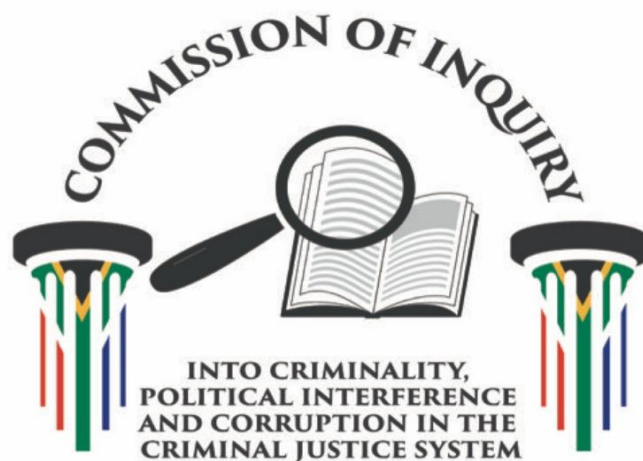


JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY,
POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM

HELD AT
BRIGITTE MABANDLA JUSTICE COLLEGE

4 AUGUST 2026

DAY 153



PROCEEDINGS ON 4 AUGUST 2026

CHAIRPERSON: Good morning, Mr Ramatsekisa.

MR RAMATSEKISA: Morning, Chair.

CHAIRPERSON: Good morning, Ms Pooe.

ADV POOE: Morning, Chair.

CHAIRPERSON: And I assume it is Advocate Serunye. A good morning to you too. Thank you. Yes, Ms Pooe.

ADV POOE: Commissioners, this morning we have Advocate Peter Serunye. And, Chair, he has indicated that
10 he will be taking the oath. He is ready to be sworn in.

CHAIRPERSON: Thank you. Please place your full names on record.

ADV SERUNYE: My name is Peter Serunye.

CHAIRPERSON: Do you swear that the evidence you are going to give is the truth, the whole truth, nothing but the truth. If so, please raise your right hand and say, “So help me God”.

ADV SERUNYE: So help me God.

PETER SERUNYE (duly sworn states)

20 **CHAIRPERSON:** Thank you.

EXAMINATION-IN-CHIEF BY ADV POOE: Advocate Serunye, Commissioners, there should be, for the beginning of this session, there should be one file before you. It is labelled “Advocate Peter Serunye Statement and Annexures”. We will be making use of the other exhibit

files, but I will indicate when it is time to do so. Advocate ...[intervenes].

CHAIRPERSON: I do not remember his statement referring to any of the other files. So you want to give us a tough time. No, please continue. Please start the session.

ADV POOE: Chair, we can always rely on memory, but I am afraid it might fail me.

CHAIRPERSON: Thank you.

ADV POOE: Advocate Serunye, there should be a file in
10 front of you containing your statement. Can you confirm that you have that file in front of you?

ADV SERUNYE: I do, Commissioners.

ADV POOE: And can you confirm your signature at page
21 of that statement?

ADV SERUNYE: It is my signature.

ADV POOE: And do you confirm that this is a statement that you have prepared for purposes of giving your testimony before the Commission?

ADV SERUNYE: I confirm that, Commissioners.

20 **ADV POOE:** And do you confirm the correctness of this statement?

ADV SERUNYE: I do, yes.

ADV POOE: Advocate Serunye, for the morning I am going to ask you to place the contents of your statement on record. We will allow you to read through the statement,

and there may be a few clarity-seeking questions, but a large part of the engagement will happen once we finish going through your entire statement.

ADV SERUNYE: Okay, thank you.

ADV POOE: We can proceed at paragraph 1.

ADV SERUNYE: Thank you very much. Okay, yes, I have prepared this affidavit, which reads:

10 “I, the undersigned, Peter Serunye,
 do hereby make an oath and state
 that ...” [intervenes]

CHAIRPERSON: Please do not read your PERSAL number.

ADV SERUNYE: Thanks very much, Commissioner, I will not.

20 “I am an adult male Deputy Director of
 Public Prosecutions, employed by the
 National Prosecuting Authority of South
 Africa. I am presently reassigned to the
 Investigating Directorate Against
 Corruption, commonly known as IDAC.
 The facts set out in this affidavit are,
 unless the context indicates otherwise,
 within my personal knowledge and are, to
 the best of my belief, both true and
 correct. Where I refer to documents, I do
 so in summary. The documents

themselves reflect their full contents and are annexed where indicated. I have been subpoenaed by the Commission to give evidence regarding my involvement in and knowledge of IDAC's criminal investigation into the allegations against Lieutenant General Samuel Dumisani Khumalo and six other Crime Intelligence officials regarding the appointment of
10 Brigadier Mokwele, commonly referred to as the Mokwele matter (State versus Khumalo and others) and the matter of Major General Lushaba.”

CHAIRPERSON: Advocate, do not you want to just highlight what you consider to be salient features or points on your employment history, rather than reading the whole thing?

ADV SERUNYE: Yes, I will do so.

CHAIRPERSON: Please, thank you.

20 **ADV SERUNYE:** Thank you. Yes, Commissioners, in brief, and I refer from the paragraph under the heading “Employment History and Experience”, I take it that the affidavit has been read. In brief, I joined the Department of Justice in 1995 as a contract prosecutor and I worked for a year until my position became permanent on the 1st of

September in 1996, and I grew in the ranks of prosecution, working in all the courts, District, Regional, and the High Court.

CHAIRPERSON: And I see that you even appeared before the Supreme Court of Appeal and Constitutional Court.

ADV SERUNYE: Indeed, Chair. I had an opportunity to appear twice, at least in the Supreme Court of Appeal, and the two cases went up to the Constitutional Court.

CHAIRPERSON: Yes. And you are an admitted advocate?

10 **ADV SERUNYE:** Sorry?

CHAIRPERSON: And you are an admitted advocate?

ADV SERUNYE: I am an admitted advocate. I was admitted in 2002 in Mmabatho High Court.

CHAIRPERSON: Yes, yes.

ADV SERUNYE: I went through some of the courses that I reflected in paragraph 6 of the affidavit and I possess, as indicated in paragraph 7, a B.luris degree and an LLB degree, both from the University, on Vista University, 1994 and 2001.

20 **CHAIRPERSON:** You are like some of the older ones, like me, old school. You have a postgraduate LLB.

ADV SERUNYE: Indeed, indeed, Chair.

CHAIRPERSON: Okay, yes.

ADV SERUNYE: I have also attended several courses as part of my training as a prosecutor, which I list in paragraph

9. In paragraph with a heading, “The Investigating Directorate Against Corruption”, I set out what the IDAC came about, and I want to believe, Commissioners, paragraph 10, 11, and 12, which deals with the setting up of the formerly ID and now IDAC by the President through a proclamation in 2019 that has been dealt with by some of the witnesses. I will therefore maybe start from paragraph 13, if it is in order.

