the crime scene by Olivier. Danikas was later informed by Mostert shot the suspect three times when right as he was falling from the building. Save that the shooter was trying to help the falling suspect,³⁸⁸ no mention was made of the suspect having posed any threat. Instead, he said something about having tried to help the suspect.

³⁸⁸ Mr Danikas Written Statement, para 79 – 81 and annexure AD17 and Transcript record day 40, pp.89 – pp.93

[437] The incidents surrounding the Berea killing was discussed at length during the Enquiry hearing.³⁸⁹

Danikas' involvement with the multi-disciplinary task team investigating Cato Manor Unit

[438] Danikas was approached on three separate occasions (between 2012 and 2016) by members of the SAPS and the NPA to provide a formal statement on the ongoing investigation into the allegations against the Cato Manor Unit.

[439] During the initial engagement with representatives of SAPS and the NPA in 2012 he was informed of the national importance of his testimony and the reason why the investigation was held. He was also assured that he would receive State protection, should he agree to become a witness in the case instituted against the members of the Cato Manor Unit.

[440] Through the MLA process, Mabula, of SAPS, and the representatives of the NPA travelled to Greece, in 2012. They urged Danikas to urgently return to South Africa to sign the statement, in person, and that he would, thereafter, immediately return to Greece. Danikas declined the offer because, he said, of the absence of clear legal guarantees and confirmed security arrangements that he would be formally placed in witness protection and that he would not be exposed to significant personal risk. He testified that he, at no point, refused to make a

³⁸⁹ See Report, Transcript, Day 40 pp 89 to 93

statement or co-operate with the investigation. The only issue was his security and safety.

[441] Later, Danikas' unsigned statement was prepared in the presence of Mabula and two ICD officials at the South African embassy in Athens. It was, thereafter, given to Mabula. It was also agreed that the NPA will initiate the MLA process in Greece and that Danikas and his family would be placed under witness protection once the MLA had been processed.

[442] In May 2014, following various media reports regarding Govern J's judgment, Danikas' attorney addressed correspondence to the NPA through Maema asking whether the state still intended to call him as a witness and whether it had intended to proceed with the MLA application. No response was received by Danikas.

[443] Around 27 January 2015, Maema responded and addressed an email to Danikas attorney Mr Julian Knight. He, Maema, outlined the difficulties in using Danikas' unsigned statement which, he said, fell outside the temporary scope of the indictment and further that there was a possibility that Danikas may be implicated in other offences unrelated to the Cato Manor Unit matters. Maema further stated that Danikas might have to testify, as a section 204 witness. Seemingly, this correspondence had been leaked to the media and caused Danikas distress as it cast him in a bad light.

[444] Around 23 July 2015, Mabula contacted Danikas telephonically again trying to persuade him to return to South Africa to testify. Danikas raised his concerns

regarding the NPA's position in relation to him as a witness including the contents of the email that was leaked to the media. He was further informed that the National Commissioner of SAPS had no objection to funding his travel arrangements.

[445] Danikas was informed that the witness protection unit would provide protection should he return to South Africa. He declined because, as he explained, he had no confidence that adequate protection would, in fact, be provided. He reminded Mabula that, since 2012, he had urged the NPA to broaden the indictment against Booysen to include allegations relating to human rights violations, torture and extra-judicial killings which had not been done.

[446] In January 2016, Mabula contacted Danikas again and indicated that a delegation, comprising of Maema and Macadam (head of the witness protection program), would travel to Greece to meet him. During the meeting with these two advocates, the importance of obtaining Danikas statement was emphasised. Mention was made that the NPA intended on prosecuting those responsible for the human rights violations that Danikas had exposed. The advocates further informed Danikas that the allegations made against him by Booysen's domestic worker formed part of an attack to discredit him and that those allegations had been disregarded. Danikas was advised not to engage with the South African media because this could prejudice the State's case.

[447] Maema also apologised for the leaked email. Ultimately, Danikas signed the statement in 2016 after it had been prepared in his native Greek language

pursuant to the MLA process. The official statement was transmitted through the MLA mechanism in 2017 and was translated by a South African Court appointed translator in 2018.³⁹⁰

Intimidation by Booysen

[448] Once Booysen became aware that the NPA intended to use Danikas as a witness, he launched an attack of intimidation and harassment on Danikas. He attempted to contact Danikas despite the fact that he was not, at that stage, formally listed as a witness. Danikas informed Maema about his concerns and fears on the harassment and intimidation by Booysen.³⁹¹ Later, Maema acknowledged Danikas' concerns via email and confirmed that he was listed as a state witness but that his name has not been included in the witness list in order to protect his identity for security reasons.³⁹²

[449] In conclusion of his evidence in chief, Danikas referred to the Goldstone Commission – the Breaking with the Past Report – where the Commission described the 1992 Vusi Nkwanyana matter as a copy and paste of the same *modus operandi* of how the Cato Manor Unit operated. The method was described as the group acting on information, arresting a suspect, the suspect supposedly escaping despite being in police custody, multiple shots fired at an

³⁹⁰ Record, Danikas Written Statement, page 4-25 to 4-26 at paras 82 to 99. See also Transcript, Day 40, pages 100, 101, 106 and 114 to 129.

³⁹¹ On or about 20 December 2017.

³⁹² Record, Danikas Written Statement, page 4-31, para 100. See also Transcript, Day 40, page 104 to 108.

unarmed fleeing suspect and later inadequate police investigations by officers who were themselves implicated.

[450] Referring to the Goldstone Commission's findings, Danikas said no effective investigation was done for three months and that no independent investigating officers were appointed after his reporting of the matter. The investigation was effectively left in the hands of Booysen and Olivier. Statements recorded by Olivier, a suspect himself, were relied on by Booysen, who was also a possible suspect. Danikas testified that this is how the Cato Manor Unit members usually operated.³⁹³

[451] During cross-examination, the version of Mostert was put to Danikas. The latter said he was not there when the shooting happened (supposedly because he had been refused entry) but said having observed and experienced how the members of the Cato Manor Unit operated, he had doubts regarding the police version of how the events had unfolded.

[452] Danikas' video footage was, seemingly, brought to the attention of Batohi. Some of the footage had been posted on YouTube. Batohi had testified that the reason why she was not convinced that the issuance of racketeering authorisations was correct was because Danikas' statement was unsigned.³⁹⁴ This was controverted by the evidence that was led before the Enquiry where Danikas explained how he signed his Greek version and that his Greek version was then translated into

³⁹³ Transcript, Day 40, page 137, line 20.

³⁹⁴ Transcript, Day 3, page 111, lines 6 to 7.

English. This then laid to rest Batohi's reliance on the fact that Danikas' statement was not sworn and signed. Therefore, the statement could not be used. In any event, as correctly submitted by Chauke, that would be inimical to POCA.

- [453] Danikas' evidence still remains uncontroverted. There is still an opportunity for those implicated to have their day in court and present their version as there is a *prima facie* case to answer. This remark is made on the assumption that the charges will be reinstated, not only for those accused to have their day in court but also for the victims (for example, Mhlongo) and their families to have justice and find closure.

Mabula's evidence

- [454] Mabula is a retired career policeman since joining the SAPS in April 1983 until retirement, during which period he served in operational, investigative and managerial capacities.
- [455] Observable from the general background facts, Mabula had personal knowledge of the origin and development of the investigation into the Cato Manor matter and the establishment and function of the DPCI and joint task teams in that investigation (that arose because of the media public exposé and subsequent involvement of the NPA including the involvement of Maema and Chauke). The background to his involvement and what he did are narrated already and need not be repeated, here. The focus, however, must be in relation to the case dockets that had been identified for investigation by the joint task team, under Mabula's command.

- [456] About seven dockets had been identified for investigation. These were Camperdown CAS 96/01/2009, Plessislaer CAS 52/07/2006, Malvern CAS 32/004/2007, Phoenix CAS 377/08/2009, eSikhawini CAS 50/09/2011, Westville CAS 108/09/2006 and Howick CAS 106/02/2008. Three of these are listed in the case dockets **TABLE 2**. It was at that point that Mangena was assigned to assist with the ballistic and crime scene reconstruction.
- [457] The investigation progressed with IPID providing an expanded list of 52 cases involving fatal shootings by members of the Cato Manor Unit. Following a presentation to Dramat and later, on the same day, to the Minister of Police (referring to Minister Mthethwa), the latter expressed dissatisfaction with the pace of criminal investigations and directed that the IPID and DPCI team be integrated into a single joint task team. This would be an IPID investigation, but Mabula would lead the team of investigators.
- [458] Following Minister Mthethwa's directive, Mabula formed a view that the scale, complexity and sensitivity of the investigation required active prosecutorial guidance from an early stage. He, therefore, arranged a meeting with ADPP-Mlotshwa to discuss the matter, who indicated that he was unwilling to meet at his offices and suggested that they meet later in the day at the parking area of the SAPS provincial headquarters in Durban.³⁹⁵
- [459] ADPP-Mlotshwa informed Mabula that in his assessment, prosecutors in KZN would be reluctant to become involved in the matter as the Cato Manor Unit were

³⁹⁵ Record, Mabula Witness Statement, page 7A-11 at para 53.

dangerous and created a real concern for prosecutors within the province. In light thereof, he advised that the prosecutorial support should be sourced outside KZN and that the matter should be escalated to the ANDPP-Jiba. ADPP-Mlotshwa undertook to contact ANDPP-Jiba on his behalf and revert to him.

[460] Later, ADPP-Mlotshwa indicated that he had spoken to the ANDPP-Jiba and arrangements were made for them to meet at the NPA offices in Pretoria. At that meeting the ANDPP-Jiba inquired who of the prosecutors Mabula preferred. He suggested Maema. The ANDPP-Jiba acquiesced to the suggestion and subsequently appointed Maema to lead the prosecution team.

[461] Subsequent thereto, Mabula met the prosecution team together with the joint task team. At that meeting, the prosecutors briefed the attendants on the program of the investigation and provided 52 dockets for prosecutorial consideration. Mathenjwa informed the joint task team that Maema was the lead prosecutor, but was temporarily unavailable as he was finalising existing commitments in the North-West.

[462] Regarding the role of Chauke, Mabula testified that Maema and Mathenjwa bore the primary responsibility for the evaluation of evidence and prosecutorial decision-making. The joint task team did not interact with Chauke and only met him during the first appearance of the accused in the regional court in Durban.

[463] Subsequent to the arrest of the Cato Manor Unit, Mabula was removed from his position as the Provincial Head of the DPCI in the North-West by Major-General Ntlemeza and transferred to the SAPS detective services. Notwithstanding this,

Mabula remained involved in the investigation but expressly requested to be excused from further involvement on the basis that it fell within the mandate of the DPCI which request was refused.

[464] Mabula's evidence also remains uncontested thus far and there is, therefore, no plausible reason to doubt the correctness of his version of events.

Mangena's Evidence

[465] It is correct that Mangena's evidence answers a factual question at the centre of the Cato Manor matter: whether there was objective, physical evidence capable of supporting the prosecution case against the Cato Manor Unit, i.e. the "no evidence proposition". His evidence is, therefore, pertinent in relation to the actions of the Cato Manor shooters, whose statements suggested that they acted in self-defence.

[466] Mangena testified that he has been attached to the Ballistics Section of the SAPS since 1995 and has worked there for approximately three decades. He specialises, exclusively, in forensic examination, analysis and reconstruction of firearm related incidents. During that period of speciality, he has examined over 6 000 ballistic forensic cases. Generally, his duties include—

- (a) forensic examination and identification of firearms, ammunition, fired bullets and cartridge cases;
- (b) attending post-mortem examination;

- (c) reconstruction of shooting incidents through the analysis of wound characteristics, bullet trajectories, blood stain patterns and crime scene geometry;
- (d) determining the range of fire and the relative positions of shooters and victims;
- (e) examination and interpretation of gunshot primer residue and firearm discharge patterns;
- (f) documentation and analysis of ballistic evidence using specialised microscopic and photographic techniques; and
- (g) preparation of forensic reports and presentation of expert testimony in criminal courts.

[467] The methodology of crime scene reconstructions by Mangena includes attending crime scenes, examining ballistic evidence and reconstructing shooting incidents. According to his testimony, these require him to examine and analyse—

- (a) gunshot wounds and wound trajectories;
- (b) bullet impact marks and ricochet patterns;
- (c) cartridge case distribution;
- (d) blood stain patterns;
- (e) post-mortem reports; and

- (f) crime scene photographs, physical layout and the spatial relationships between shooters, victims and surrounding structures.

[468] Mangena became involved in the Cato Manor matter when the Divisional Forensic Services formally requested him to assist in an investigation conducted by the DPCI into allegations concerning shooting incidents involving members of the Cato Manor Unit. The request was for assistance in analysing crime scene photographs and reconstructing shooting incidents.

[469] The forensic examination commenced on 17 January 2012 in KZN. Mangena was provided with a list of six LCRC (Local Criminal Record Centre) files from different police stations for purposes of analysis and reconstruction. The list later ballooned to 52 files.³⁹⁶

[470] Mangena's role in relation to the Cato Manor matter was, specifically, to conduct independent ballistic reconstruction of the shooting incidents based on physical evidence, including crime scene photographs, postmortem reports, ballistic trajectories, blood stain patterns and related material.

[471] Ultimately, Mangena compiled 23 crime scene reconstructions³⁹⁷ in the following case dockets:

- (a) KwaDukuza CAS 39/09/2008;
- (b) Durban Central CAS 185/02/2009;

³⁹⁶ List of Cases from IPID. See Record, Mangena Witness Statement, page 2-102, Annexure CM2.

³⁹⁷ 31 January 2013.

- (c) Berea CAS 288/05/2008;
- (d) Melmoth CAS 142/11/2008;
- (e) Phoenix CAS 377/08/2009;
- (f) KwaMashu CAS 341/11/2008;
- (g) eSikhawini CAS 03/04/2010;
- (h) eSikhawini CAS 50/09/2011;
- (i) Umlazi CAS 585/01/2011;
- (j) Chatsworth CAS 161/09/2011;
- (k) Madeni CAS 08/2008;
- (l) Thokoza CAS 176/08/2011;
- (m) Heidelberg CAS 89/11/2010;
- (n) Rustenburg CAS 1098/09/2009;
- (o) Randburg CAS 712/09/2011;
- (p) Dawn Parks CAS 29/04/2008;
- (q) Cato Manor CAS 161/8/2009;
- (r) Cato Manor CAS 187/02/2011;
- (s) Cato Manor CAS 146/03/2011;

- (t) Estcourt CAS 34/08/2008;
- (u) Pinetown CAS 668/05/2009;
- (v) Sundumbili CAS 32/01/2010; and
- (w) KwaMashu CAS 03/08/2008.

[472] Of the 23 reconstruction reports compiled by Mangena, 24 deceased persons were examined. The reader's attention is drawn to the fact that the listed 23 case dockets above do not correlate with the case dockets **TABLE 2**, as this table details the dockets in the indictment. In several cases, the cause of death was primarily a gunshot wound to the head as confirmed by post-mortem examination and forensic ballistics.