CHAIRPERSON: Yes, yes.

10 **ADV SERUNYE:** -:

“On 13 October 2021, I was issued with an authorization by then ID Advocate Hermione Cronje, the then-Investigating Director of the Investigating Directorate, to exercise powers as set out in section 24(2) of the National Prosecuting Authority, Act 32 of 1998, and to appear on behalf of the state in criminal proceedings, appeals and matters arising from criminal proceedings instituted by the Investigating Directorate in all jurisdictional areas and courts within the Republic of South
20 Africa in respect of any offence envisaged in section 7(1) read with proclamation 20 of 2019, and section 28(1)(c) of the National Prosecuting Authority, Act 32 of 1998, and I attach as Annexure PS1 the authorization. On the very same day, 13 October 2021, together with the rest of the other deputies in the office, I undertook an oath of office

before then Judge Ledwaba, Judge, Acting President Ledwaba, Deputy Judge President of the Gauteng Division of High Court Pretoria.”

ADV KHUMALO SC: I am glad you corrected it yourself.

ADV SERUNYE: Thank you, Commissioner.

ADV KHUMALO SC: Because that was my note here.

ADV SERUNYE: Thank you very much, yes.

10 “And the oath was to uphold and protect the Constitution and the fundamental rights entrenched therein and enforce the law of the Republic of South Africa without fear, favour or prejudice in accordance with the Constitution and law, as the circumstances of any particular case may require. I have attached to my affidavit the copy of the oath as Annexure PS2.”

Paragraph 15:

20 “Within IDAC, my functions are principally the prosecution and the management and oversight of a group that deals with high-level corruption cases in the public and private sector. The group comprises of senior and junior state advocates, that is, prosecutors, and

then lead investigators, criminal investigators, financial investigators, as well as chief financial investigators, a data analyst and a project manager. At the relevant time, IDAC operated through four groups, each headed by a Deputy Director of Public Prosecutions and a project who would then also be a project owner to cases under such groups. I

10 headed the group dealing with high-level corruption in the public and private sector as aforesaid. My colleague, who is now on pension, Advocate Louw, oversaw cases in the security cluster largely emanating from the intelligence services at the police. Advocate Annemarie Friedman oversaw Eskom-related matters, and the late Advocate Dobada oversaw the Transnet-related

20 matters. Following Advocate Dobada's passing, his group was taken over by Advocate Witbooi, who was a Deputy Director of Public Prosecutions on contract. Each group carried both historical matters and matters generated

from the recommendations of the Commissions of Inquiry, that is, the State Capture Commission, commonly known as the Zondo Commission, the Mpati Commission, and the Nugent Commission.”

ADV POOE: Advocate Serunye, in paragraph 16 where you mention that Advocate Louw has since retired, who has taken over that group?

10 **ADV SERUNYE**: It is now Advocate, her surname is also Louw. I am trying to remember, but I cannot remember her name now, Advocate, her surname is also Louw.

ADV POOE: Right, thank you.

ADV SERUNYE: Ja, Talita Louw, I think, yes.

ADV BALOYI SC: Morning. When did Advocate Louw retire?

ADV SERUNYE: At the end of April this year, 2026.

ADV BALOYI SC: Okay, thank you.

ADV SERUNYE: Paragraph 17:

20 “At the time of the Mokwele and Lushaba matters, a significant part of our work was to identify potential cases from the recommendations and evidence of Commissions of Inquiry that I have earlier listed, the Zondo, Mpati, and

Nugent Commission. In my group, once a possible matter was identified from a Commission report, we would deliberate as a group, and I would then compile a memorandum (an application addressed to the Investigating Director motivating for the authorization of an investigation).”

Maybe just to add, Commissioners, the application of this memorandum, in the said application, I would then
10 set out the summary of facts as we would have detected them from, say, from the Zondo Commission report. A particular case, I just want to give an example, maybe let us say that deals with Sunday trading, we, I would then encourage all my group members to read the particular chapter of the Commission, and let us say we identify that particular case, we then summarize the evidence, and which is then going to form part of this application that we are directing, that I am directing to the ID.

And in the said application, I would also then
20 request the ID, if she finds that to be in order, to authorize the matter, either in terms of section 28(1A) or 28(13). And I also, in the application, ask her to authorize the designation of the officials that I would have listed in the application, financial investigators, investigators, data analysts, and so on. And the ID would then consider the

application, and if it is approved, we then get a feedback via the project manager, then we start working on the matter.

CHAIRPERSON: Purely out of interest, how would you identify cases that you would end up dealing with? Do you just rake through the record and say, oh, there is another one. You continue, there is another one, and then you deal with those. How exactly would you do that?

ADV SERUNYE: Ja, Chair, like I indicated in the earlier
10 paragraphs, I was overseeing a group that was dealing with high-level corruption in the public and private sectors. So as we ...[intervenes].

CHAIRPERSON: I am talking about Commission matters, not, ja, that is my focus, not your section 27 referrals.

ADV SERUNYE: Ja.

CHAIRPERSON: Ja.

ADV SERUNYE: We read through the report. The Commission, Judge Zondo made certain recommendations.

CHAIRPERSON: Okay.

20 **ADV SERUNYE:** For example, when the Commission would have dealt with the matter, they then make a recommendation whether law enforcement should look into that. There is recommendations which are directed to say, prosecution should be considered, then we follow those type of cases.

CHAIRPERSON: Okay. Oh so ...[intervenes].

ADV SERUNYE: So it is where recommendations ...[intervenes].

CHAIRPERSON: Recommendations that would direct you to ...[intervenes].

ADV SERUNYE: [Indistinct]... [cross-talking].

CHAIRPERSON: ... and then you go to the relevant parts of the report.

ADV SERUNYE: That is correct.

10 **CHAIRPERSON**: Okay, all right, all right.

ADV POOE: And then, Advocate Serunye, in terms of the designation, when you give it as part of the application, do you indicate the individuals who will be forming part, or who exactly chooses the composition of that team?

ADV SERUNYE: That is true, Commissioners, I do. In the application, I include a list of names of people.

ADV POOE: And so it would be the DD's in the applications who would designate who would form part of the team.

20 **ADV SERUNYE**: Indeed. Always, in each of these cases, there must be a Deputy Director of Public Prosecutions who is the project owner, who is heading the group. And I must then have a balance of officials, a lead criminal investigator, a lead financial investigator, and maybe a junior criminal investigator, and a junior financial

investigator, prosecutors. Depending on the complicity of the case, I may have two senior state advocates and a junior, and try and balance the team like that, including a data analyst, and so on. But then, I am requesting the ID to them, and if she finds that to be in order, to approve that. It is not, I am not making a decision at a time, it is just an application. The ID will then go through that. Sometimes she will then suggest, include a chief investigator, or maybe include two more prosecutors, and so on. Then we change
 10 the documents, provide them to her again, then she signs it off.

CHAIRPERSON: Whether a section 27 referral or a Commission matter, would a matter ever commence within IDAC without a Deputy Director of Public Prosecutions being a part of the team, ordinarily, ordinarily?

ADV SERUNYE: That should not happen. That should not happen.

CHAIRPERSON: Did it, did it, ordinarily, did it ever happen? Let us not talk about the matters that we are
 20 dealing with now. Ordinarily, would that ever happen?

ADV SERUNYE: It will never happen. There must always be a Deputy Director, because as we go on with the investigation, there are documents that must be signed by the Deputy. There is communication that we must make with outside stakeholders that must go under the signature

of the Deputy Director.

CHAIRPERSON: So from inception ...[intervenes].

ADV SERUNYE: From inception.

CHAIRPERSON: A Deputy is involved.

ADV SERUNYE: There must be a Deputy, who is the project owner of the project.

CHAIRPERSON: All right, all right.

ADV BALOYI SC: In the application that you submit ...[intervenes].

10 **ADV SERUNYE**: Yes.

ADV BALOYI SC: The, and you say that the, because in the nature of an application which is approved by the ID, you say she could make recommendations or suggestions that include others. In your experience, does she, has she gone so far as to specify who by name, not just include another two investigators or a prosecutor? Have you had that kind of experience?

ADV SERUNYE: I have never had such an experience, Commissioners, but she will suggest, maybe looking at the
20 balance of the team, that you still need another prosecutor, either a junior or a senior, without specifying a name, without recommending include so-and-so. She would just advise, beef up your team, you still need another data analyst or this or that, but without specifying a name.

ADV BALOYI SC: Okay. And again, your experience, has

the, have you had experience where the ID picks the team for you? Have you had that kind of experience where she specifies these people that she has already spoken to, and you are married to them, so to speak?

ADV SERUNYE: I have never had such an experience, Commissioners. It has never happened.

ADV BALOYI SC: Thank you.

ADV SERUNYE: Yes.

CHAIRPERSON: I am sure when you say it has never
10 happened, you are not talking about the cases that we are going to be dealing with now.

ADV SERUNYE: I mean, in general, it has never happened.

CHAIRPERSON: Because on the face of it, it appears that what Commissioner Baloyi is asking is exactly what happened. That which you say has never happened appears to have happened in this instance.

ADV SERUNYE: Indeed, Chair.

CHAIRPERSON: Yes.

ADV SERUNYE: But the question as I understood it was, in
20 my experience personally has ...[intervenes].

CHAIRPERSON: In your, okay.

ADV SERUNYE: Is that has the ID ever recommended to me that a particular person or team be, and that has never happened to me.

CHAIRPERSON: Okay, all right.

ADV SERUNYE: From paragraph 18:

“Depending on the strength and detail of the available material, the memorandum would motivate either for investigation under section 28(1A) of the Act, or for a preparatory investigation in terms of 28(13). Such memoranda were ordinarily prepared and issued in my name as the DDPP responsible for the group.”

10 I deal with the oversight structure in brief in paragraph 19.

ADV POOE: Advocate Serunye, before you deal with the oversight structure, just to understand, in the drafting process of these applications, whether you are motivating for a 28(1) or 28(13), who all is involved in that? Is it you or is the entire team involved in the process of drafting?

ADV SERUNYE: It is the whole team. Not necessarily that, but sometimes I will sit with, say, a lead criminal investigator or a senior state advocate, but there are
20 instances where I will sit with the whole team and, because I would have said to them, read here, read those parts, read those parts, let us deliberate. I am intending to do the following, and therefore, as a team sitting, I will also then get advice from other members of the team to say, DD, maybe here, let us go for a 28(13), or let us go for a

28(1A).

ADV POOE: And in your experience, has there ever been a situation where the ID indicates to you that please draft an application in terms of either 28(1) or (13)?

ADV SERUNYE: No, it has never happened to me in that sense, but there are instances where, let us say, my memo would ask her to authorize the matter in terms of 28(1A), but after going through what would have been presented before him, she, I know of one matter where she would have
10 said, not a ...[indistinct] she then make notes on the memo. She sort of recommends or does not recommend. When she recommends, she makes notes, or if she does not recommend, she also makes notes saying why. Sometimes she can call me in and say the evidence is insufficient maybe at this stage. Maybe I propose you go for a 28(13), but she always make notes on the, on top of that memo so that you understand. When I go back to my team, I can also brief them to say this is the outcome of the application.

ADV POOE: In those instances, it would be on the back of
20 you having made an application, not necessarily that she would approach you to say make an application on her own, as it were?

ADV SERUNYE: Indeed, Commissioners, I would have made an application and she then makes a recommendation. She has never approached me to say I

want you to do an application for this specific matter or for that specific matter, neither has she ever said to me include so-and-so in the application and do not include so-and-so in the application.

ADV POOE: Thank you.

ADV SERUNYE: Or in the matter, at least.

ADV POOE: Thank you. You can proceed with the oversight structure.

ADV SERUNYE: All right. On paragraph 19.1:

10 “The Investigating Director, Advocate
Andrea Johnson, heads the unit. The
Head of Investigations and Operations,
the position is held by Mr Matthew
Sesoko. He sits at the same level as
Deputy Directors and reports directly to
the Investigating Director.”

Maybe if I can just explain that. We have the ID as
the Head and we have the four deputies directly underneath
the ID, all of us reporting directly to the ID. And Mr Sesoko
20 is sort of on the same level with us reporting to the ID. But
we also on dotted lines report to him. He calls meetings
and we brief him on the cases because he has to directly
report to the ID.

CHAIRPERSON: You say in your statement the dotted line
reporting is in respect of, I think you said, operational

matters. Would that be administrative matters or what are operational matters, because you say regarding your work you report directly to the ID. I just want to have an idea of operational matters.

ADV SERUNYE: Yes. Chair, we report to Mr Sesoko on, we brief him as the investigation, as we are busy with the investigation, we call him, we even make reports, quarterly reports and there is a structure which he is heading where on a monthly basis we meet and we then present these
10 cases to him with a view that he will then brief the ID on how far the cases are, where we need resources will inform him, where we are having challenges, we inform him.

CHAIRPERSON: Let me tell you where my confusion is. If you report to him about the progress of the matters, I would have thought that that relates to your work about which you say you report directly to the ID. Do you see my confusion?

ADV SERUNYE: I get that, I get that, Chair. Maybe we ...[intervenes].

CHAIRPERSON: And yet you say there is a distinction in
20 that you report to him on operational matters. That is why I was saying these operational matters are they perhaps administrative matters, but on what you have just said now it seems you report to him in relation to your work as well.

ADV SERUNYE: True. Like we are duplicating the reporting, what we report to him to some extent we also

when we are having management meetings or meetings with the ID where we will be deliberating on a specific matter we also raise the same issues with her.