[473] In each of the 23 case dockets involving gunshot fatalities, a firearm was recovered at or near the body of the deceased as documented in crime scene photographs and forensic reconstruction reports. Mangena testified that, of the 23 case dockets listed above, 13 of the reconstruction reports he compiled were ultimately not incorporated into the indictment.³⁹⁸

[474] Mangena testified that when comparing his list to the case dockets disclosed by the NPA, some of those case dockets did not contain his reconstructions. Those case dockets include:

- (a) KwaDukuza CAS 39/09/2008.

³⁹⁸ Record, Mangena Witness Statement, page 2-14 at paras 44 to 46.

- (b) Berea CAS 288/05/2005.
- (c) Rustenburg CAS 1098/09/2009.
- (d) Umlazi CAS 585/01/2011.
- (e) KwaMashu CAS 341/11/2008.
- (f) Pinetown CAS 668/05/2009.

[475] It is clear from Mangena's testimony, that some documents from a number of dockets were not included or were removed. For example, in case docket Umlazi CAS 585/01/2011, section A, B and C were not included. They were later, during the hearing, handed up by the NPA. Some case dockets were filed without sections B and C, the obvious example being KwaDukuza CAS115/03/2010 which is part of the indictment but only has a few pages which do not include witness statements (except those of the officers involved) and no ballistic reports.

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[476] Another instance is the docket pertaining to Chonco whose death seemed to be the trigger to all the killings of the KTA members as the Cato Manor Unit alleged that the KTA members were Chonco's killers. It is apposite to add that parts of

³⁹⁹ Transcripts, Day 34, pages 3 and 4.

that docket surfaced through the Chief Evidence Leader. This specific docket is discussed later during Williams' cross-examination.⁴⁰⁰

[477] Mangena testified that he did not know about the Cato Manor Unit and only heard about it while conducting the investigation in 2012. His conclusions, on a sample of 10 reconstructions and reports of dockets contained in the indictment against the members of the Cato Manor Unit, are dealt with below, on a case-by-case basis:

The Durban Central CAS 185/02/2009

[478] On 3 February 2008, the deceased – Mr Bongani Mkhize – was found lying in the driver's seat of his black Lexus car.⁴⁰¹ The reader is referred to the urgent application launched by Mkhize in October 2008, seeking to interdict the SAPS from killing him.⁴⁰² According to Maema's indictment, Padayachee, Lee, Stoltz, Dlamuka and Mfene were involved in the killing of Bongani Mkhize.

[479] The affidavits of Stoltz and Lee narrate that they had received information on Bongani Mkhize (who was wanted under Bhekithemba CAS 113/01/2009) while on duty. They identified Mkhize's vehicle and tried to get him to stop his vehicle, while Stoltz radioed other Cato Manor Unit members. While trying to get Mkhize to stop, he produced a firearm through his open window. What ensued was a high-speed chase of Mkhize, at which point Stoltz decided to shoot out Mkhize's

⁴⁰⁰ See para [609] below.

⁴⁰¹ Record, Maema Witness Statement, page 1-38.

⁴⁰² Record, Maema Witness Statement, pages 1A-298 to 1A-301 – The interim order successfully obtained by Mkhize interdicting the Cato Manor Unit from "killing, injuring, threatening, harassing or in any way intimidating [Mkhize]."

wheels. The vehicle slowed down, and Mkhize and other SAPS members exchanged gunfire. When Stoltz exited his own vehicle and approached Mkhize's car, the gunfire exchange had stopped.⁴⁰³ Maharaj corroborates this version of events in his affidavit wherein he states that he joined the high-speed chase after being radioed by Stoltz. Maharaj further states that upon Mkhize's vehicle stopping, he noted shots in his direction and began shooting back.⁴⁰⁴

[480] Mangena testified that based on the post-mortem reports and photographs contained in this docket, doctors determined that the cause of death was a gunshot wound to the neck. Furthermore, the wound characteristics indicated that the projectile travelled from right to left and in a forward direction through the neck of the deceased.

[481] Mangena testified that based on the crime scene photographs provided, he observed—

- (a) bullet damage to the vehicle;
- (b) fire cartridge cases outside the vehicle;
- (c) the position of the deceased inside the vehicle;
- (d) the firearm and cartridges found inside the vehicle; and
- (e) the nature and position of the wounds sustained by the deceased.

⁴⁰³ Record, Docket, page DC 000019.

⁴⁰⁴ Record, Docket, page DC 000024.

[482] Furthermore, he observed photograph 42⁴⁰⁵ depicting damage to the right window of the vehicle driven by Mkhize which damage is consistent with penetration by a projectile entering the vehicle from outside. Additionally, he observed glass shards from the damaged window inside the vehicle.

[483] Mangena examined ballistic reports relating to this case. In his report, he analysed cartridge cases recovered from the scene. According to his conclusions, two different calibres were used in shooting at the vehicle of Mkhize (i.e. a high-velocity – possibly 5.56mm – and a low velocity – possibly 9mm). According to Mangena's conclusion, the person who fired from the high velocity firearm(s) was directly opposite Mkhize, on the right hand. During his testimony, Mangena said, in relation to the wounds sustained by Mkhize, that:

“The one that is open, the one at the top, the big one, is from the 5,56[mm] rifle [i.e. high velocity 5,56mm] ... and then the one that I have circled is from a handgun, a pistol [i.e. low velocity 9mm pistol].”

[484] The cartridges were fired from the pistol with a serial number H86407Z⁴⁰⁶ which was later discovered to belong to Lee.⁴⁰⁷

[485] According to the ballistic report, all possible shots were fired from outside towards Mkhize's vehicle, which indicates that the firearm found inside the vehicle of Mkhize was not the one used to fire any of the cartridge cases recovered at the scene. According to Mangena, the shooters used a high velocity calibre firearm

⁴⁰⁵ Record, Mangena Reports, page 2A-88.

⁴⁰⁶ *Id.*, page 2A-87. See also, Record, Mangena Witness Statement, page 2-18 at para 60

⁴⁰⁷ See Transcript, Day 31, page 100, line 1.

to the door and window of the vehicle. This was in stark contradiction to the statements of the police officials, namely, Dlamuka, Mfene, Padayachee, Maharaj and Stoltz, that Mkhize fired shots in the direction of the police who, acting in self-defence, returned shots that fatally wounded Mkhize.⁴⁰⁸

[486] There is a ballistic report by Sergeant Tilakdharee (Tilakdharee), a Sergeant attached to the forensic unit of the SAPS.⁴⁰⁹ Tilakdharee stated that all cartridge cases collected from the crime scene (including the two found inside of the vehicle of the deceased), were not linked to the firearm found in the vehicle of the deceased.⁴¹⁰ According to Mangena this firearm was the 9mm pistol belonging to Lee. An impression had, allegedly, been created that the firearm found in the vehicle belonged to Mkhize. Mention should be made that Lee made no mention of the high velocity firearm that Mangena described as having been used to shoot at Mkhize from outside his vehicle.

[487] Mangena observed the residue primer that was found on the deceased's right hand as per the post-mortem report. He testified that a positive test for primer residue may arise in one of four circumstances where a person discharged a firearm, was within approximately two square metres of a firearm when it was discharged, was in close proximity to a discharged firearm or handled or came into contact with a recently discharged firearm.

⁴⁰⁸ Record, Mangena Report, page 2A-67.

⁴⁰⁹ Record, Mangena Report, pages 2A-68 to 2A-90 and Record, Mangena Witness Statement, page 2-16 at para 49.3. See also Record, Docket, page DC 000026 to DC00031; DC00032 to DC00037 and DC000087 to DC000091.

⁴¹⁰ Record, Mangena Report, pages 2A-68 to 2A-90.

- [488] Mangena's observation must be understood in light of the statements of the police concerned that were found in the case dockets.
- [489] In light of the above, there is no reason to doubt the veracity of the findings by a ballistic expert, Mangena.
- [490] The first witness who established the evidence of similar facts and a pattern of racketeering was Danikas. That evidence, even though it relates to incidents prior to 2008, save for the Berea CAS 288/05/2008, illustrates the *modus operandi* involving similar facts and a pattern of racketeering by the members of the Cato Manor Unit. From the evidence of the police officers themselves, there is no doubt that the officers themselves admitted to having killed Mkhize.

eSikhawini CAS 03/04/2010

- [491] The details of this case are harrowing. They pertaining to the killing of 16-year-old Kwazi Ndlovu (Ndlovu). He was killed with an R5 rifle on 1 April 2010, while lying on a couch. On the version of Padayachee, they were briefed by Mostert regarding escapees from Westville prison, which brought them to eSikhawini after following some leads. Padayachee gained access into the house through the kitchen door, accompanied by Nel and Ghaness. While proceeding through the kitchen, he passed a door through which he saw a television on and a male pointing a firearm in his direction.⁴¹¹ Padayachee then alerted his colleagues and

⁴¹¹ See Padayachee's Statement, Record, Docket, page EK 0036.

fired four shots at Ndlovu with his R5 rifle. Thereafter, he entered the room and saw a male lying on the couch. He was, allegedly, in possession of a firearm.⁴¹²

[492] According to the statement of Nel (corroborating Padayachee's version), he, Ghaness and Padayachee infiltrated the house shouting "Police". Padayachee then shouted "he's got a gun" whereafter Nel heard gunshots.⁴¹³

[493] The statement of Ndlovu's mother, Lindiwe Desiree Ndlovu, is harrowing. At around 03h00, she heard a loud bang from somebody kicking the door. She then heard some footsteps in the passage, followed by about four gunshots. According to her, the officers came into her bedroom and instructed her and her husband to stay in the room. After a while, her husband was instructed to leave the room and she was left alone. She went to stand at the entrance of the kitchen. From the entrance, she peeped into the lounge and saw Kwazi who, she thought, was sleeping on the couch. She had not, yet, noticed that he was dead: She said:

"6. As I was going out, I peeped through to look at the lounge as there was somebody stand on the entrance from the passage to the lounge and I saw Kwazi sleeping on the couch but I didn't notice that he was dead. One white policeman asked about [Thuli... (illegible)] I could not [hear]...(illegible)... what he was saying until one Black man said he was asking for Thuli. I asked that policeman who was Thuli and he didn't answer me and went around the home and came back and asked me if this is ...(illegible)... house, [the] nickname for my husband and I said to them yes.

⁴¹² *Id.*

⁴¹³ Affidavit by Detective Warrant Officer Eric Nel, Record, Docket, page EK0038.

7. I asked one of the policemen that was standing next to me if it was the right thing for police [to shoot] without saying a word and the response was that do I feel happy if policemen are being killed. I asked the policeman what was he talking about and he didn't answer me.
- ...
9. Then I returned to the house and I couldn't enter the lounge. Somebody was standing blocking the entrance to the lounge. I asked them to allow me to take my kids to their grandmother than to see these big weapons because they are not even hidden. The police said I must go outside and I went to another policeman and pleaded with him to take my kids out to their grandmother. The policeman told me to go and sit in my car that was parked outside and I pleaded to get my kids first and he allowed me to get my [kid.] Sgi, the small baby that was sleeping with me in the bedroom. When I tried to pick the other kid [Sgi and] the policemen grabbed the duvet ... (illegible) ... I took Sgi to the vehicle and put him inside and came to plead again to get Kwazi out and they said I must leave Kwazi they are still questioning him. I was [trying] to see Kwazi and I was violently taken outside. I drove out to my mother's house to leave Sgi and came back. When I came back from dropping Sgi I was instructed not to get into my yard...
10. I came out of my vehicle and I walked to my yard with the aim of going to fetch Kwazi but I was denied access and those were now uniformed policemen which I think were from eSikhawini. I insisted to go inside [the] room but I was being pushed and told that they are still questioning the boy. From this I saw the police putting the tapes surrounding my house and I was standing outside of the tape.
11. I tried shouting at Kwazi's name and there was no response from Kwazi and one policeman asked me how old was the boy I was calling I told the policeman that he was little but old. While I was standing the police arrived with my husband. Sbu asked me what was the tape for, now I told him (Sbu) that I don't know... (illegible). After those words from my husband I screamed and I forced my way through the tape and ran straight to the lounge window and I peeped through and I saw my son lying on the couch with the bullet wound on his arm and there was a firearm that was put next

to him. I screamed saying my child has been killed and the firearm has been placed next to him.”⁴¹⁴

[494] The medical analysis regarding his injuries revealed that he sustained multiple gunshot wounds to the left of his face, left abdomen, right forearm and a grazed wound on his left elbow not reported in his post-mortem report. According to Mangena, the wound morphology, entry characteristics and the absence of close-range indicators such as tattooing⁴¹⁵ or soot deposition, are consistent with distant discharge.

[495] Based on the examination of the crime scene photographs and ballistic evidence, Mangena made the observations described below, that—

(a) Ndlovu was struck by three projectiles, but four cartridges were recovered from the scene;

(b) four shots were fired, three of which struck Ndlovu while he was lying on the sofa and one of which missed and perforated the same sofa;⁴¹⁶

(c) all the wounds sustained by Ndlovu and the bullet damage are indicative of the fact that a high velocity ammunition was used consistent with a 5.56mm rifle;⁴¹⁷

⁴¹⁴ Record, Docket, EK0019 to EK0022 at para 4 to 12.

⁴¹⁵ During his testimony on Day 31 (Transcript, Day 31, page 104, line 2), Mangena described tattooing as *“the [presence] of unburnt and partially burnt propellant particles penetrating the skin...”* which assists in determining how far a firearm muzzle was from the body of its target. Tattooing generally indicates a close-range shot.

⁴¹⁶ Record, Mangena Reports, page 2A-109 to 2A-112.

⁴¹⁷ Record, Mangena Reports, page 2A-116 at 12.5.

(d) the wounds sustained by the deceased, the bullet trajectories and blood stain patterns confirmed that Ndlovu was shot while lying on the sofa and that the shooting did not occur during any active movement by the deceased and further that his body showed minimal post-shooting repositioning;⁴¹⁸

(d) the position of the firearm found next to the deceased, was unexplained by the wound patterns, the direction of fire and the blood stained splatter, and that the upward positioning of the left arm and placement of the firearm were not readily reconcilable with the ballistic reconstruction.

[496] The ballistic expert findings above, simply disproved the police version.

eSikhawini CAS 50/09/2011

[497] The deceased in this matter was Qinisani Philangenkosi Gwala (Gwala). Gwala was found deceased in his house with gunshot wounds to the hand and head. Six Cato Manor Unit members were implicated, including Mostert, Makhanya and Martens. According to Marten's affidavit, he met other Cato Manor Unit members and left to eSikhawini on the instruction that information had come to light regarding a suspect (Philani Ndlovu) from Nyoni CAS 158/08/2010. They incorrectly identified and arrested Gwala as Philani Ndlovu, using cable ties to restrain him.

[498] Confirming from Gwala's ID that he was, in fact, not Philani Ndlovu, they asked Gwala to take them to his homestead to search for weapons, which Gwala did.

⁴¹⁸ Record, Mangena Reports, page 2A-116 at 12.6 and 12.7.

Upon reaching Gwala's house, Gwala requested his cable ties be removed, which they removed, given Gwala had been co-operative and in any case was not the correct suspect.