CHAIRPERSON: It seems to me there are no bright lines as to the difference in terms of what you report to him and what you do not report to him. There are no ...[incomplete].

ADV SERUNYE: I will agree with that, Chair. That is why I am saying we sort of find ourselves reporting the same issues ...[intervenes].

10 **CHAIRPERSON**: Yes, yes.

ADV SERUNYE: Again to the ID when we meet with her.

CHAIRPERSON: Not that it matters for present purpose or in the bigger scheme of things. I do not think.

ADV SERUNYE: Thank you, Chair.

CHAIRPERSON: Yes.

ADV BALOYI SC: Can I just on this same question, the, I also wanted to understand the difference between the kind of reporting that you do and more specifically the purpose that you give reports to the ID as the matter is rolling and
20 the reports that you give to Mr Sesoko, what the purpose is and behind my question, I have sort of tried to give myself an answer that if you want decisions about a course of action that you are thinking of following, for example we are now ready to get people arrested and presented to court it seems to me that would be the kind of decision or report

that would go to the ID and then I am not sure what Mr Sesoko, or the report to Mr Sesoko would be, its purpose, what does it serve.

ADV SERUNYE: Indeed, Commissioners, what we report to the ID when we are ready with the take down, those are issues that we will discuss with the ID. We have a briefing where we take her through the evidence that we have and decisions will then be made at that level. If she is of the opinion that you are still lacking on this or that, she has a
10 right to advise. With Mr Sesoko it is on a monthly basis there is this structure where we report and if we are having problems of resources and so on we report to him. We ask for those to be provided and he can then help with those, If it has to be issues that he takes up with Human Resource department, he does that on our behalf and, but I want to believe that the purpose of that is for him to also then when he reports to the ID to say this team in relation to this matter, this is where they are and these are the challenges that they are having and so on and so on.

20 **ADV BALOYI SC:** And is it a requirement, I want to say prescribed but that is not quite the word, I think prescribed is too strong, but is it a requirement that on a monthly basis there must be reports, all the teams must report to Mr Sesoko on a monthly basis?

ADV SERUNYE: That happens. It is a requirement. That

happens. Project managers are in charge of, they are responsible for doing those reports. Our meetings are held or at least were held monthly, yes, with Mr Sesoko and then we will then report on these cases.

ADV BALOYI SC: And in those reports, and maybe let me use an example, if you, do you report to Mr Sesoko in a way that he is able and he is allowed to say to you I do not understand why you are deciding to prosecute this person, why you are deciding to arrest this person from what I have
10 read, is it that kind of reporting and that kind of engagement with him?

ADV SERUNYE: No, it is not Commissioner. He does not question issues up to that level where he can say why these charges, why not those charges or why. No, it is more to report to him about the progress and where we are having challenges. It is not about him advising on - I know Mr Sesoko used to be a prosecutor many years ago but the function here for him is not to advise on legal issues or anything, he is more of a CEO in charge of our daily
20 operations, yes.

ADV BALOYI SC: Thank you.

ADV POOE: Sorry, Advocate Serunye, I was just trying to be of assistance. Maybe if we look at the operations manual, so that will be in file 10.

ADV SERUNYE: I have file 10.

ADV POOE: Just to, maybe I may be wrong. What is the OMC? Is this the committee that does the monthly ...[intervenes].

ADV SERUNYE: Yes, this committee that is headed by Mr Sesoko.

ADV POOE: Okay.

ADV SERUNYE: Ja.

ADV POOE: Commissioners, so you will see the definition of OMC is on page 12, but the provision I wanted to draw
10 your attention to is on page 25.

CHAIRPERSON: Which heading?

ADV POOE: My apologies, on page 24 which deals with the roles in IDAC. It is 3.3. It starts at 3.3.

CHAIRPERSON: Head of Investigations and Operations?

ADV POOE: Yes. You will see there it is one of the duties is to convene the Operations Management Committee and you will also see under the topic “Deputy Director Public Prosecutions” on page 25, the third from the bottom or second from the top, provide progress report to OMC and
20 ID. Is this ...[intervenes].

ADV SERUNYE: You are at paragraph?

ADV POOE: It is paragraph point 2 on page 25, the one that says “provide progress report to OMC and ID”.

ADV SERUNYE: Ja, okay.

ADV POOE: Is that what you are talking about?

ADV SERUNYE: Exactly. It is indeed so, Commissioners.

ADV POOE: So this reporting structure is prescribed by this operations manual.

ADV SERUNYE: Indeed. Indeed. I see the definition of OMC is Operations Management Committee.

ADV POOE: Yes.

ADV SERUNYE: On page 12.

ADV POOE: Okay, thank you. We can then go back.

ADV SERUNYE: Yes.

10 **ADV POOE**: I mean for completeness just to be clear, is this operations manual that we are looking at in effect at IDAC as far as you know?

ADV SERUNYE: Indeed, Commissioners, it is. I think it was signed in 2024, I am trying to get the date, by Mr Sesoko and the ID.

ADV POOE: That is at page 10, and this is what guides your day-to-day operations.

ADV SERUNYE: This is what guides our day-to-day operations. Every new employee in the IDAC is given this
20 manual to go through. What I do in my group as I welcome the new members, I will then arrange a meeting and say we have three, four say maybe two prosecutors, two investigators, we will have a meeting. I call all the members and as part of what we are going to deal with in that meeting is to go through the manual just for the new

officials to, sort of as an induction to the new officials.

ADV POOE: Okay. Right, thank you. We can then return to your statement.

ADV SERUNYE: Yes.

ADV POOE: We are at paragraph 19.2.

ADV SERUNYE: At 19.2, as I am dealing with the structure, beneath the DDPP's are the senior state advocates and then the junior state advocates and on the investigative side we then IDAC drew both on investigators seconded
10 from the Directorate for Priority Crime Investigation and on contracted civilians who were hired as financial investigators. They come with experience from different institutions like banks and SARS and so on, and we have criminal investigators, including a chief investigator. Chief investigators, we currently have two. It is Chief Investigator Perumal and Chief Investigator Booi, Nico Booi. So all the investigators are reporting directly to the two chief investigators on a monthly basis.

CHAIRPERSON: So does that mean because there are
20 four groups or teams, does it mean the two chief investigators are spread across all four teams?

ADV SERUNYE: Indeed so, Chair, they are spread within all four groups. On a monthly basis the deputies, chief investigators and project managers report on each matter through a structure chaired by the Head of Investigation

Operations, Mr Sesoko, as I earlier indicated. The Investigating Director in turn reports to the National Director of Public Prosecutions and also to Parliament as and when she is called.

ADV POOE: Advocate Serunye, just on the, how you allocate, so you indicated that the prosecutors are split into the four groups. Does it happen that a prosecutor in group A working on the security cluster for example could then do matters with group C who works on recommendations from
10 the Zondo Commission?

ADV SERUNYE: We do have that cross pollination. Before the time of Advocate Johnson when it was Advocate Cronje, she wanted the groups, you know, when you are designated to a group you belong to that group throughout, but when Advocate Johnson came she changed and she was of the view that people should get experience in dealing with all the cases, type of cases and therefore no one investigator or prosecutor is permanently based in a group. Where there is a shortage in another group, a person can be
20 designated by that group that requires those services.

ADV POOE: And in practical terms how does that work? Is it only in the instance of shortage or is there sort of a regularized rotation system?

ADV SERUNYE: There is not a regularized rotation. It is mainly when the shortages and sometimes when a new

matter altogether is being designated, the Deputy can choose prosecutors from other groups, especially those I only have worked with before just to also give them a chance to deal with the type of cases that I am dealing with in my group,

ADV POOE: And would you ...[intervenes].

ADV SERUNYE: But there is always this core. There is always this core group, you know, that I have, that I would have started with for the last maybe 3, 4 years.

10 **ADV POOE**: And then would you, in an instance where you are working with a prosecutor from another group, would you then notify the DD there that you would be making use of one of their prosecutors?

ADV SERUNYE: That is true, Commissioners. Before I include another member from another group, in fact I have to discuss with their Deputy first and to inform them and we then agree as Deputies that no, you can use the person, he is not having a lot of cases with me currently. Sometimes as we are discussing in this structure, this OMC structure of
20 Mr Sesoko, those are some of the issues that we are discussing to say there is this other group that needs a data analyst, is that data analyst available to be designated in that group or this group requires one or two more prosecutors and that is done at that level. But the discussion is held between the Deputies. I cannot just take

a prosecutor from another group or an investigator without informing the person that they report to, because in the beginning of the year, our financial year runs from 1 April to 31st of March. What we do is, I sign on behalf of the NPA/IDAC in contracts with the individual members, say the investigators, prosecutors who are in my group, therefore for that specific year I have to assess their performance. On a quarterly basis we do performance assessments and so on. So, therefore when we are having a person reporting

10 in this group and in that group, we know that for that specific year the person has signed a contract with say Advocate Friedman and I am also having some work that I am doing with them for advocate Friedman to know when she is doing assessment, performance assessment with the individual, I have to give her reports on how the person is performing in my group, what work they would have done and so on. So there is that engagement between Deputies.

ADV BALOYI SC: What, how does it work when, with new matters that come in? So it is not arising from a report of a

20 Commission. We have come to understand that there is an intake process where matters get, they come in and then they are evaluated, whether they fall into your mandate or not. So, when such matters come, how do they land with you eventually as a DDPP responsible for a team?

ADV SERUNYE: Ja, Commissioners, I must say the manual

talks to that process. I have however in my group I have never dealt with that section 27, matter which came via 27, but that process is dealt with or at least explained in the manual. One would have expected that once the IDAC was set up, we are going to have a lot of cases being referred or members of the public reporting cases to the IDAC and therefore the manual talks of a secretariat which will receive these cases, coming via email or post and so on and then there is an intake criteria which has to sit to then
 10 determine whether these cases belong in terms of jurisdiction in our, in the IDAC and so on, which will compose of, Mr Sesoko will always sit in, in those, in the inter-criteria ...[indistinct]. There would then be a Deputy and a chief investigator I think and at some, it also recommends either senior state advocate or a chief investigator. So it is about four people interchanging. It is not a permanent structure. I think Mr Sesoko will always be part of that inter-criteria ...[indistinct].

ADV BALOYI SC: And have you in the team that you are
 20 responsible for, have you had a situation where the ID approaches your one, I call them juniors, someone other than you, the head of the team, to look into a matter? Have you had that kind of situation?

ADV SERUNYE: I have never had that type of situation, Commissioners, except for this case that we are dealing

with that I am here for today where one of the juniors in my group was utilized for these Mokwele/Lushaba matters without my knowledge and engagement.

ADV BALOYI SC: Yes, that is exactly what I wanted to ask about.

ADV SERUNYE: Yes.

ADV BALOYI SC: So I am going to pause for now ...[intervenes].

ADV SERUNYE: That is the only one case, otherwise
10 ...[intervenes].

ADV BALOYI SC: Okay, let me pause my question. We will discuss it in more detail when we get to the specifics. Thank you.

ADV SERUNYE: Yes, thank you.

ADV POOE: You can proceed with paragraph 20.

ADV SERUNYE: Ja, at 20, paragraph 20:

20 “As a matter of practice the group do not share detail, the detail of their respective matters with one another and members sign non-disclosure undertakings. This is to guard against the leaking of information. Every matter is however headed by the DDPP who acts as project owner.”

If I can just add on to this. In paragraph 20, the

signing of non-disclosure forms, this is drilled into each and every employee that comes in, the non-sharing of information. So when a group is dealing with a case, only that group knows the facts, who are the suspect. Documents are only dealt by that specific group. I cannot be involved in the discussions of another group ...[indistinct] unless if I am designated. There are cases where two, even more Deputies are designated in one group. We do this because sometimes people go on leave, 10 you have a Deputy who is on leave and his group wants a section 28 subpoena that has to go to the bank to be signed and on an urgent basis, therefore if I am available then I can sign it. But I can only do it if I have been designated to be part of that group, otherwise the non-disclosure, you know, requirement comes into play. So we do not share information. That is why a person who occupies an office next-door to me can be involved in this case which, for example a case that involves my neighbour and I would not know about it, because we do not share. Even when we are 20 having our coffee and discussing matters, we do not talk about cases. If I have, if we have, if I have a problem, if I want to know something and when we are discussing about the law or issues, we talk in general terms. I am not going to say, colleagues, please help me, I have this case of so and so, and how do I go about. I can give them a scenario

without talking to the names of the suspects in my case to avoid information being shared amongst them.

ADV KHUMALO SC: Advocate Serunye, the last sentence of your paragraph 20 - good morning. I do not think I greeted you.

ADV SERUNYE: Yes, good morning.

ADV KHUMALO SC: Good morning.

ADV SERUNYE: Morning, Commissioner.

ADV KHUMALO SC: Paragraph 20, the last sentence, you
10 say every matter is headed by a DPP who acts as a project owner.

ADV SERUNYE: Indeed.

ADV KHUMALO SC: Are there exceptions to that rule if it is a rule at all, because the matter you are talking about next, as I understand your statement, it was not headed by a DDPP.

ADV SERUNYE: Ja. There is no, there is no exception to that rule.

ADV KHUMALO SC: Or there should not be.

20 **ADV SERUNYE:** There should not be ...[intervenes].

ADV KHUMALO SC: There should not be exceptions.

ADV SERUNYE: There should not be.