[499] While searching Gwala's house, Gwala suddenly lunged forward and pulled a firearm out from somewhere next to a bed. Fearing for his life, Marten shot at him.⁴¹⁹ Mostert's affidavit supports Marten's version, going further to state that upon his entering the room, he found Gwala (whom Mostert alleges he thought was still their suspect) bleeding on the floor, with a revolver lying in close proximity.⁴²⁰

[500] The post-mortem report, forming part of the case docket, recorded multiple gunshot wounds to the head, chest and left hand of the deceased.⁴²¹

[501] Mangena examined the case docket, attended the crime scene and obtained aerial photographs to analyse the spatial relationships between the deceased, projectile impact points and the surrounding structures. His findings, following the crime scene analysis and reconstruction, were that—

(a) regarding the headshot, this was most probably caused by a 9mm handgun as the exhibits collected from the scene and the statement of Warrant Officer Smit indicated that only one 9mm shot was fired to the head. Based on the trajectory of the bullet, he concluded that the

⁴¹⁹ Affidavit by J Marten, Record, Docket, pages ES0052 to ES0053.

⁴²⁰ Affidavit by Mostert, Docket, pages ES0054 to ES0055.

⁴²¹ Affidavit on Medico-legal report postmortem examination by Dr SJ Ntsele, Docket, pages ES0028 to ES0034.

deceased was likely seated or in a kneeling position when he was shot. Importantly, the shooter was probably standing in front of the deceased and that after being shot, the deceased fell backwards into the position he was found.⁴²²

- (b) in respect of the chest wound, the shot struck the deceased in the chest which wound shows the characteristics of a high velocity firearm, most likely a 5.56mm rifle,⁴²³ and that bullet struck a rib, fragmented and caused extensive damage to the heart;
- (c) the hand wound was caused by the same high velocity bullet that entered the chest⁴²⁴ and concluded that the position of the hand suggested that it was raised, most likely consistent with a defensive posture;⁴²⁵
- (d) the deceased was shot with two different firearms, one 9mm handgun and one 5.56mm rifle. The 9mm shot to the head was likely the first shot that immediately incapacitated the deceased. The rifle shot to the chest was separate and caused catastrophic internal damage; and
- (e) the positioning of the wounds and bullet marks in the room indicates that the deceased was likely seated when shot in the head. The shooter

⁴²² Record, Mangena Reports, page 2A-134 at para 13.5.

⁴²³ Record, Mangena Reports, page 2A-132 at para 13.1.2.

⁴²⁴ *Id.* at 13.1.3.

⁴²⁵ Record, Mangena Witness Statement, page 2-32 at paras 112 and 113.

was standing in front of him and the head shot bullet ricocheted after passing through.

- [502] Similarly, the evidence of Mangena with regard to his examination in relation to the *eSikhawini CAS 50/09/2011* remained uncontested. It should stand until tested in a court of law.

Melmoth CAS 142/11/2008

- [503] This case involves 11 officers from the Cato Manner Unit, including Padayachee, Mostert and Nel. The deceased, Bongani Biyela (Biyela Snr) and his nephew, Khanyisani Biyela (Biyela Jnr)⁴²⁶ were killed at their homestead. Biyela Snr had been accused in another matter at the Durban Magistrate Court, which he failed to appear in. Acting on a warrant, the officers traced him at his homestead.⁴²⁷ Biyela Snr was shot naked outside a rondavel. According to Nel,⁴²⁸ he heard shouting followed by gunshots. He noticed Biyela Snr approaching him amidst the shouting and fired two shots at him, using his 9mm pistol. Investigating further, he noticed a black 9mm pistol lying near Biyela Snr. In respect of Biyela Jnr, MacInnes stated that while moving through the rondavels, he heard gunfire and took cover. Spotting the alleged direction of the gunfire, he advanced into the rondavel and noticed a man shooting out of the window. He fired 3 rounds at the suspect with his R5 rifle.⁴²⁹

⁴²⁶ Transcript Day 31, page 190, lines 16 and 17.

⁴²⁷ Record, Maema Witness Statement, page 1 to 49 at para 176.

⁴²⁸ Affidavit of Olivier, Record, Docket, page MM0038 to MM0039 at para 4.

⁴²⁹ Affidavit of MacInnes. See Record, Docket, page MM0032.

[504] Mangena received dockets together with its contents in relation to Biyela Snr and Biyela Jnr.

*Biyela Snr*⁴³⁰

[505] In relation to Biyela Snr, the medical analysis of the post-mortem report⁴³¹ provided that Biyela Snr sustained wounds on the right side of the head, at the top of the head, an entrance wound on the left side just above the hip (the wound appears atypical in that it lacks a clear abrasion ring and could be mistaken for an exit wound or incised injury). The wound is marked, B1W3, in photograph 5, and exits at the upper arm next to the shoulder.⁴³²

[506] In relation to the head wound, upon reconstruction, Mangena found that the wound characteristics were that the bullet entered the right side of the face, exited at the top of the scar and that the trajectory of the bullet was upward and further that the shooter was positioned at a lower level than the deceased and the deceased was in an upright position at the time the shot was fired.⁴³³

[507] In relation to the abdominal or arm wound, Mangena determined that the shot entered at the left lower abdomen, travelled left to right exited at the right upper arm and, further, that based on the soil particles found on the deceased's face and the bullet impact in the soil adjacent to the body, the deceased was lying on the ground when this shot was fired. Mangena said that the bullet struck the

⁴³⁰ Record, Witness Statement of Mangena, page 2A-185.

⁴³¹ by Dr Vikesh Pooran Kalapadeo. See Record, Docket, page MM0074.

⁴³² Record, Mangena Reports, page 2A-187.

⁴³³ Transcript Day 31, page 193. See also Record, Mangena Reports, page 2A-201 at para 15.1.

ground after perforating his body and the soil particles were projected onto the face of the deceased.

[508] In light of the above, Mangena said that the calibre used was most probably consistent with a 5.56mm ammunition rifle (rifle calibre) having regard to the wound characteristics.⁴³⁴

[509] Mangena determined that Biyela Snr was shot twice, the first shot was fired while he was standing and he, likely, collapsed immediately. The second shot was fired while he was lying on the ground. As was illustrated through the photographs and the pointing by Mangena during the hearings, the ballistic evidence supports the shooter having been positioned lower than the deceased during both shots.⁴³⁵

[510] This evidence was not contested.

*Biyela Jnr*⁴³⁶

[511] As regards Biyela Jnr and based on the post-mortem report⁴³⁷ that was contained in the case docket, the doctor described the wounds sustained as an entrance wound on the left side of the chest, and exist wound on the neck, an entrance wound on the left side of the chest, and an exit wound on the right side of the

⁴³⁴ Record, Mangena Reports, page 2A-202 at para 15.2.

⁴³⁵ *Id.*

⁴³⁶ Record, Mangena Reports, page 2A-186.

⁴³⁷ by Dr Vikesh Pooran Kalapadeo. See Record, Docket, pages MM0055 to MM0058.

shoulder. Biyela Jnr sustained two gunshot wounds with corresponding entry and exit points consistent with handgun ammunition rather than rifle fire.⁴³⁸

[512] Mangena's crime scene analysis and reconstruction led him to determine that the wound on the right shoulder was consistent with a short exit wound which is produced when the skin is supported by a firm surface at the time the projectile exits. This indicates that Biyela Jnr was lying on the floor when that shot was fired and that the shooter was most probably standing, inside the room, in close proximity to the deceased.

[513] Mangena determined that the two additional shots were fired into the floor based on the holes that appeared therein. He observed that these bullets ricocheted upon impact, fragmented and caused secondary fragment damage to the wall. In his opinion, these were fired when the deceased was lying on the floor and sand and debris landed on the deceased's arm and on top of the existing blood. These shots could have been fired either from the inside of the room or through the open window.⁴³⁹

[514] In relation to the blood stain pattern analysis, Mangena described and identified five distinct blood stain patterns:

- (a) *Drip trail*: individual drops of blood indicating movement. This indicates that Biyela Jnr moved after sustaining the initial wounds;

⁴³⁸ Record, Mangena Reports, page 2A-205 at para 15.4.

⁴³⁹ Record, Mangena Reports, page 2A-206 at para 15.5.

- (b) *Swipe*: transfer of blood to a surface during lateral motion. This indicates contact between the deceased and the wall while bleeding.
- (c) *Pool*: accumulation of blood in one location. This indicates that Biyela Jnr remained stationary for a sufficient period for blood to gather;
- (d) *Wipe*: movement through pre-existing blood. This indicates subsequent movement through pooled blood.
- (e) *Flow*: gravity-driven blood movement without interruption. This indicates no further significant movement after the final injury.⁴⁴⁰

[515] Based on the blood stain analysis explained above, Mangena's reconstruction sequence for Biyela Jnr suggests that Biyela Jnr sustained the first set of chest wounds. He began bleeding and moved, creating a drip trail. His body came into contact with the wall, creating a swipe. Blood pooled near the wall indicating that he remained there for a period of time. Biyela Jnr subsequently rolled or was moved, creating a wipe pattern. The second set of wounds were inflicted while he was lying on the floor.⁴⁴¹

[516] The shoring, produced when the skin is supported by a firm surface at the time when the projectile exits, confirms that Biyela Jnr's body was supported against the floor at the time. The final injury resulted in a flow pattern indicating no further movement.

⁴⁴⁰ Record, Mangena Reports, page 2A-207 at 15.6

⁴⁴¹ Record, Mangena Reports, page 2A-208 at 15.7.

- [517] In relation to the firearm that was found next to Biyela Jnr, Mangena observed that Biyela Jnr moved extensively while bleeding, but the condition of the firearm did not have the expected blood transfer. If the deceased had handled the firearm while bleeding, blood smearing on the grip would reasonably be expected, but no such smearing was visible.⁴⁴²
- [518] Further, one would expect blood pooling beneath or around the firearm, but no such pooling was visible. The absence of such transfer patterns raised forensic concern.⁴⁴³ In conclusion, Mangena concluded that the possibility that the firearm was placed at the scene after the incident could not be excluded.
- [519] The expert examination and findings above, remained uncontested at the Enquiry. Mangena's evidence therefore stands until tested in a court of law.

Phoenix CAS 377/08/2009

- [520] The victim, Lindokuhle Phillip Nzuza (Nzuza) was wanted in relation to several armed robberies of which he was a suspect. According to Lockem, while patrolling with Mostert and Naidoo, they received information on Nzuza. The information detailed that Nzuza was driving around in a white Honda. He was spotted and pursued using blue lights, but Nzuza did not stop. When Lockem had caught up to the vehicle, Nzuza produced a firearm while still driving. Mostert and Naidoo engaged in gunfire, wounding Nzuza and bringing his vehicle to a

⁴⁴² *Id* at 15.8

⁴⁴³ *Id.*

halt.⁴⁴⁴ Naidoo corroborates this, confirming that he was using an R5 rifle and indicates that a revolver was found next to Nzuza. Mostert then called an ambulance before handing the scene over to Lockem.⁴⁴⁵ In his witness statement, Maema contended that the firearm was actually placed next to Nzuza's body.⁴⁴⁶

[521] In terms of the medical report, the deceased sustained multiple gunshot wounds from at least two different calibre firearms, a head wound, an occipital wound, a cheek to neck wound, a chest and back wound, a right forearm wound and a lefthand wound.⁴⁴⁷

[522] Mangena noted the crime scene photographs which included the position of the deceased and police vehicles, the position of fired cartridge cases, shattered glass between vehicles, position of the deceased inside the vehicle and position of a firearm inside the deceased's vehicle.

[523] The deceased was shot at least four times⁴⁴⁸ with a low velocity projectile (likely being of a 9mm calibre) and a high velocity projectile, likely that of a 5.56mm calibre.⁴⁴⁹ Mangena was of the opinion that the right cheek wound was likely inflicted first, whereafter the deceased likely became unconscious and fell

⁴⁴⁴ Affidavit of Lockem. See Record, Docket pages PX0008 to PX0009 at para 5.

⁴⁴⁵ Affidavit of Naidoo. See Record, Docket page PX0010 at 4.

⁴⁴⁶ Record, Maema Witness Statement, page 1-55.

⁴⁴⁷ Affidavit of Theresan Naidoo in terms of section 212(4) medico-legal examination. See Record, Docket, page PX0053.

⁴⁴⁸ Record, Mangena Reports, page 2A-223 at 9.2.

⁴⁴⁹ *Id* at 9.4.

backwards on to the seat. Subsequent head wounds were inflicted while he was lying backward with his head resting towards the left side of the head rest.⁴⁵⁰

[524] Mangena observed that—

- (a) based on the shattered glass particles at the crime scene, the shooting likely occurred at a fixed position and the deceased's vehicle did not travel more than approximately three meters after being shot;⁴⁵¹
- (b) given the short distance between the vehicles and the allegation that the deceased fired shots towards the police, one would have reasonably expected some bullet damage to the police vehicle, but such damage could not be seen on the police vehicles; and
- (c) the cartridges that the police reportedly fired – three shots from an R5 rifle by Naidoo and four shots with a 9mm pistol from Mostert – were not found at the scene.⁴⁵²

[525] Mangena concluded that the deceased sustained low velocity (handgun) and high velocity (rifle) wounds. The first shot likely rendered him incapacitated and subsequent shots were inflicted while he was reclined backwards.⁴⁵³

Berea CAS 288/05/2005

⁴⁵⁰ *Id* at 9.5.

⁴⁵¹ Record, Mangena Reports, page 2A-223 at 9.2.

⁴⁵² Record, Mangena Reports, page 2A-224 at 9.11.

⁴⁵³ Record, Mangena Witness Statement, page 2-48 at para 170.

[526] The deceased in this matter was Thabo Sunshine Msimango, who was found on the ground of his parking lot on 24 May 2008 with his body riddled with bullets. In his statement, Mostert himself, Eva and Naidoo departed to Avondale Road after receiving information on a suspect of an armed robbery, Msimango. They entered the building, accompanied by Nel. Upon entering the apartment on the third floor, Mostert was confronted by Msimango brandishing a pistol in his direction. This caused him to shoot at Msimango, who ran to and dove through the balcony window.⁴⁵⁴ Maharaj alleges in his affidavit that himself and Inspector Makhanya had not accompanied the others upstairs, but after a few minutes, heard gunfire and noticed a man falling to the ground with a firearm in his hand. Maharaj then instinctively fired two shots at the man before approaching to kick the gun away. Eva then took over the scene.⁴⁵⁵

[527] The post-mortem analysis and findings determined that the deceased sustained multiple wounds to the head, torso, shoulder and left arm involving the skull, right kidney, liver, heart and the right lung. Shrapnel injuries were also noted to the right flank shoulder consistent with bullet fragmentation.⁴⁵⁶

[528] The police officers further indicated that Mostert then fired an additional shot towards the suspects before descending to the ground floor where he (Mostert) found the deceased in close proximity to a firearm. The police outside stated that the deceased moved while he was on the ground. They further stated that he

⁴⁵⁴ Affidavit of Mostert. See Record, Docket page BR0073 at para 3.

⁴⁵⁵ Affidavit of Maharaj. See Record, Docket page BR0077 to BR0078 at para 4.