ADV KHUMALO SC: So where there are exceptions, what is the problem, and what is the reason for that?

ADV SERUNYE: The only exception that I know of is with

this case, and I cannot explain it. I always believed that each case must, is going to have, or must have a DDPP, because there are functions that a DDPP must do as the investigation unfolds. As I indicated earlier, when we need information from the banks, from cellphone providers, and so on, we serve them with a subpoena. That subpoena can only be signed by a DDPP. And if a group does not have a DDPP, I cannot see how they are going to be able to proceed with an investigation.

10 **ADV KHUMALO SC:** And that is the whole point of a prosecutor-led investigation, that you need a senior prosecutor overseeing and guiding that investigation.

ADV SERUNYE: That is true, Commissioner. That is true.

ADV KHUMALO SC: So where that does not happen, what is the issue, what is the problem? I am trying to understand, because the case you are going to deal with, you are going to give us facts, but I am more interested in reasons.

ADV SERUNYE: Ja.

20 **ADV KHUMALO SC:** When no DDPP is appointed to act or to be a project owner of a matter, what could be the reason?

ADV SERUNYE: Commissioner, I find it difficult to explain, because that should not happen. That should not happen. Otherwise, investigations are going to stall. They are going

to find it difficult to get information from service providers. And in such a situation, you also do not have leadership. You do not have anyone guiding and helping the team and so that they can wrap up. Everybody is going to do as they please, so that is why you need a leader in the form of a DDPP to help direct the team.

ADV KHUMALO SC: It is like a soccer team playing a match without a coach.

ADV SERUNYE: Indeed, indeed, Commissioner.

10 **ADV KHUMALO SC:** It can happen, but it should not happen.

ADV SERUNYE: They are going to kick the ball all over without any direction. My involvement in the Mokwele matter, paragraph 21:

20 “On the morning of 27 June 2005, I arrived at the office as usual, around about half past 7. On my way to my office, I found colleagues in one of the offices discussing an arrest, which IDAC had conducted the previous day, which was the 26th of June 2025. This arrest was on a number of high-ranking police officers.”

CHAIRPERSON: Just, I am thinking once an IDAC matter reaches the stage of an arrest, there would surely have

been some investigations already.

ADV SERUNYE: Indeed, Commissioner ...[indistinct]
[intervenes] [cross-talking].

CHAIRPERSON: That is investigations within IDAC itself.

ADV SERUNYE: That is what has to happen. You cannot arrest without doing investigations. You cannot arrest without coming to a decision that we have done so much work, we are ready, or we still have shortages here and here. So the team ...[intervenes].

10 **CHAIRPERSON:** But ...[intervenes].

ADV SERUNYE: [Indistinct]... [cross-talking].

CHAIRPERSON: But we have enough to arrest.

ADV SERUNYE: We have enough to arrest.

CHAIRPERSON: Yes.

ADV SERUNYE: Yes.

CHAIRPERSON: Now, the way you frame it in these two sentences, it appears you are not aware at all that there were any investigations, and not just investigations, investigations that ought to have led to the arrests you
20 heard about this morning.

ADV SERUNYE: Yes. And, Chair, what I am stating there, indeed, is I was not aware, but it is because this case was not in my group. I get to the office, and the office is buzzing with people talking about this big arrest that happened the previous day.

CHAIRPERSON: Yes.

ADV SERUNYE: That is what drew my attention to that. Everybody is talking about it and ...[intervenes].

CHAIRPERSON: Oh, so it was not in your group?

ADV SERUNYE: It was not my case.

CHAIRPERSON: Okay.

ADV SERUNYE: It was not, I was hearing about it for the first time.

CHAIRPERSON: In whose group was it?

10 **ADV SERUNYE:** I did not know at the time, and that is what then made me curious as well, because everybody is talking about that case. I wanted to find out. As I am stating by the next paragraph, I then started asking around, which case are you talking about? Who is the DDPP? I state on paragraph 22, Commissioner:

20 “Consistent with the practice that I described above, I had no prior knowledge of this matter. Out of concern, I enquired which group was responsible for it. No one appeared to know, at least from the people that I was talking to, no one appeared to know which DDPP was responsible, which I found unusual, since every matter is headed by a DPPP as its project owner.”

ADV POOE: Advocate Serunye, before you move away, was it out of concern at that point, or was it interest? And if it is concern, why were you concerned at that point?

ADV SERUNYE: No, it was more out of interest. Everybody is talking about this case, you know, it is Generals in the police arrested and you, naturally, as a leader myself in the structure, that draws me to a point of wanting to know, which cases, who are handling this case, which cases, you know, and ...[intervenes].

10 **ADV POOE:** Would you ...[intervenes].

ADV SERUNYE: And that is what then leads me to paragraph 3, where, as I am enquiring, I am then told that Advocate Joy Hlatshwayo, who was one of our junior state advocates, and who was at the time reporting to me, or reporting to my group, and who, without belittling her or anything, she was amongst the most junior in the office. I am told she is the one who is handling this case. I established that she was appearing ...[intervenes].

ADV BALOYI SC: Can I, sorry, can I just before we forget
20 it, from your description or allocation of the four streams and the DDPP's that you allocated there, it seems that Advocate Paul Louw should have been, would have been the DDPP responsible for this stream, because it is, I think you said Intelligence. He was responsible for that.

ADV SERUNYE: Indeed. Indeed, Commissioner. If things

were done in accordance with the manual ...[intervenes].

ADV BALOYI SC: Yes.

ADV SERUNYE: Then Advocate Louw ought to have been the project owner, the DDPP indicates. But if I remember well, he was also there in the office that morning, and that is why he did not appear to know anything about this case as well, and that is what was strange.

CHAIRPERSON: Ja, another kink, as it were, would have been the fact that one of your prosecutors, Advocate
10 Hlatshwayo, was the prosecutor. You told us that if someone were to be taken from a Deputy by another Deputy, there would be a discussion between the Deputies. Obviously, from what you say here, nobody had approached you and asked that Advocate Hlatshwayo be part of the prosecution in another group or team. So, as I say, so that is another kink, or that is another anomaly.

ADV SERUNYE: Indeed, indeed, Commissioner.

CHAIRPERSON: And I also see the name of Mr Brian Padayachee. Was he not a senior investigator in your
20 team?

ADV SERUNYE: Padayachee was not in my team.

CHAIRPERSON: He was not in your team.

ADV SERUNYE: Yes, I think he was in the security cluster.

CHAIRPERSON: Someone else's team.

ADV SERUNYE: Yes.

CHAIRPERSON: So it looks like it was ...[intervenes].

ADV SERUNYE: But it was strange that a junior prosecutor who was reporting to me is allocated to this case without me having been engaged. Not that it does not happen, like I said. I would have expected, say, maybe Advocate Paul Louw, if he was part of that group, to have discussed the matter with me, to say we need a prosecutor, we are having a shortage, do you have a lot of work for Joy? If I say no, then we agree they can utilize him.