⁴⁵⁶ Record, Mangena Reports, page 2A-7 at para 8.

was in possession of a firearm, whereafter further shots were fired at him.⁴⁵⁷ This is the incident Danikas mentioned in his statement and testimony.

[529] Based on the reconstruction analysis, and contradictory to the version of Mostert and other police at the scene, Mangena concluded that at least two shots were fired inside the flat from different positions and the deceased sustained injuries and was bleeding before going over the balcony. After falling, further shots were fired. Certain wounds clearly indicate that the deceased was on the ground when the wounds were inflicted and the evidence on the scene demonstrates shots fired from both elevated and ground level.⁴⁵⁸

[530] The expert findings that contradict the statement of the police remain unchallenged and should, therefore, stand until tested in a court of law.

KwaDukuza CAS 39/09/2008

[531] In this case, Mostert, Eva, Makhanya, Naidoo and Auerbach are suspected in the killing of Mr Lindelani Buthelezi (Buthelezi). On the version of Thandeka Sokhulu (Sokhulu) who was with him, a group of men entered their bedroom while they were sleeping, at which point Buthelezi raised his hands. The men then ushered him out of the bedroom and placed a blanket over her. Shortly thereafter, she heard gunshots, before being assaulted.⁴⁵⁹ Sokhulu further stated that Buthelezi did not have a weapon on him.⁴⁶⁰ On Naidoo's version, Buthelezi ran out of the

⁴⁵⁷ Record, Mangena Witness Statement pages 2-50 to 2-51 at para 177.

⁴⁵⁸ Record, Mangena Reports, page 2A-19 at 12.3.

⁴⁵⁹ Affidavit of T Sokhulu, Record, Docket, page KD0008 at 3 to 4.

⁴⁶⁰ *Id*, page KD0009 at para 5.

bedroom into an adjacent room pursued by Naidoo and Mostert. Entering the room, they saw Buthelezi extracting a pistol from a suitcase and point it at them, at which point Mostert opened fire and wounded Buthelezi.

[532] The cause of death as described in the post-mortem report was gunshot wounds to the head, a gunshot wound entering the left cheek and exiting on the right side of the head, a grazing wound at the back of the head and a separate wound at the back of the head where a damaged bullet was recovered.⁴⁶¹ The deceased sustained three separate gunshot wounds to the body and three corresponding exit wounds to the back.

[533] Mangena observed that the deceased was shot while in two positions. The first position was while he was standing upright and the second position while lying on the floor. Further shots were fired while he was lying on the floor. At least, one bullet ricocheted off the floor and struck his head. Mangena testified further the placement of the firearm under his head is questionable and not easily explainable by the wound patterns.

[534] Therefore, based on his forensic reconstruction analysis, he concluded that the deceased was first shot while standing and fell down.⁴⁶²

[535] The expert findings above remain unrefuted and should stand until tested in a court of law.

⁴⁶¹ Record, Mangena Reports, page 2A-156 at para 6. See also Report on medico-legal postmortem by MA Deyssel, Record, Docket, page KD0031.

⁴⁶² Transcript Day 32, Page 91, Line 17.

KwaMashu CAS 314/11/2008

[536] The deceased in this case was Mr Nhlanhla Masondo (Masondo). Masondo was killed in his bedroom, found lying on his on his bed with a gunshot wound to his back. According to Maema, Cato Manor Unit members Nel, Eva and MacInnes were accused of the killing.⁴⁶³

[537] MacInnes' version is that while on duty with Eva and Nel, they received information on Masondo who was suspected of involvement in various offences, including the use of explosives and murder. Upon arriving at Masondo's residence, MacInnes announced his SAPS identification and Masondo allowed them into the house.

[538] While inspecting Masondo's bedroom, Nel shouted that Masondo had a gun, which MacInnes saw pointed at Nel when he turned to them, prompting him to fire four rounds at Masondo with his 9mm Beretta pistol.⁴⁶⁴ Upon further inspection, MacInnes noticed a revolver lying on the bed next to Masondo's body, which Eva came to remove and placed on a nearby chair, for safety.

[539] The version of Masondo's mother that, sadly, describes what she witnessed bears repeating. Unquestionably, it contrasts the version of the police officials. It is this:

“The police officers started making noise talking very loud in English and Afrikaans and I heard several gunshots but Nhlanhla was quiet all this time. After those

⁴⁶³ Record, Maema Witness Statement, page 1-77 at para 315.

⁴⁶⁴ Affidavit of MacInnes. See Record, Docket, page KM0016.

many gunshots another two gunshots were fired and those were two last gunshots fired in my house. I wanted to get inside my son's room but the police constantly denied me access. The police had already opened the sliding door at Nhlanhla's room the one that you can gain entry from outside. The police were in and out Nhlanhla's bedroom using that sliding door."⁴⁶⁵

- [540] According to the post-mortem report contained in the docket, the cause of death is described as multiple gunshot wounds to the left arm, chest and back, abdomen, lower body and genital area.⁴⁶⁶
- [541] The crime scene analysis and reconstruction by Mangena established that some bullets travelled upwards through the body from left to right while some travelled backwards and upwards.⁴⁶⁷ At least one travelled backwards and downwards from the right to the left. One bullet was recovered from beneath the skin in the back area and was described as a 9mm full metal jacket bullet.
- [542] Mangena testified that the variation in bullet direction is significant because when a bullet travels upwards through a body, it usually means that a shooter was positioned lower than the body. When a bullet travels downwards through the body, the opposite is usually true (i.e. that the shooter was positioned higher than the body). He testified that this is due to the fact that there are those upward and downward trajectories indicating that the deceased was not in a fixed position during the entire shooting.

⁴⁶⁵ Jabulisiwe Gladys Masondo - Masondo's mother's statement. See Record, Docket page KM0008 at para 4.

⁴⁶⁶ Report on medico-legal postmortem examination by Threnesan Naidoo. See Record, Docket, page KM0076

⁴⁶⁷ Record, Mangena Reports, page 2A-178 at para 9.1.

- [543] Mangena opined that the wounds 1a (Left arm),⁴⁶⁸ 2a (chest and shoulder wounds),⁴⁶⁹ 3a (flank and back wounds),⁴⁷⁰ and 5a (lower abdominal wounds),⁴⁷¹ were shot while the deceased was likely lying on the bed.⁴⁷² The shooter's position, based on the trajectory analysis, would have been in front of him, near the chair as indicated in the reconstruction photograph.⁴⁷³
- [544] The other wounds show that the deceased was likely standing or sitting upright on the bed because there are no clear visible bullet holes in the walls or bed responding to some of the internal trajectories. Nonetheless, the possibility that the bullets passed into or through the bed cannot be excluded.
- [545] Challenging the police version, Mangena concluded that the reconstruction does not support the suggestion that the deceased was shot while actively reaching under the pillow. His specialised findings remain unchallenged, meaning that his evidence stands until tested in a court of law.

Rustenburg CAS 1098/09/2009

- [546] The deceased in this case was Mr Sifiso Ndimande (Ndimande) whom the Cato Manor Unit suspected of being involved in the iNkosi Zondi murder.⁴⁷⁴ Padayachee, Mostert and Eva are listed in the indictment as having been involved in the shooting of Ndimande. In his witness statement, Padayachee's

⁴⁶⁸ Record, Mangena Reports, page 2A-178.

⁴⁶⁹ Record, Mangena Reports, page 2A-175.

⁴⁷⁰ Record, Mangena Reports, page 2A-178.

⁴⁷¹ Record, Mangena Reports, page 2A-176.

⁴⁷² Record, Mangena Reports, page 2A-179 at 9.2.

⁴⁷³ *Id.*

⁴⁷⁴ Maema Witness Statement, page 1-44 at para 160.

explained that information was received regarding Ndimande. Padayachee and Mostert travelled to Rustenburg. In Rustenburg, the informer led them to the house in which Ndimande was hiding. Padayachee kicked the door open after shouting “police”. Ndimande then fired two shots from the couch. Padayachee then fired three shots back from his R5 rifle before Ndimande fell.⁴⁷⁵ Mostert indicated that he also fired shots at the couch with his 9mm pistol and that after Ndimande had fallen and tried reaching for his firearm, Mostert kicked it away.⁴⁷⁶

[547] Mangena received the docket and its contents and attended to the scene of the incident. He noticed three possible bullet holes on the walls inside the room.

[548] The postmortem report found that the deceased sustained multiple gunshot wounds to the orbital region, head, neck, bicep and back which wound patterns show that one bullet passed through the head and neck and the same bullet re-entered the body at the shoulder and exited through the arm while another bullet caused angled entry wounds and travelled downwards.

[549] Mangena’s crime scene analysis and reconstruction determined that the downward trajectories through the orbital region and head made it improbable that the deceased was standing upright or lying flat when these shots were fired. He further opined that the most probable position is that the deceased was kneeling in front of a shooter and that the skull fracture could have resulted from impact upon collapse.⁴⁷⁷

⁴⁷⁵ Affidavit of Padayachee. See Record, Docket, pages RB0011to RB0012.

⁴⁷⁶ Affidavit of Mostert. See Record, Docket, page RB0014.

⁴⁷⁷ Record, Mangena Reports, page 2A-287 at 1.5.

[550] Mangena also found the laceration patterns that indicate that (a) the deceased was initially lying faced down and he was subsequently moved; and (b) the muzzle imprint of the firearm⁴⁷⁸ indicates a high probability that the firearm pressed against his head, resulting in a gunshot wound in the orbital region and further that this was an in-contact shot.⁴⁷⁹ He found that the shots to the chest-wound was most likely subsequent to the shots to the head.

[551] Similarly, Mangena's expert findings were not refuted at the hearing, meaning, therefore, that his testimony stands until tested in a court of law.

Estcourt CAS 34/08/2008

[552] The deceased, Mr Muzi Majola (Majola), was shot twice in the bathroom of the Midway Caltex petrol station.⁴⁸⁰ The police were on the hunt for Majola, who was alleged to have escaped from Westville prison. According to Mr Mpendulo Mngomezulu (Mngomezulu) who was with Majola when he was killed, they were arrested by the police in Glencoe and stopped at the petrol station where they asked to use the bathroom. After Majola was escorted to the bathroom, Mngomezulu then heard gunshots.⁴⁸¹ Naidoo's version is that he and Nel escorted Majola to the bathroom. He then uncuffed Majola who punched him and grabbed his gun. Naidoo screamed for help, after which he heard gunshots.⁴⁸²

⁴⁷⁸ Record, Mangena Reports, Photo 15 (see page 2A-286) and Photo 16 : (see page 2A-288).

⁴⁷⁹ Transcript, Day 32, page 134, line 16.

⁴⁸⁰ Record, Maema Witness Statement, page 1-75 at para 304.

⁴⁸¹ Affidavit of Mngomezulu. See Record, Docket, page EC0011.

⁴⁸² Affidavit of Naidoo. See Record, Docket, page EC0015.

- [553] The post-mortem analysis showed entrance gunshot wound on the face of the deceased together with a surrounding of a blackening and multiple tattooing measuring 70cm x 60cm which is consistent with a close-range gunshot wound.⁴⁸³
- [554] The second wound is a gunshot wound on the left side of the chest which was surrounded by a rim of abrasion which is consistent with a close-range entrance gunshot wound. Wound 4,⁴⁸⁴ on the lumbar back, was consistent with an exit gunshot wound and wound 5,⁴⁸⁵ on the left shoulder region, was consistent with a gunshot wound related to the entrance wound in front.
- [555] Mangena testified that his crime scene analysis and reconstruction established blood drips on the floor which pattern is consistent with what is known as a “*drip pattern*” which results when blood drips from a bleeding wound while a person is upright or moving. The distribution and nature of these drips are consistent with bleeding from the facial wound.
- [556] There were no corresponding exit wounds noted on the mouth for the facial shot.
- [557] Mangena opined that if the shot had been to the chest, the T-shirt worn by the deceased would likely have absorbed a significant amount of blood. The resulting blood flow would not have produced the drip pattern visible in the photographs.

⁴⁸³ Transcript, Day 32, page 158, line 3.

⁴⁸⁴ Record, Mangena's Report, page 2A-98.

⁴⁸⁵ *Id.*

- [558] Mangena further opined that it is probable that the shot to the face was inflicted before the shots to the chest. Most likely, the chest wounds were subsequent to the facial wound.
- [559] He concluded that the wound to the face was inflicted at a very close range. The drip pattern indicates that the deceased was bleeding while upright or moving.⁴⁸⁶
- [560] So far, the unchallenged, substantially objective forensic evidence of Mangena shows that the police have a case to answer. The evidence stands until it is tested in a court of law.

Ms Sharmilla Henrietta Williams

- [561] Ms Sharmilla Henrietta Williams (Williams) was called by Chauke to give in relation to her own investigation of certain case dockets involving Cato Manor Unit members. Her evidence at the Enquiry extended to both her involvement at some scenes and her further investigations into the Unit's overall involvement.
- [562] Williams joined the SAPS in 1991 and rose through the ranks until 1996 when she joined the SAPS Violence, Child Protection and Sexual Offences Unit. She took a break in 1999 after a near death incident while on duty and returned in 2006 and joined the Independent Complaints Directorate (ICD) known, today, as the IPID.

⁴⁸⁶ Record, Mangena Reports, page 2A-99 at para 8.

[563] Williams' duties in IPID as a senior investigator included conducting investigations into criminal cases involving members of the SAPS and Metro Police which would entail conducting interviews, collecting and preserving evidence and liaising with technical experts including forensic pathologists and ballistic experts. She further testified that she would compile investigation reports for IPID management and managed multiple high priority cases, simultaneously, while attending court proceedings and internal departmental hearings to ensure that compliance with investigative protocols and documentation standards were met.⁴⁸⁷

[564] Williams testified that she investigated a number of killings which formed the basis of the Cato Manor Unit prosecutions. In particular, she investigated the killings of KTA members in the course of the Cato Manor Unit's purported investigation into the killing of Superintendent Chonco and iNkosi Zondi.⁴⁸⁸ In some investigations Williams was the lead investigator while in others she was assigned to conduct the investigation being led by a colleague from ICD.

[565] Williams was the lead investigator in the killing of Bongani Mkhize in Durban Central CAS 185/02/2009. She took the initiative to have the ICD investigations reopened in KwaDukuza CAS 39/09/2008 and Howick CAS 106/09/2008 and was, therefore, a lead investigator in these three of the 23 dockets referred to in this Report. Williams attended the crime scenes of other killings, for example,

⁴⁸⁷ Record, Williams Witness Statement, page 3-3 at para 11.

⁴⁸⁸ Record, Williams Witness Statement, page 3-5 at para 17.

the Mandini CAS 76/09/2009 and the Umkomaas CAS 235/10/2008⁴⁸⁹ forming part of the 23 dockets. In many instances, she was the lead investigator.⁴⁹⁰ She further testified that she was not a member of the DPCI task team nor was she consulted when it commenced in what would be a third round of investigation for some of the dockets.⁴⁹¹

[566] Williams testified that she cannot comment and is not familiar with the investigation that was conducted by the task team in 2012. However, she confirmed that the evidence she gathered was sufficient for a successful prosecution against the implicated members of the Cato Manor Unit.⁴⁹²

[567] Williams bemoaned the serious structural defects in the ICD which rendered the organisation toothless. She testified that, whilst notionally the ICD was independent, it reported directly to SAPS Commanders about its investigations while it was investigating the same SAPS members.⁴⁹³ Williams further testified that ICD's independence was not secured in the manner that it is operated. This was because there were no mechanisms available to enforce their decisions against the SAPS.

[568] Williams further testified that whilst death in police custody or resulting from police actions are not matters that should be investigated by SAPS itself, the practical reality of the manner in which ICD operated is that in many investigations, it was

⁴⁸⁹ Record, Williams Witness Statement, page 3-5 at paras 18 and 19; See also Transcript Day 35, page 6.

⁴⁹⁰ Record, Williams Witness Statement, page 3-6 at para 20.

⁴⁹¹ Record, Williams Witness Statement, page 3-6 at para 21. See also Transcript Day 35, pages 107 to 108.

⁴⁹² Record, Williams Witness Statement, page 3-7 at para 23.2. See also Transcript, Day 35, page 110.

⁴⁹³ Record, Williams Witness Statement, page 3-57 at para 34. See also Transcript, Day 35, page 113.

SAPS that did the parallel investigative work with the ICD investigators, the latter only monitoring the investigation.

[569] According to Williams, the ICD did not have true institutional independence from SAPS. In some instances, the ICD was permitted to interview the police officers involved in the shooting at the crime scene, while in others, their versions would be relayed to the ICD by the SAPS duty officer at the scene.

[570] As regards the investigation relating to the Cato Manor matter, Williams testified that many cases involving Cato Manor Unit members were investigated by the same Unit and only monitored by the ICD. It was only after the establishment of the joint task team in 2011 that the Cato Manor killings were independently investigated.⁴⁹⁴ The IPID's mandate included the investigation of deaths in police custody and deaths resulting from the police conduct as well as complaints relating to the discharge of firearms by police officers.

[571] Although the IPID investigators were vested with full investigative powers – similar to those exercised by police investigators under the CPA, where they are able to secure crime scenes, obtain statements, seize exhibits, attend post-mortems and effect arrests – the IPID however functioned in much the same manner as the ICD did where it relied on the investigation by the SAPS and at other stages they would be denied immediate access to the crime scene.⁴⁹⁵

⁴⁹⁴ Record, Williams Witness Statement, page 3-11 at para 40; Transcript Day 35, page 114.

⁴⁹⁵ Record, Williams Witness Statement, page 3-12 at paras 42 to 46. See also Transcript, Day 35, page 135.

Williams further indicated that the SAPS members would, in those instances, close rank and not talk about what happened in a crime scene.

Investigations led by Williams

[572] Williams was the lead investigator in the *Berea CAS 288/05/2008* where the deceased was Mr Thabo Sunshine Msimango. She worked with another ICD investigator, Ms Witness Anele Mpanza.

[573] The deceased was shot and killed on 24 May 2008 by members of the Cato Manor Unit.

[574] Upon arrival at the scene Williams testified that she saw the deceased body of an adult male lying on the ground in the parking area outside a block of flats and it appeared that the deceased had been shot several times. Williams also observed a pistol on the ground about a metre away from the deceased.⁴⁹⁶

[575] The duty officer on the scene relayed what the officers involved in the incident had told him happened. From what Williams was told, it became clear that the members of the Cato Manor Unit forced their entry into Msimango's flat late at night using a crowbar. The officers then alleged that they encountered resistance from Msimango, resulting in the officers shooting Msimango who then jumped out of the window to the car.

⁴⁹⁶ Record, Williams Witness Statement, page 3-22 at para 67.

- [576] Williams indicated that this explanation is similar to what the police did with the suspect in the 2007 Malvern case that she had already mentioned above but does not form part of the 23 dockets in the indictment.
- [577] According to Williams, she did not find the police's version plausible as Msimango lay faced down on the pavement having fallen from the fourth floor. Therefore, she reckoned, Msimango could not have posed a threat to the police. That is so, because Msimango was shot twice while lying down. She referenced Mangena's report in this respect.
- [578] Williams was advised by Inspector Vishnu and an LCRC Constable, who would have been at the scene, to stay out of the verbal argument she observed taking place between Ms Mpanza and Eva. She suspected that Eva was intoxicated because his speech was slurred and his behaviour pointed to someone who was not sober. She testified that she did not know what the argument was about or how it started but it struck her as unusual and inappropriate for an ICD investigator to engage in a heated argument with a SAPS member while on duty. Williams attended the scene reconstruction two days later, after the incident.
- [579] Williams concluded that the killing of Msimango was not justified and recommended that the Cato Manor Unit members should be charged. Her supervisor, Mr Chris Vorster (Vorster), agreed and signed off on the recommendation. The ICD document was forwarded to the DPP KZN's office

together with a memorandum. Despite the recommendation and the approval, the then DPP KZN⁴⁹⁷ declined to prosecute.⁴⁹⁸

Durban Central CAS 185/02/2009

[580] Williams testified that she was the lead investigator in this case wherein the deceased, Bongani Mkhize, was fatally shot by members of the Cato Manor Unit, on 3 February 2009. The police had alleged that there was a shooting involving members of the National Intervention Unit (NIU)⁴⁹⁹ on Umgeni Road. Together with Ms Ntombi Gibson, they were assigned to investigate the matter.

[581] At the crime scene, the duty officer - Superintendent Jackie Bristow (Bristow) became hostile to members of the ICD and refused them entry into the scene. At some stage, Bristow accused the ICD investigators of being reporters notwithstanding the fact that they had been introduced to her by another SAPS member as ICD investigators.

[582] The NIU members involved in the shooting or the incidents were Mfene, Dlamuka and Sikhulume. They informed the ICD investigators that they were conducting a patrol when they received a call for backup from the Cato Manor Unit on the police radio. They assisted and when they arrived on the scene at Umgeni Road, they witnessed Bongani Mkhize shooting at members of the Cato Manor Unit.

⁴⁹⁷ In 2008, Batohi was the KZN DPP.

⁴⁹⁸ Record, Williams Witness Statement, page 3-23 and 3-24, paras 64 to 73. See also Transcript Day 35, pages 171 to 176; and Transcript Day 36, pages 4 to 8

⁴⁹⁹ The NIU is a specialised unit whose function is to support the SAPS, specifically focusing on targeted deployments to address dangerous situations that the ordinary SAPS members are not equipped to handle.

- [583] The NIU joined in pursuit of Bongani Mkhize's vehicle and at some stage led the chase. Then, the NIU cut off Bongani Mkhize's vehicle at which point they alleged that he fired at them and they returned fire. Bongani Mkhize was subdued and ultimately killed by shots fired by the NIU members.
- [584] The only Cato Manor Unit members identified in taking part in the alleged shooting were Stoltz and Lee.
- [585] Eventually the two ICD investigators were allowed access into the scene and they observed that there appeared to be no evidence that shots had been fired from inside of Bongani Mkhize's vehicle. This version confirms Mangena's findings and contradicts the NIU's version, that Bongani Mkhize shot at them.
- [586] The ICD investigators were informed by Captain Govender of the Durban Detective Branch, who was then the duty officer after Bristow had left, that he was responsible for the crime scene. He explained that members of the Cato Manor Unit had been following up on information regarding a suspect in the murders of Superintendent Chonco and iNkosi Zondi. According to Govender this led to the death of Bongani Mkhize as he was firing at the police and the police shot back.
- [587] Williams concluded that there were five shooters in the incident - three NIU members and two Cato Manor Unit members (Stoltz and Lee). Williams testified that her investigation was then interrupted by Gibson who informed her that Stoltz had removed money and documentation from the scene without completing an inventory.

- [588] Williams immediately spoke to Stoltz and requested him to hand over the envelope and money belonging to Bongani Mkhize. The money was then given to Williams for safekeeping and recording in the relevant documentation. The money and other possessions were booked at the Durban Central Police Station in the exhibits register.
- [589] After her assessment of the scene and further investigation, Williams became skeptical of the NIU members' account that they had been conducting a patrol when the Cato Manor Unit members requested back-up. In her experience the NIU did not do patrols like ordinary SAPS members would. This is so because their role is limited to, among other things, tactical operations.
- [590] It also seemed strange to Williams that the Cato Manor Unit members would call for back-up when they are in pursuit of a lone suspect. Williams asked the NIU Commanding Officer-Durban, Colonel Chetty (Chetty), several questions, but received unsatisfactory answers as Chetty became defensive and accused Williams of being on a witch-hunt and told her not to continue with her inquiries.⁵⁰⁰
- [591] Williams attended the post-mortem examination on, 6 February 2009. It was agreed, amongst the pathologists, that the probable cause of death was a gunshot wound to Bongani Mkhize's neck caused by a low velocity 9mm parabellum handgun. This contradicted the NIU and Cato Mano Unit members' version that the NIU officers shot at and killed Mkhize from a distance.

⁵⁰⁰ Record, Williams Witness Statement, page 3-30 at para 93.2.

- [592] A further scene reconstruction was performed on 9 February 2009. Williams attended. From the reconstruction of the crime-scene it was clear that there was no indication that any shots had been fired by Bongani Mkhize from inside the vehicle.
- [593] On 10 February 2009 Stoltz and Lee arrived at Williams' office and handed in their firearms as they were discharged during the alleged shootout with Bongani Mkhize. At that time, Williams was not aware of the interdictory application lodged by Mkhize against the Cato Manor Unit. She only became aware of it later,⁵⁰¹ after Bongani Mkhize had already been killed.
- [594] Upon reading the full record of proceedings on the interdict sought by Bongani Mkhize, Williams requested her manager, Mr Jerome Ngcobo (Ngcobo), and Vorster her immediate supervisors to allow her to conduct a full investigation in the death of Mkhize. This was refused by both her manager and immediate supervisor. According to Williams, although the investigation was proceeded with by the SAPS, the further investigation was fruitless.⁵⁰²

Pinetown CAS 1000/05/2009

- [595] Williams was also appointed as the lead investigator concerning the Pinetown case docket⁵⁰³. The deceased was Mr Sibongiseni Badumele Ndimande

⁵⁰¹ On 12 February 2009.

⁵⁰² Record, Williams Witness Statement, pages 3-24 to 3-33 at paras 74 to 107. See Transcript Day 36, pages 3 to 47.

⁵⁰³ See **TABLE 2** above.

(Sibongiseni Ndimande), who was, allegedly, fatally shot by members of the Cato Manor Unit.⁵⁰⁴ Williams was appointed together with Mpanza.

[596] As Williams attempted to inspect the scene, Mpanza told her that it was pointless as the scene had already been processed by her. In Mpanza's report, she did not reveal that the killing was linked to the Cato Manor Unit's investigation into the murder of iNkosi Zondi and that it was being investigated under Bhekithemba CAS 113/01/2008. In hindsight, Williams thought that she should have checked Mpanza's report as she later found that there were no details in the report.⁵⁰⁵

Williams' re-opening of ICD investigations into other KTA killings

[597] Williams re-opened investigations into the following cases:

- (a) Mandini 76/09/2008, regarding the deaths of Mzameni Johannes Ntuli (also known as Kopolota) and Nkosinathi Wilson Mthembu, both members of the KTA;
- (b) Howick CAS 106 and 107/09/2008, involving the killing of Magojela Thomson Ndimande, the Vice Chairperson of KTA and Sibusiso Thokozani Tembe (his bodyguard);
- (c) Umkomaas CAS 235/10/2008, concerning the killing of Mduduzi Mkhize, also a member of the KTA; and

⁵⁰⁴ On 23 May 2009.

⁵⁰⁵ Record, Williams Witness Statement, pages 3-33 to 3-34 at paras 108 to 112.

(d) KwaDukuza CAS 39/09/2008, where Lindelani Buthelezi, a member of the KTA was killed.

[598] In these investigations, Williams worked with Adv Steinberg (Steinberg) between 2009 and the middle of 2011. During their working relationship, which was cordial, Williams grew frustrated with the approach of Steinberg who was very reluctant to pursue a case against the Cato Manor Unit for the KTA killings. Steinberg was further unwilling to record their communications in the investigation diary.

[599] Upon being probed about his behaviour, Steinberg indicated that he worked closely with the Cato Manor Unit and even suggested that this gave rise to a conflict of interest. This was quite surprising to Williams because she had been working with Steinberg but he had never flagged his personal relationship with the Cato Manor Unit nor that it may lead to a conflict of interest. Despite the progress made by Williams in her investigation, it was terminated by Steinberg.⁵⁰⁶ Contemporaneously with the termination, Steinberg, informed Williams that he will be taking a position at the ICC.⁵⁰⁷ The investigation was, therefore, never concluded.⁵⁰⁸

[600] Williams commenced a full investigation into Bongani Mkhize's death around 2009. She concluded that the police actions had not been justified and

⁵⁰⁶ In or about August 2021.

⁵⁰⁷ At which Batohi had earlier been appointed.

⁵⁰⁸ Record, Williams Witness Statement, pages 3-34 to 3-37 at paras 113 to 124.

recommended that the implicated NIU and Cato Manor Unit members be charged with murder.⁵⁰⁹

KwaDukuza CAS 39/09/2008

[601] The deceased in this matter was Buthelezi.⁵¹⁰ The lead investigator in that case was Miss Phindile Dlamini. The matter was not referred to a full investigation by the ICD at the time.

[602] Williams opened an ICD investigation into the matter.⁵¹¹ On reviewing the ICD diary, she was struck by the premature conclusion that the police action had been justified, despite the absence of a proper investigation. She was also concerned by the rushed investigation because Ngcobo was, at the time, aware of serious allegations that the KTA killings, including the killing of Buthelezi, were connected. Despite this, he (Ngcobo) did not assign the matters to a single investigator who could examine all the KTA killings together.

[603] Williams identified a number of gaps in the investigation of the death Buthelezi, including:

- (a) The failure by the ICD investigator, Miss Dlamini, to provide the SAPS with the statement of Miss Thandeka Sokhulu (Sokhulu), Buthelezi's common law wife;

⁵⁰⁹ Record, Williams Witness Statement, pages 3-37 to 3-38 at paras 125 to 127.

⁵¹⁰ He was fatally shot on 3 September 2008.

⁵¹¹ Around January 2010.