10 **CHAIRPERSON:** And was this the right team for, or rather was this the right case for Mr Padayachee or was he too misplaced, as it were?

ADV SERUNYE: He is a senior criminal investigator, Chair. I would believe he was suited to be part of this team.

CHAIRPERSON: No, I am asking in the context of the different groups. For example, Commissioner Baloyi said this was an Intelligence matter which would have fallen under Deputy Louw.

ADV SERUNYE: Yes.

20 **CHAIRPERSON:** So did Mr Padayachee work under Deputy Louw?

ADV SERUNYE: He was working under Advocate Louw.

CHAIRPERSON: Oh, so ...[intervenes].

ADV SERUNYE: So he was in the security cluster which was headed by Advocate Louw.

CHAIRPERSON: That is what I wanted to know.

ADV SERUNYE: The only amazing thing, Chair, is that Advocate Louw appeared also not to know about this case because I saw him in the office that morning.

CHAIRPERSON: All right. Yes.

ADV SERUNYE: He was not properly dressed for court, or at least that he knew about the case.

CHAIRPERSON: So when you enquired, what case is this and what have these Generals been arrested for, he too did
10 not respond and say this is what happened and this is why they were arrested. He appeared to be in the dark as well.

ADV SERUNYE: He appeared to be in the dark like I was. He did not know about the case.

CHAIRPERSON: Okay.

ADV KHUMALO SC: Advocate Serunye, ordinarily who allocates matters to junior prosecutors in the IDAC? So take, for example, Advocate Hlatshwayo, who ordinarily allocates matters to prosecutors at her level, is it the ID or is it the DDPP's?

20 **ADV SERUNYE:** It will be me. It will be me as the DPPP in that group. I would look at the setup of the team and say I need say maybe one or two juniors. Let me go for Advocate Hlatshwayo and so and so on.

ADV KHUMALO SC: Can Mr Sesoko allocate a matter to a junior prosecutor?

ADV SERUNYE: No, he, that does not fall within his mandate.

ADV KHUMALO SC: So ordinarily only a DDPP would allocate a matter to a junior prosecutor?

ADV SERUNYE: That is true, Commissioner, only a DDPP.

ADV KHUMALO SC: If it is a junior prosecutor in your team, you would be the one allocating?

ADV SERUNYE: Indeed. Indeed so. That is so, Commissioner.

10 **CHAIRPERSON:** I think you were to ...[intervenes].

ADV SERUNYE: And in this case, that is why I found myself asking a lot of questions because I did not know about the case where one of my juniors is involved and, but I understood that because we signed this non-disclosure forms, maybe that has happened and I was not involved. But it was something, something that did not sound right. It was a bit strange.

CHAIRPERSON: I think you were to start at “I established that she was appearing” ...[intervenes].

20 **ADV SERUNYE:** Yes.

“I then established that Advocate Hlatshwayo was appearing in court that morning with investigating officer, Mr Brian Padayachee, and that there was no co-prosecutor with them in court, no

senior state advocate, no DDPP, and no chief investigator assisting her. I was concerned that in matters of this magnitude involving the arrest of senior members of the police was being handled without such support and without a DDPP overseeing it. I then together with one of my fellow DDPP's, Advocates, Jacinda Witbooi, and Mr Sibusiso Tshikovhi, who
10 is a chief financial investigator ...”

These people, I am mentioning them because they were in this group when we were enquiring and making, and trying to find out who was handling this.

“We then decided, the three of us, we then decided to approach the Head of the unit, the Investigating Director, Advocate Johnson, to request permission to attend court to assist Advocate Hlatshwayo. On arriving at her office, we found that the
20 Investigating Director had not yet arrived and we left a message with her personal assistant, Ms Innocent Sekhukhune. On my way back to my office, Ms Sekhukhune telephoned me to say that she had discussed our request with the

Investigating Director telephonically and
that the Investigating Director had agreed
that we could attend court as requested.”

ADV BALOYI SC: Did you ask or did you find out who and
how Ms Hlatshwayo came to be allocated? Who selected
her?

ADV SERUNYE: Yes, I only came to know afterwards,
Commissioners. I asked and I was told, I asked and the
information I got was that she was appointed by the ID and I
10 was told that initially the only prosecutor in the matter was
Advocate Ramsamy, Dru Ramsamy, and that Hlatshwayo
was then also allocated or at least designated to the matter
around May, so earlier, just shortly before the arrest in this
case. In paragraph 26:

“We were then given permission by the
ID to go and assist in court. When we
arrived at court, we found Advocate
Hlatshwayo in the company of the
investigating officer, Mr Padayachee, and
20 evidently overwhelmed. The court was
about to commence and the J15, which is
the administrative form to which the
charge sheet is attached, had not been
completed, there being some seven
accused involved in the matter.

Advocate Witbooi obtained the necessary
J15.”

I remember she literally rushed to the to the clerk of the court, brought a blank form. I then took the docket from Mr Padayachee. I then started reading out the names of the accused as they appeared in the docket to Ms Witbooi, who was then, or to Advocate Witbooi, who was then completing the J15, which was then handed to the clerk to register the matter on the book.

10 “Our assistance enabled Advocate Hlatshwayo to consult with the defence legal representative. The courtroom was full of police officers, family members of the accused, and members of the press. Advocate Witbooi and Tshikovhi obtained seats at the back of the court. As there was nowhere else to sit, I then sat in front next to Advocate Hlatshwayo and Mr Padayachee, the investigating officer,

20 who was seated directly behind us. I was not the prosecutor in the matter. My colleagues and I attended solely to support Advocate Hlatshwayo. The proceedings commenced before the magistrate, Mr Matlangu, whom I did not

know and was seeing for the first time. Advocate Hlatshwayo conducted the bail proceedings on behalf of the state, indicating that the state was not opposing bail and setting out the reasons. The legal representatives of the accused moved their bail applications by reading their clients' supporting affidavit into the record. At various points, Advocate Hlatshwayo experienced difficulty in answering questions from the court and conferred with me and with Mr Padayachee, who was seated behind us. In the course of dealing with the bail application, Advocate Hlatshwayo asked the court to impose a condition that the witnesses not be contacted or interviewed by the accused. The magistrate indicated that he required a list of the witnesses, as he could not simply warn them, and he appeared not to be satisfied with her response. The magistrate then invited me to address him, observing that I appeared to be from the same office."

And maybe just to add here, Commissioners. I remember, he precisely said that, because they were engaging with Advocate Hlatshwayo, and he then looked at me and he said, okay, let the gentleman seated next to you address me. He appears to be from your same office, because now and then, Hlatshwayo kept on talking to me, and at the same time with Mr Padayachee and that is why the magistrate said, let this gentleman address me.

10 “Before doing so, I then asked
Padayachee whether a bail statement or
affidavit had been prepared.”