- (b) The fact that Sokhulu was at home with Buthelezi at night on 2 September 2009, moments before the Cato Manor Unit shot and killed Buthelezi;
- (c) The ICD diary records that on 17 September 2009, Vorster instructed Dlamini to make a copy of Sokhulu's statement after it had been commissioned and make the original available to the police. Dlamini noted the instruction and that it would be complied with. There was no evidence that it was complied with;
- (d) Upon perusal of the ICD file, Williams did not provide Sokhulu's statement to the SAPS, as a result the SAPS report to the public prosecutor would not have included this vital piece of evidence;
- (e) Williams made an entry in her diary that the statement of the deceased's girlfriend was obtained and will be filed in the docket around March 2010. She further recorded that the docket needs to be resubmitted to the DPP because it was originally handed to the DPP for a decision without the witness statement;
- (f) Vorster did not acknowledge this critical failure by Dlamini and instead asked Williams to comply with the previous instructions and finalise all the investigations as soon as possible; and

(g) The case was not linked to the ICD's investigations in the other KTA matters and therefore the ICD did not alert the DPP as to the connection between these killings.⁵¹²

[604] In the remainder of the cases that were reopened, Williams also found a pattern of evidence not being included in the docket or matters not referred for a full investigation when there was a request to show that the killings by the police were not justified.⁵¹³

[605] In conclusion, Williams said that she left the IPID in August 2024 mainly because of the pressure and the frustrations she experienced during her work with IPID. She further said that "while I do not believe I was pushed out of IPID solely because of my persistence in investigating the Cato Manor killings I discussed in this statement, I have no doubt that it played a role."⁵¹⁴

[606] In cross-examination, the Lead Evidence Leader introduced a bundle containing documents linked to the death of Chonco and injuries sustained by Khanyile. The reader's attention is drawn to the fact that this case docket (Maphumulo CAS 99/08/2008) was omitted from the case dockets made available by the NPA and was never produced despite repeated requests by Chauke and the direction by the Panel to the NPA to make the docket available.

⁵¹² Record, Williams Witness Statement, pages 3-38 to 3-41 at paras 129 to 136.

⁵¹³ Record, Williams Witness Statement, pages 3-41 to 3-46 at paras 137 to 167.

⁵¹⁴ Record, Williams Witness Statement, pages 3-4 at para 15.

- [607] The admission of the bundle was opposed by Chauke, given that the Maphumulo docket had already been requested several times and had never been provided.
- [608] As far as the Enquiry was aware, the NPA could not find the docket and provided an affidavit evidencing their failed efforts to locate the docket. The Lead Evidence Leader was not willing to identify the source of the documents until pressed by the Panel. He then informed the Panel that he obtained the documents from Mostert, having been directed by Booysen.⁵¹⁵
- [609] The cross-examination by the evidence leaders did not take the matter any further as the point that was made by the Evidence Leaders was that Williams was not an expert, yet she indicated that she attended to the crime scene, reconstruction and the post-mortem. The Evidence Leaders did not have any contrary evidence to place before the Enquiry. Williams' evidence therefore stood uncontroverted.
- [610] Further, her evidence proves that the prosecution of the Cato Manor Unit was not sudden, baseless national intervention, that it was built on real investigative material, much of which was generated or identified by an independent police oversight investigator before the matter became a national scandal.

Mhlongo's evidence

- [611] Mr Siphamandla Mhlongo's (Mhlongo) evidence is crucial, not necessarily in respect of the issues raised in the ToR pertaining to Chauke. Rather, being a factual witness who personally experienced the conduct of members of the Cato

⁵¹⁵ Transcript Day 39, pages 2 to 18.

Manor Unit, his evidence is direct evidence as to what happened to certain of the victims of the Cato Manor Unit. As is the case with Williams' evidence, Mhlongo's statement and oral evidence do, searchingly, speak to the question whether there was "no evidence" justifying the racketeering charges against members of the Cato Manor Unit.

[612] Mhlongo is currently serving as the Chairperson of KTA. To give context to his testimony, it is necessary to, first, summarise his connection with the KTA and, second, deal with his encounter with the Cato Manor Unit. His father was a taxi operator in the KTA. There was a feud between the KTA and the STA,⁵¹⁶ which started⁵¹⁷ when some members broke away from KTA and formed the STA

[613] According to Mhlongo, the feud intensified⁵¹⁸ when the KTA's members were killed. He stated that this resulted in a Commission of Enquiry being established by the then Member of Executive Council (MEC) of Transport in KZN, Mr Bheki Cele, to deal with the taxi violence and feud between the two associations. Upon proper research, no such Commission was established. Mhlongo seems to confuse the arbitration that ensued at the instance of MEC Cele with a commission. The Arbitration, as has been established through research, was chaired by Adv Pammenter SC who, seemingly, made an award that both

⁵¹⁶ Also known as KwaDukuza Taxi Association.

⁵¹⁷ The feud is said to have started around 1983 or 1984.

⁵¹⁸ From around 2003.

associations should operate in the same town, Stanger. The matter ended in the High Court before Pillay J.⁵¹⁹

[614] The STA had started operating from KwaMaphumulo. The KTA then had to operate in Stanger, a nearby town. But still, the feud that sparked more violence and loss of life, allegedly by the police, deepened when the disagreements arose about taxi routes. During this time, Chonco was investigating the spate of killings within the taxi space.

[615] Mhlongo became a member of KTA and a taxi owner. During that period, several KTA members were targeted by members of the Cato Manor Unit in connection with the murders relating to the murders of iNkosi Zondi and Chonco.⁵²⁰ Mhlongo's arrest and involvement by the Cato Manor Unit should be understood within that broader context.

[616] According to Mhlongo, the Cato Manor Unit allegedly systematically targeted and killed members of the KTA after the murder of Chonco. He said that it was widely understood within the KTA that the Unit had compiled a list of KTA members suspected of killing Chonco and that those individuals were being actively pursued by the police. Between 29 August 2008 and 18 September 2008, several suspects were killed in separate incidents, allegedly by the members of the Unit.

[617] Mr. Mhlongo testified further that he knew about the incidents because he was appointed as a disciplinary committee member of the two associations. This was

⁵¹⁹ See in this regard *KwaDukuza/Stanger Taxi Owners Association v Maphumulo Taxi Owners Association and Others* (AR240/2020) [2022] ZAKZPHC 10 (28 January 2022).

⁵²⁰ On 27 August 2008 *en route* to court.

during the time when the two associations were trying to forge peace between themselves.

[618] Giving a proper context of the events leading to his arrest, Mhlongo testified that on 25 August 2008, Mr Makhosobo Swayo Mkhize (Swayo Mkhize) and Mr Gedwane Mhlongo (Gedwane Mhlongo) attended court in Pietermaritzburg for a matter in which they were already on bail. While attending those proceedings, they were arrested by Constable Ndlovu of the Taxi Violence Task Unit in connection with the murder of a person who had been killed on 9 August 2008 in KwaDukuza. As a result, they were taken into custody and detained at Kranskop Police Station until 27 August 2008.

[619] On 27 August 2008, Constable Ndlovu transported Swayo Mkhize and Gedwane Mhlongo to the KwaDukuza Court to await the arrival of the docket so that the legal representatives could consider it in preparation for a bail application.

[620] On that same day, they were informed that Chonco had been murdered while enroute to deliver the docket to court. The bail application (of Swayo Mkhize and Gedwane Mhlongo) was postponed to 3 September 2008. They were remanded in custody.

[621] According to Mhlongo, there was, at that time, a culture of abuse and torture of KTA members in police custody. This resulted in KTA appointing Hlapane Attorneys to represent Swayo Mkhize and Gedwane Mhlongo and apply to court that both should be detained at Westville prison rather than the Cato Manor police cells to protect them from abuse and torture by members of the Unit. The

magistrate issued a detention warrant designating Westville prison as their place of detention.

[622] However, despite the warrant, Swayo Mkhize and Gedwane Mhlongo were taken to the Cato Manor police station and detained there. Upon enquiries by Hlapane Attorneys, it was discovered that the detention warrants were altered, by deletion of Westville prison and substitution with Cato Manor police station. It was further discovered that the two were taken by Detective Inspector Panday of the Cato Manor Unit to the Cato Manor police cells⁵²¹.

[623] Mhlongo testified that immediately after the murder of Chonco, six black males were killed between 29 August and 18 September 2008, under the guise of resolving the murder of Chonco.⁵²²

[624] On 28 August 2008, at approximately 08h00, the attorneys visited Swayo Mkhize and Gedwane Mhlongo at Cato Manor police station. The two had reported to their attorneys that they had been assaulted and tortured during interrogation and were denied access to legal representation. They appeared in court on 29 August 2008 where Maharaj opposed their bail application, but it was ultimately granted on the basis that the State's case was extremely weak.⁵²³

Intervention by Hlapane Attorneys

⁵²¹ Record, Mhlongo Witness Statement, page 5-4 at paras 18 to 19.

⁵²² *Id*, page 5-4 at paras 18 and 19 and page 5-5 at paras 25 and 26. See also Transcript, Day 42, pages 26 and 27.

⁵²³ *Id*, page 5-4 to 5-5 at paras 27 to 30 and para 32. See also Transcript, Day 42, pages 19, 20 and 22 to 25.

[625] Hlapane Attorneys addressed a letter to the Provincial Commissioner of KZN, MH Ngidi (Ngidi)⁵²⁴ complaining about the way the members of KTA were being treated by the Cato Manor Unit. In particular, the attorneys requested that should the need arise, members of the KTA will avail themselves for questioning and that they (Hlapane Attorneys) should be informed so that they could bring those members to the police station. This letter has been read many times into the record and need not be repeated here.⁵²⁵

[626] Ngidi responded.⁵²⁶ He said that the complaints have no merit and asked for actual evidence regarding the tortured and killed members of the KTA. Ngidi questioned why details of the taxi association members concerned were not given⁵²⁷ and went to the extent of threatening Hlapane Attorneys with referring them to the KZN Law Society for investigation.⁵²⁸

[627] In the meantime, there was a media release with a heading to the effect that the suspects in the murder of Chonco had been apprehended. This was after the killing of Magojela Ndimande and Tembe. Hlapane Attorneys denied the allegations contained in the press release by Senior Superintendent Henry

⁵²⁴ Dated 25 September 2008. The letter is attached to Mhlongo's Witness Statement as SM1 at page 5A-1.

⁵²⁵ For example, Transcript, Day 42, pages 28 and 33.

⁵²⁶ In a letter dated 11 September 2008. The response is attached to Mhlongo's witness statement as SM2 at page 5A-9.

⁵²⁷ Record, Mhlongo Witness Statement, paras 44 to 53. See also Transcript, Day 42, pages 39 and 55.

⁵²⁸ *Id.*

Budhram.⁵²⁹ Hlapane Attorneys replied to Ngidi⁵³⁰ and denied the contents of his response. They complained that this gave a false impression that Magojela Ndimande and Tembe were the apprehended suspects, while the two had, in fact, already been killed. This was perceived by Hlapane Attorneys as a ploy to mislead the public.⁵³¹

[628] As a last resort before approaching the High Court, Hlapane Attorneys escalated the complaint⁵³² to the MEC KZN Community Safety and Liaison Bheki Cele (MEC Community Safety) (with whom they had a meeting), National Chairperson of the Human Rights Commission, Head of the ICD, National Commissioner and Public Protector. The attorneys complained against the conduct of the Cato Manor Unit.⁵³³

[629] The purpose of the meeting the meeting between MEC Community Safety, the Attorneys and some of the KTA members was to determine whether any members of the KTA were being sought by the police in connection with the murder of Chonco and, if so, to arrange for voluntary surrender via legal representatives. At the time of the meeting, five members of the KTA, plus Tembe (Magojela Ndimande's bodyguard), had already being killed. The Attorneys

⁵²⁹ Dated 16 September 2008. The press release appears in an email chain which is attached as annexure SM3 to Mhlongo's witness statement in this Enquiry. See Record, Mhlongo Witness Statement, page 5A-11 to 5A-12. See also Transcript Day 42, page 58.

⁵³⁰ In a letter dated 18 September 2008. The letter is referred to Mhlongo's Witness Statement at paras 54 to 57 and is attached and marked SM4 from pages A13-5 to A13-17. See also Transcript, Day 42, pages 58 and 68.

⁵³¹ Record, Mhlongo Witness Statement, page 5A-11 to page 5A-12.

⁵³² On 23 September 2008. The letter is attached to Mhlongo's witness statement as SM5, pages 5A-18 to 5A-35.

⁵³³ Record, Mhlongo Witness Statement, page 5-11 to 5-14 paras 54 to 69. See also Transcript, Day 42, pages 68 and 75.

stated that the reason behind the killings, as was alleged by the members of the Cato Manor Unit, was that the deceased were implicated in the murder of Chonco.

[630] The MEC Community Safety confirmed that there was a list that had been compiled from the information provided by the detainees who were escorted by Chonco on the day of the murder. The KTA members expressed concern regarding statements made by MEC Community Safety at Chonco's funeral, that the police should take the suspects to the nearest mortuary if they are unable to arrest them. The KTA members viewed this statement as justification for the subsequent killings.

[631] Mhlongo explained that MEC Community Safety then responded in *isiZulu*: "*Amanzi adungekile izingwenya ziyathanda ukubhukuda kuwona*" (loosely translated: "*When the waters are muddy, crocodiles enjoy swimming in them*") which the KTA members understood to mean that in unstable or violent circumstances aggressive action would follow. The statement was interpreted by the KTA as justifying the killing of their members. At the end of the meeting, MEC Community Safety is said to have remarked that "*You must remember that this is war*".⁵³⁴

The murder of iNkosi Zondi

⁵³⁴ Record, Mhlongo Witness Statement, pages 5-14 to 5-16 at paras 70 to 79. See also Transcript, Day 42, at page 75.

- [632] iNkosi Zondi was murdered.⁵³⁵ Later, Mhlongo, became aware that his co-accused in another matter, Swayo Mkhize had been arrested as the prime suspect⁵³⁶ in connection with killing of Chonco.
- [633] A day after obtaining this information about Swayo Mkhize, he, (Mhlongo) drove to the First National Bank in Stanger to deposit money. While seated in his motor vehicle counting the money he intended to deposit (approximately R30 0000 in cash), he was approached and apprehended by members of the NIU. The NIU police official took the money together with his cellphone and other personal belongings that he had on him at the time. Mhlongo was transported to a nearby park in Stanger where he was assaulted by being punched and kicked. His constitutional rights were never explained to him. He was also never told why he was being arrested.
- [634] The punching and kicking only stopped after an elderly Indian woman approached and started shouting at the police officers and questioned why they were assaulting Mhlongo in that manner. It was only after that intervention that the police officer stopped this assault and placed him into a grey BMW and was transported to the Cato Manor Unit offices.
- [635] *En route* to the offices, Mhlongo was repeatedly pressured to admit that he had participated in the murder of Zondi and was threatened that if he failed to disclose his alleged involvement, he would “meet his fate”. On arrival at the Cato Manor

⁵³⁵ On 22 January 2009.

⁵³⁶ On 2 February 2009.

offices, Mhlongo met van Tonder, Mostert and other members of the Cato Manor Unit whom he later identified as Maharaj and Panday. Mhlongo repeatedly requested permission to contact his partner, Nolwazi, but his requests were refused. He was then taken for interrogation regarding the murder of iNkosi Zondi.

[636] During the interrogation, so Mhlongo recalled, he was subjected to severe physical and psychological torture. He was stripped naked in the presence of male police officers and one female officer and was then handcuffed.

[637] He was forced to sit on a chair with his arms pulled over the chair. One of the officers stepped on the handcuffs to apply pressure and prevent him from moving. Whilst restrained in that position, other police officers punched, kicked and kneed him. When he attempted to shield the punching and kicking using his legs, both legs were then shackled. He was suffocated with a plastic bag until he urinated and defecated because of the torture.

[638] Mhlongo further testified that the torture was repeated several times to pressurise him to self-incriminate in the murder of iNkosi Zondi. Eventually, he became unconscious but cold water was poured over him, to revive him so that the interrogation could continue. Mhlongo was repeatedly threatened and pressured to implicate himself in the murder of iNkosi Zondi.

[639] At one stage, his co-accused – Swayo Mkhize, was brought into the room and a firearm was placed against his head to intimidate Mhlongo. As this happened,

Swayo Mkhize was crying and begged Mhlongo to confess to anything the police told him so that his own torture could end.

[640] Mhlongo was also shown a photograph of Bongani Mkhize, the Chairperson of KTA who had been killed on that day. He was told that if he does not co-operate, he will suffer the same fate. Mhlongo was further assaulted and suffocated and was instructed to agree to do a pointing out.⁵³⁷

[641] During the interrogation, members of the Cato Manor Unit presented Mhlongo with their prepared warning statement that he was willing to conduct a pointing out to assist the investigation. Mhlongo testified that he did not voluntarily agree to do a pointing out. The warning statement was later signed by Warrant Officer Zungu the following day.⁵³⁸

The pointing out on 4 February 2009

[642] Mhlongo was taken from Sydenham police station to Cato Manor by Inspector Gasa at approximately 08h00 for a pointing out at Umlazi. They met Captain Naicker, Inspector Ndlovu, and Sergeant Kennedy. The latter was the photographer.

[643] According to Mhlongo, the pointing out was not properly conducted. Because Mhlongo did not know the scene of the crime where he was supposed to be pointing out it took the police much longer to get there. The police had to ask

⁵³⁷ The pointing out was scheduled to take place on 4 February 2009.

⁵³⁸ Record, Mhlongo Witness Statement, page 5-16 to 5-27 at paras 82 to 132. See also Transcript, Day 42, pages 79 to 109.

people for directions as they could not find the location. This confirmed that Mhlongo did not know the scene of the crime and could not have participated in the killing of iNkosi Zondi.⁵³⁹ Mhlongo was then returned to Sydenham police station where he was further detained. He remained there until his court appearance.

[644] Several members of his family visited Mhlongo at Sydenham police station to satisfy themselves that he was still alive. They were made to believe he was dead. Among these was his brother, Welcome Mhlongo who was, at the time, a Colonel in the DPCI KZN (the HAWKS).

[645] Mhlongo was later informed that, a day before, his brother (Colonel Mhlongo), had travelled to Cato Manor office and warned van Tonder and Mostert against killing his brother (Mhlongo). Seemingly, Colonel Mhlongo had mentioned to the two Cato Manor Officers that if there were allegations against his brother, such allegations should be dealt with through the courts. Colonel Mhlongo also telephoned Booysen and warned him against killing Mhlongo. Booysen did not say anything in response. Mhlongo believes that the visit and warning by his brother, saved his life.⁵⁴⁰

Court appearance and bail proceedings

⁵³⁹ Record, Mhlongo Witness Statement, page 5-22 to 5-24 at paras 106 to 120.

⁵⁴⁰ Record, Mhlongo Witness Statement, page 5-25 to 5-28 at paras 122 to 135. See also Transcript, Day 42, page 211.

- [646] Swayo Mkhize and Mhlongo appeared in the Umlazi Magistrates Court in connection with the murder of iNkosi Zondi.⁵⁴¹ The matter was postponed to 13 February 2009 for purposes of his bail application. The bail application did not proceed on that day because Swayo Mkhize had not obtained legal representation and the matter was further postponed to 19 February 2009.
- [647] On 19 February 2009, the witness appeared for his formal bail application which was opposed by the State. The State was represented by Warrant Officer Zungu (Officer Zungu) who was the arresting officer and who worked on the matter with Advocate Elaine Harrison-Zungu (who at that stage was a senior State Advocate within the NPA). Officer Zungu deposed to an affidavit opposing the accused's bail application. The bail application was refused. As a result, Mhlongo was remanded in custody in the Westville Correctional Centre, pending trial.
- [648] Swayo Mkhize was, in the interim, released on bail. He was, unfortunately, shot dead by in Umlazi by the police.⁵⁴² Mhlongo was, thereafter, the only accused in the matter regarding the killing of iNkosi Zondi.
- [649] The witness later learnt that, in separate court proceedings in Umlazi, Swayo Mkhize had deposed to an affidavit retracting his pointing out statement and alleged confession. In that affidavit he stated that both pointing out and confession were obtained as a result of torture inflicted by members of the Cato Manor Unit. During the trial-within-a-trial, Zungu confirmed under cross-

⁵⁴¹ On 9 February 2009.

⁵⁴² On 9 July 2009.

examination that he was aware of Swayo's retraction and the allegation that the statement had been procured through torture.⁵⁴³

[650] During Mhlongo's trial-within-a-trial,⁵⁴⁴ the court found that his alleged confession and pointing out were made under duress. The court further found that his constitutional rights had been violated and was, consequently, discharged in terms of section 174 of the CPA.⁵⁴⁵

[651] In conclusion, Mhlongo confirmed that although the police knew that Swayo Mkhize had withdrawn his confessions to the pointing out and also in relation to Mhlongo himself as well as the fact that the court found that the pointing out was unlawful, they (the police) nonetheless continued using the confessions as their reason for going after the KTA members and killing most of them.

[652] Mhlongo's evidence was uncontested. It, therefore, stands.

[653] It is important to recap for the reader to understand the basis for the comprehensive detailing of the evidence tendered at the Enquiry. When dealing with the issue regarding the racketeering charges, the De Kock Panel stated that "there is no evidence in the dockets to substantiate an averment that the accused performed activities helpful to the operation of the enterprise... and that there is

⁵⁴³ Record, Mhlongo Witness Statement, page 5-21 at para 103 and court proceedings transcribed record appearing at page 5A-160, from line 11 to 20.

⁵⁴⁴ The trial started on 1 September 2010.

⁵⁴⁵ Court proceedings transcribed record. See Record, Mhlongo Witness Statement, page 5A-267 to page 5A-270.

no evidence that [the accused] acted with common purpose in the furtherance of the objectives of the enterprise.”⁵⁴⁶

[654] Furthermore, the Panel placed much reliance on the fact that the statements of potential witnesses, namely, Danikas, Ndlondlo and Bongani Mkhize, were unsigned and that, in respect of Danikas, there was no certified translation of the Greek statement. The Panel held the view that the statements constituted hearsay, and have had their “own challenges in respect of their probative value and reliability.” Therefore, the Panel concluded that the prosecution would have difficulty in having the “hearsay statements admitted as evidence” because the application to have them admitted would be unsuccessful.

[655] It is clear from paragraph 659 above that the Panel had no regard to the provisions of POCA and case law dealing with the admissibility of hearsay evidence concerning racketeering. It is unclear, on what basis, the Panel would approbate to itself the power that resides with the criminal court, regarding the admissibility of evidence.

[656] From the reading of De Kock 1, the Panel took cognisance of the fact that the ballistic investigation in relation to Mandini CAS 76/09/2008 was incomplete because several of the cartridges, bullet heads and fragments found on the crime scene were not linked to any firearm. They, the Panel, assumed that the firearms of the accused were not ceased at that time and sent for ballistic testing and comparison. From this, the Panel selectively, and in a manner that seems to

⁵⁴⁶ Record, Batohi Written Statement, at page SB3 196 at para 167.

distort the report, relied on certain parts of the report by Lieutenant Jacobus Steyl (Steyl), a forensic ballistic expert, who had remarked that “the statement in this case is not complete as none of the shootists’ firearms were connected with the cartridge cases and exhibits at the scene.”⁵⁴⁷

[657] The Panel did not, however, consider the content the report in its entirety,⁵⁴⁸ specifically paragraph 10 on which they relied. In relevant parts, paragraph 10 reads:

“The ballistic statement in this case is not complete as none of the shootists firearms were contented with the cartridge cases and exhibits at the scene, however, in summary, it appears that the two 9mm pistols, one a LEW Z88 pistol with erased serial number and one CZ75 pistol with serial number G2921, were retrieved from the scene. This is also depicted on the scene photographs indicating the pistols on the carpet in the vicinity of the deceased. One of these pistols fired two shots... However, there were two 9mm shots (9x17mm) calibre cartridge cases retrieved from the scene where there was no firearm on the scene that could have fired these cartridges.”

[658] The Panel incorrectly relied on its understanding of the admissibility of hearsay evidence under POCA and approbated to itself the role of the criminal court regarding the admissibility of hearsay evidence. As regards the meanings of racketeering and enterprise, the Panel made certain conclusions of law basing them on foreign jurisprudence without to regard to South African jurisprudence. Riley admitted that they had no regard to South African jurisprudence and attention was drawn to the SCA decision in *Eyssen v S*⁵⁴⁹ regarding the

⁵⁴⁷ *Id*, page SB3 220 at para 224.

⁵⁴⁸ Record, Docket, page MD0094 at para 10.

⁵⁴⁹ (746/2007) [2008] ZASCA 97 (17 September 2008), at para 6.

requirements of an enterprise for instance. During cross-examination, Riley admitted the court's interpretation of the phrases⁵⁵⁰ enterprise and racketeering. This clearly signals an acceptance by Riley of the errors made by the Panel in its understanding of the phrases.

[659] The Panel had acknowledged the incompleteness of the investigation regarding the Cato Manor matter. Nonetheless, the Panel concluded that there was no evidence to support the racketeering charges and consequently made recommendations that the racketeering authorisations by the ANDPP-Jiba (on 17 August 2012) and the NDPP-Abrahams (on 16 February 2016) and should be withdrawn.

[660] The proposition by the De Kock Panel that there was no evidence supporting the racketeering authorisations for the prosecution of Booysen and his co-accused was based, solely, on the version of the police without having regard to the uncontested evidence in the case dockets, particularly that of Mangena. Riley admitted that not all case dockets presented to the Panel contained the ballistic reports of Mangena. This may be gleaned from the testimony of Riley, during cross-examination, that the Mangena Reports were not placed before Batohi as part of De Kock 1:⁵⁵¹

“ADV NGCUKAITOBI SC: That is what I am saying. We did the same exercise, and we looked at the affidavit, and we see what he says was additional information, and that is the list we came up with. And what I found interesting in your analysis is the complete exclusion of the Mangena reports when there is an express

⁵⁵⁰ Transcript Day 49, pages 221 to 222.

⁵⁵¹ Transcript Day 49, page 113, lines 20 to 26.

paragraph in Advocate Abrahams' affidavit that says he considered 19 of them.

ADV RILEY: Yes, I agree."⁵⁵²

[661] At the hearing, Riley referred the Enquiry Panel to her working paper,⁵⁵³ SR5, which was attached to her witness statement at this Enquiry. Only a portion of SR5 was annexed to her witness statement, whereafter she attempted to hand up the remaining parts during her testimony, which was successfully objected to by Chauke's counsel. The significance of this is that Riley admitted that this SR5, relating to her working paper analysing of the case dockets, was not only included not included to form part of the Panel's report, but was also not given to Batohi. This makes it clear that the Panel's report did not have regard to all the contents of the case dockets relating to the racketeering charges against Booysen and his co-accused, particularly Mangena's ballistic reports. These matters make it clear that the report could not and ought not to have been relied upon in recommending the setting aside and withdrawal of the racketeering authorisation. Yet, Batohi accepted the recommendations and actually withdrew the racketeering authorisations were based on the Panel's report.

[662] The police version regarding the killings was based on self-defence. However, the uncontested evidence presented at the Enquiry overwhelmingly proves that there is a *prima facie* case for Booysen and his co-accused to answer.

[663] In the narration where the police claim that most of the victims were shooting at them, there is not a single piece of evidence presented at this Enquiry that shows

⁵⁵² See Transcript Day 49, page 281 of 290

⁵⁵³ Annexed to Riley's witness statement in this Enquiry as SR5.

damage to a police car, injuries to the police officers involved in the alleged shootout with the deceased or damage to buildings/objects damaged by the deceased's bullets. The contentions by the police, therefore, seem implausible.

The Mdluli Matter

[664] The issues in relation to the Mdluli matter turn on one primary issue regarding the withdrawal of the charges against Mdluli which, as comprehensively dealt with by the High Court and the SCA on appeal, does not raise complex issues.

[665] Accordingly, the parties agreed that the real issue for determination hinges on certain questions of law (including their interpretation) as illustrated in the pronouncements by Murphy J and the SCA, per Brand JA. Consequently, what remains for determination relates to the issues arising from clause 3.1.2 of the ToR, concerning the alleged —

“failure [by Chauke] to continue with charges against Lieutenant-General Richard Mdluli for his involvement in the murder of Mr Tefo Abel Ramogibe, in that he, Adv Chauke, caused the charge of murder relating to the killing of Mr Tefo Abel Ramogibe, and related charges to be withdrawn, notwithstanding that there was strong evidence justifying the institution of a prosecution in the matter, which decision caused a significant delay in proceeding with charges concerned.”

[666] This can be distilled to two questions: (i) whether Chauke withdrew the murder charge and related charges against Mdluli; and (ii) whether Chauke failed to continue with or reinstate such charges notwithstanding that there was strong evidence. This clause was, however, the subject of much discussion during the Enquiry that ultimately resulted in an application being lodged for an amendment

of the ToR. Having considered all the papers, including the submissions made regarding the amendment, the Panel considered that a case was not made to justify a recommendation for an amendment. Accordingly, the Panel recommended to the President not to amend the ToR.⁵⁵⁴ As at the end of the hearings, the decision of President was and is, but for the effluxion of time, awaited.

[667] There is no doubt that Chauke withdrew the charges against Mdluli. As mentioned above, the withdrawal was followed by litigation that ended in appeal by the NDPP to the SCA. In its final order, the SCA ordered that the NDPP to reconsider the charges and make a decision on which charges to reinstate. That being the case, the Parties in the Enquiry agreed that they could not take the matter any further.

[668] In any event, as mentioned above, the order of the SCA was implemented by NDPP-Nxasana. That said, that should bring an end to the Mdluli issue. However, the final issue, regarding non-compliance with the prescripts of the law, need to be dealt with.

Non-compliance with the Constitution, NPA Act, Prosecution Policy, Code of Ethics and Directives.

[669] The issues regarding Chauke's failure to comply with the law, i.e. the Constitution, NPA Act, Prosecution Policy and directives as well as the Code of Ethics arose,

⁵⁵⁴ Record, Panel Rulings, page PR001.

basically, during the assessment and findings by Broughton (in Broughton 2),⁵⁵⁵ in Nalane SC's opinion⁵⁵⁶ and Maenetje SC's opinion (in response to the remarks made by Nalane SC) and Moroka SC's opinion.⁵⁵⁷

[670] The Nalane SC opinion refers against the backdrop of the Mdluli matter, concluding that Chauke has failed to comply with the Prosecution Policy Directives.⁵⁵⁸ In relation to the Cato Manor matter, Nalane SC stated that the Prosecution Policy does not permit Chauke the luxury to veer in and out of his jurisdiction without a prosecutorial note.⁵⁵⁹ Assessing the latter's overall conduct, Nalane SC made the following observations, that:

"Chauke has violated a host of provisions emanating from the: Prosecution Policy Directives; Prosecution Policy; Code of Ethics of the National Prosecuting Authority; National Prosecuting Authority Act; and [the] Constitution. It is therefore necessary to interrogate whether Chauke is fit and proper to continue to hold office."⁵⁶⁰

[671] In her opinion, Moroka SC advised that:

- "100. In light of the above facts and legal principles, it is my considered view that, an enquiry into Adv. Chauke's fitness to hold office in terms of section 12(6)(a) of the NPA Act must be held.
- 101. The section 12(6)(a) enquiry must be to ascertain the following *inter alia*:-
 - 101.1. Whether Adv. Chauke properly exercised his discretion in discontinuing criminal proceedings against Mdluli.

⁵⁵⁵ See Record, p LO 00233 at para 64.

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⁵⁵⁷ See Record p LO 001070 ta paras 19 to 32.

⁵⁵⁸ See LO 00089 at 189.

⁵⁵⁹ See LO 00106 at 254.

⁵⁶⁰ Record, page LO 00107 at para 263.

- 101.2. Whether he exercised his powers and performed his duties and functions in accordance with prosecution policy and policy directives as determined under section 21 of the National Prosecuting Authority Act.
- 101.3. Whether he acted at all times without fear, favour or prejudice when he allowed himself to be unduly pressured by Adv. Jiba to be involved in the Cator Manor prosecution when he knew as a senior member of the NPA that the case fell outside his area of jurisdiction.
- 101.4. Whether he violated the provisions of section 179 (1) of the Constitution of the Republic and sections 6, 20(3) and 24 of the NPA Act when he assumed responsibility in a case which fell outside his area of jurisdiction.
- 101.5. Whether Adv. Chauke is a fit and proper person to continue to hold his office as Director of Public Prosecutions.
- 101.6. I say this because there is *prima facie* evidence that Adv. Chauke is misleading in his submissions that his involvement in the Cator Manor matter was merely that of a coordinator. He even went as far as misleading the Commission of Enquiry into State Capture regarding his involvement in the Cato Manor prosecution, and thereby committing perjury.
- 101.7. His involvement in the Cato Manor case was not, as asserted, simply one of coordinating the activities of the prosecution team. He committed acts of misconduct when [he] took key prosecutorial decisions in the matter and thereby exercising powers in terms of section 20(1) and 24(1)(a) of the NPA Act when he was not the DPP having jurisdiction in the matter.
102. The question, should an enquiry be held into the fitness of Adv. Andrew Chauke to hold office of Director of Public Prosecution: South Gauteng-Johannesburg, is answered in the affirmative."

[672] The point is buttressed by Batohi, in her witness statement before the Enquiry.

Explaining the essence of the allegations against Chauke, she said that Chauke

acted outside of his jurisdiction.⁵⁶¹ Simply put, the accusation levelled at Chauke, which he denied, was to the effect that he acted unlawfully by getting involved in the prosecution of matters in KZN, outside his jurisdiction – without proper authorisation and, therefore, exceeded the scope of his function.

[673] In Clause 3.2 read with 3.2.1 of the ToR, the Enquiry Panel is tasked to probe into whether, in fulfilling his responsibilities as DPP, Chauke complied with the Constitution, the NPA Act and other relevant prescripts of the law and whether he is fit and proper to continue holding that position and his membership of the prosecutorial service. Additionally, in terms of Clause 3.2.2 of the ToR, the Panel is asked to investigate whether Chauke exercised his discretion properly when instituting and conducting criminal proceedings on behalf of the State, including, discontinuing criminal proceedings.

[674] Broughton 2 further notes the findings of the Mokgoro Enquiry and submits that Chauke was complicit in the ANDPP-Jiba's alleged improper conduct.⁵⁶² It was stated further that Chauke's role in overseeing and coordinating the work and activities of the prosecutorial team constituted prosecutorial functions in terms of section 24(1)(a) and (b) of the NPA Act and was irregular and, thus, constituted a misconduct.⁵⁶³ This question is answered already, considering the lengthy

⁵⁶¹ Record, Batohi Witness Statement, page 66 at para 156.1.

⁵⁶² The Mokgoro Enquiry found that ANDPP-Jiba did not understand how her authority operates insofar as the assigning of prosecutors from out a particular DPPs jurisdiction works. (See Record, page LO 00234 at paras 195 and 196).

⁵⁶³ Record, Legal Opinions, page LO 00235 at para 197.

discussion of clauses 3.1.1 and 3.1.2 of the ToR above. There is no need to traverse this issue again.

[675] However, one must hasten to mention that, as a matter of law, racketeering decisions under POCA fall within the exclusive jurisdiction of the NDPP. Correctly, this much was admitted in cross-examination, by one of the De Kock panellists, Riley. She accepted, as correct, the contention that Chauke's role was of "merely recommending", similar to her role. This is where she accepted (albeit, evasively) that Chauke (as DPP-South Gauteng) was similarly placed as herself (as DPP-Western Cape). They had, both (including other members of the De Kock Panel who did not have jurisdiction in KZN), been mandated to perform functions in relation to matters concerning the Cato Manor matter in KZN, that is to say, outside of their jurisdiction. If Chauke had misconducted himself as alleged, De Kock Panellists who had been appointed by Batohi, ought in the same breath, to have been accused of violating the law and misconducting themselves.

[676] In any event, Chauke, as established above, did not make prosecutorial decisions in the prosecution of Booysen and his co-accused. Neither did he "discontinue" criminal proceedings in respect of the Mdluli matter as stated in the ToR (clause 3.2.2.3). He merely provisionally withdrew the charges pending finalisation of the inquest and, to that end, the SCA pronounced that his conduct was not irrational.

Having said that, the only remaining issue for consideration is whether Chauke “violated the host of provisions” of the law.

[677] Steadfastly, Chauke denied the accusations and maintained that he was requested by the ANDPP to assist with putting together a prosecution team to guide members of the joint task team on the investigation and prosecution of the Cato Manor cases and that he agreed to serve as a coordinator of the team. The coordination role, Chauke explained, dealt with logistics and administrative matters of the prosecution team, ensuring coordination between various stakeholders and updating the ANDPP-Jiba, including the submission of documentation from the prosecution team to her (the ANDPP-Jiba). Specifically, Chauke’s involvement excluded taking prosecutorial decisions whether to prosecute or not.

[678] The evidence of Chauke was not proven false, by neither Batohi nor Riley or anyone, for that matter. It stands. Interestingly, in cross-examination, Riley conceded that an act of “recommending” will not constitute a charge of misconduct as it does not constitute a “decision”, especially under POCA. This concession by Riley is correct. It is consistent with Batohi’s admission that there is a distinction between “decision” and “recommendation.”

- [679] Accordingly, there is no merit in the allegation that Chauke breached any legal prescripts by performing the co-ordinating functions in relation to the Cato Manor matters, in KZN.
- [680] As to whether Chauke violated the code of ethics, the prosecution policy and policy directives, a suggestion is that Chauke misrepresented facts to the NDPP-Nxasana⁵⁶⁴ and went as far as misleading the Zondo Commission. By so doing, Chauke is said to have breached the Code of Ethics and therefore put the NPA into disrepute. That is said to constitute a misconduct and that Chauke, thereby, committed perjury.⁵⁶⁵ Paragraph 156.4 of Batohi's witness statement makes the bolder allegation against Chauke that he failed to comply with prosecutorial policy⁵⁶⁶ and that he perjured himself. This is linked directly to issues of credibility, for both Chauke and the NPA.
- [681] During Batohi's testimony, reference was made to the various matters that had wracked the NPA and its credibility. This goes to the heart of the ToR, clause 3.2.4, which asks whether Chauke, in fulfilling his duties, performed his functions in accordance with the Prosecution Policy, NPA Code of Ethics and Policy Directives.
- [682] Credibility is discussed at chapter 4.2 of the Code of Ethics. It is defined as "being reliable, sincere and transparent" in the manner that prosecutors conduct

⁵⁶⁴ Moroka SC's Opinion. See Record, Legal Opinions, page LO 01096, paras, 101.2.

⁵⁶⁵ See Record, Legal Opinions, LO00214.

⁵⁶⁶ Transcript Day 4, page 20.

themselves.⁵⁶⁷ Subsumed in the chapter, are the “giving of honest and impartial advice”⁵⁶⁸ and “protecting the NPA’s name and reputation”.⁵⁶⁹

[683] In his witness statement before this Enquiry, Chauke responded as follows:

“395. ... In paragraph 156.4 of her affidavit, she asserts that I settled the affidavit of Jiba and that because the allegations in that affidavit were allegedly false, I thereby made myself party to those false allegations.

396. This reasoning is flawed at multiple levels... the subsequent judgment of Legodi J demonstrates that the criticism of Jiba’s affidavit rested on a misunderstanding of her evidence and that there was information before capable of supporting the authorisation. Once that is recognised, the foundation for paragraph 156.4 falls away.”⁵⁷⁰

[684] In any event, the accusations by Batohi against Chauke could not be tested at the Enquiry because she walked out while still under cross-examination. Besides, there were no other witnesses who testified about these accusations. The accusations were, thus, unsubstantiated by direct evidence.

[685] It stands to reason that, for the Enquiry Panel to achieve the objective as set out in clause 3.2 of the ToR, direct and credible evidence must have been presented during the Enquiry hearing to test the veracity of the accusations levelled against Chauke. There was none.

⁵⁶⁷ NPA Code of Ethics, Section 4.2: Credibility. See Record, Polices and Directives, page PD 00028.

⁵⁶⁸ Id, page PD 00029 section 4.2.1 which states “We will: a. Base opinion on all available relevant information; b. Evaluate information objectively; c. Not make assumptions based on gossip and rumours; d. Evaluate only factual information.”

⁵⁶⁹ Id, page PD 00029, section 4.2.3. “We will:... (d) Conduct ourselves in the manner as set out in Public Service policies and regulations pertaining to behavioural conduct.”

⁵⁷⁰ Record, Witness Statement Chauke, page 6-107 at para 396.

[686] Accordingly, in the absence of such evidence, one is constrained to conclude and recommend that Chauke did not breach the law and/or committed misconduct.

Concluding remarks

[687] The importance of the prosecuting authority – the NPA, in our criminal justice system cannot be overstated. Borrowing from the words of the President stated in his letter, to Chauke, dated 18 February 2025:

“The NPA is a constitutional entity and its work is central in the fight against crime, including corruption, as the NPA is an integral part of the criminal justice system. Your obligations as a Director of Public Prosecutions warrant that the integrity of the NPA be preserved at all times.”⁵⁷¹
(Underlining for emphasis.)

[688] Although the letter was addressed to Chauke the words, trenchantly, apply with equal force to the NDPP, all DPPs and prosecutors within the NPA.

[689] With regard to the role of prosecutors, it is not insignificant that all members of the NPA mentioned in section 32 of the NPA Act, would have taken the prescribed oath or made an affirmation ascribed to him or her in the form set out below, that:

“I (full name) do hereby swear/solemnly affirm that I will in my capacity as National Director/Deputy National Director of Public Prosecutions/Director/Deputy Director of Public Prosecutions/prosecutor, uphold and protect the Constitution and the fundamental rights entrenched therein and enforce the Law of the Republic without fear, favour or prejudice and, as the

⁵⁷¹ Record, Correspondence Bundle, page C00033 at para 5.

circumstances of any particular case may require, in accordance with the Constitution and the Law. (In the case of an oath: So help me God.).”

[690] In her witness statement Batohi echoed the President’s words that the NPA is at the centre of a well-functioning democracy and therefore that prosecutors have a constitutional mandate to prosecute crime. Batohi further said that prosecution of crime is a matter of fundamental importance to the State. She emphasised that—

“... prosecutors serve as gatekeepers of the system and we present cases in Court. These are all the role – this is the role of the prosecutors. We represent the interests of society throughout these proceedings... The role of a prosecutor, which I mentioned in my opening remarks, comes with great responsibility, as prosecutors are vested with the power to charge the accused [and] to try [the] accused. We must seek justice, do justice, protect the innocent, and charge the guilty.”⁵⁷²

(Underlining for emphasis.)

[691] Batohi correctly confirmed that where prosecution is used for ulterior purposes, it will be in breach of the Rule of law. Confirming the function of prosecutors, she stated that they “ensure a fair trial [and] that justice is actually seen to be done”⁵⁷³ ...prosecutors must be sensitive to the needs of victims and do justice between the victim, the accused, and the community according to the law and the dictates of fairness.”⁵⁷⁴

(Underlining for emphasis.)

⁵⁷² Transcript Day 4, Page 50.

⁵⁷³ Transcript Day 4, Page 54.

⁵⁷⁴ Transcript Day 4, Page 60.

[692] One could not agree more with all the sentiments expressed, above.

[693] Explicit from the introductory statement in this Report, the circumstances giving rise to the establishment of this Enquiry have a chequered history, stretching over approximately two decades and, yet, the Cato Manor matter involving many case dockets in which the victims and their families have not seen justice and found closure, remains unprosecuted. The delayed justice as the investigation in this Enquiry has exposed, without doubt translates to a denial of justice. Fundamentally, this demonstrate challenges in our criminal justice system that must be addressed, without delay.

[694] In the circumstances, it would be appropriate for the NPA to discharge its constitutional mandate expeditiously, to ensure that justice is not only done but is seen to be done for the victims and/or their families. Not only that. The said discharge of the constitutional mandate will also ensure that those who are alleged to have committed the racketeering crimes mentioned in the indictment **TABLE 1**, will have their day in court – to vindicate themselves.

RECOMMENDATIONS

[695] In light of the above, the following recommendations are made one is constrained to conclude as follows:

- (a) As regards Clause 3.1 read with Clause 3.1.1 (including the sub-clauses) of the Terms of Reference, there is no credible evidence on the basis of which one may find and recommend that Adv. Chauke took prosecutorial decisions, as alleged in relation to the Cato Manor matter and that he breached the law in the performance of his coordination function which he was, unquestionably, appointed to perform by the Acting National Director of Public Prosecution, Adv. N Jiba (as she then was).
- (b) As regards Clause 3.1.2, pertaining to the Mdluli matter, one is constrained, consistently with the decision of the Supreme Court of Appeal particularly regarding Adv Chauke's provisional withdrawal of the murder and related charges against General Mdluli and referral to inquest, to recommend that the conduct of Adv Chauke was not irrational. Accordingly, it is recommended that Adv Chauke should be found to be fit to continue to hold office as Director of Public Prosecution-South Gauteng.
- (c) In light of the overwhelming evidence presented at the Enquiry, the "no evidence" notion is unsubstantiated. Accordingly, it is recommended

that there was evidence supporting the institution of racketeering charges in terms of section 2 (4) of the Prevention of Organised Crime Act, 1998 (POCA), against Major General Booysen and members of the Cato Manor Unit.

- (d) There is no direct and credible evidence to sustain the allegations that Adv Chauke (a) breached the law, particularly the Constitution, the NPA Act, the Prosecution Policy and other relevant prescripts and (b) failed to exercise his discretion properly, while fulfilling his responsibilities as Director of Public Prosecutions. Accordingly, it is recommended that Adv Chauke should not be found to have breached the law (as alleged in Clause 3.2.

B E NKABINDE J

Chairperson

30 June 2026