ADV BALOYI SC: What is a bail statement? What would you find in there?

ADV SERUNYE: Commissioners, this matter, as I understood at the time, fell under schedule 5 of the Criminal Procedure Act, and schedule 5 and schedule 6, these are serious matters. Schedule 5, the accused to be released on bail has to bring an application and satisfy the court that it is in the interest of justice that he be released on bail.
20 What we do as the state, to avoid the investigating officer to testify *viva voce* in court, he then compiles an affidavit, setting out, even if the state is not opposing, the reasons why we are not opposing. For example, we would have verified the addresses of the accused. The statement will state, we have checked their criminal records, they do not

have criminal records, they are not a flight risk, they are gainfully employed, and all those kind of issues, they will come into the statement. We either do that by way of an affidavit of the statement, or the IO has to go into the box, and as a prosecutor, I will then have to lead him to cover all those aspects.

ADV BALOYI SC: And you say that is something that happens as a matter of course with schedule 5.

ADV SERUNYE: It has to happen. I know, Commissioner,
10 that there are instances where the state is not opposing, even when the state is not opposing bail, and the prosecutor addresses the court from the bar saying, we are not opposing bail, I know of instances where the courts would have insisted at least on some form of evidence, formal evidence from the state, at least by way of an affidavit from the IO or so.

I do not have case law with me, but I know there is a case or two where the court would have also said, even when the state is not opposing bail, but the court is sitting,
20 the court needs to be assisted by the two parties, and even when the state is not opposing bail, but as an officer of the court, you have to address the court, say why you are not, give this information to the court.

So if you have compiled an affidavit, it is easier for the court. You read it into the records, saying these are our

reasons, and when the court evaluates whether or not the accused has met the onus of proving that it is in the interest of justice that he be released on bail, the court has the benefit of both the state and the applicants' evidence.

But in this case, the bail application or the statement was not done, which was one of the things that made me realize that this team did not appear to have been ready for this bail application. I would have expected them to, because when we were in court, I then asked Brian, just
10 before addressing the magistrate, I asked him, did you compile an affidavit, because now I could see the magistrate was going to engage me, so I wanted to speak out of an affidavit, not just give the court information which I was not privy of, but I remember asking him about the issue of the list, and then quickly he said, no, no, we have other outstanding investigations against some of these people, so that is why we do not want the list of these people to be known, because if we list them, that is going to impact on our outstanding cases. And that is what I then
20 delivered to the court, when the court was asking Hlatshwayo why not the list. I made a paragraph where the magistrate invites me to address him, and before doing so, I then asked Padayachee whether a bail statement or affidavit had been prepared. It had not. Mr Padayachee explained that the witnesses have been told that if they

were contacted by the accused, they should immediately report to him, so that there was no danger in that regard, and that there was a further ongoing investigation involving the same accused. Such listing of the witnesses could disclose the identities and the existence of that other investigation. This is what I delivered to the court. On that ...[intervenes].

ADV BALOYI SC: Sorry. So where you say in line 1, 2, 3, 4, 5, there is a sentence that starts, “so that there was no
10 danger in that regard”, it is preceded by where Padayachee explains to you that witnesses have been told that if they are contacted by accused, they should immediately report it to him, and then you say, so that there was no danger in that regard. Can you just explain what you are addressing there?

ADV SERUNYE: Ja.

ADV BALOYI SC: Where you say, so that there was no danger in that regard.

ADV SERUNYE: Ja, I think what I wanted to say here was
20 that Padayachee and his team would have discussed with the witnesses, if anyone contacts you, please let us know, so that they can take steps. So I am saying, so that there was no danger in that regard, the quicker they are alerted, the investigating team is alerted, then the danger could be averted.

ADV BALOYI SC: Okay.

ADV SERUNYE: On that basis, at paragraph 31:

10 “On that basis, I then addressed the
 court and requested that the witnesses
 not be listed, so as not to compromise
 the other ongoing investigations involving
 certain of the accused. Out of respect
 for the court, I could not decline to
 address the court when the magistrate
 invited me to do so.”

At 32:

20 “Bail was fixed for the accused in the
 amount of R10 000 each, save for
 accused number 2, Mr Lushaba, who was
 not admitted to bail at that stage, owing
 to a separate outstanding matter, and the
 matter was postponed. Among the
 conditions imposed by the magistrate
 was a condition that the accused do not
 enter the premises of Crime Intelligence
 anywhere in the country. Neither the
 state nor the investigating officer had
 requested that condition, and the
 magistrate gave no reasons for imposing
 it. Of significance is that, in the course

of granting bail, the magistrate himself remarked that he was not persuaded that the state had a strong case, and indicated that this was among the considerations that moved him to admit the accused to bail. He observed that the matter was not a typical fraud or corruption case. This doubt was expressed by the presiding officer at the
10 very first appearance.”

It is there on record, Commissioner. The magistrate says it after asking Advocate Hlatshwayo some questions. He says, I am not that convinced that your case is that strong, because it is not like the typical cases that we deal with of fraud, and he also says it to the accused when he grants them bail. He says, one of the things that I have considered is this issue, and I am not convinced about the strength of the state case as it stands, based on the address by the prosecutor. The record speaks for itself on
20 that issue. 34:

“My involvement then ended after the first appearance.”

ADV BALOYI SC: Can I just ask, so you stayed in court the whole time, until the court rose?

ADV SERUNYE: Indeed, Commissioners, I stayed in court

until the bail application was finalized.

ADV BALOYI SC: And where was Mr Padayachee by the time court rose?

ADV SERUNYE: Mr Padayachee was with us up to a certain point, I think just before the judgment, because he had to catch a flight back to Durban or Port Elizabeth. He is based there, he stays there, so I think he comes to the office after every second week. There is an arrangement that they have in the office. So I remember he had to go back, rush
10 to airport to catch a flight. So he kept on saying to us at the time, guys I am going to leave you, I am not going to stay until, so he left at some point. When the magistrate was delivering judgment, he was no longer there, he left.

ADV BALOYI SC: More specifically, when the debate or discussion about conditions was happening, do you recall whether he was in court or not?

ADV SERUNYE: He was still in court, because I also asked him, that is when I asked him, do you have a bail statement, have you prepared a bail statement. And when Hlatshwayo
20 was addressing the court about the conditions, he was still there. I think he left just before the magistrate had started delivering judgment.

ADV BALOYI SC: Thank you.

ADV POOE: Advocate Serunye, before you move to August, when you come back from court and having seen

what you have seen that day, from the moment where you were consulting your colleagues to what you have then witnessed in court, did you do a report to either the ID or Mr Sesoko on the developments of the day, in particular, your concerns?

ADV SERUNYE: Ja, personally, I did not, because at least at this stage, I did not have enough information that I later got. At least at this stage, in my mind, I am thinking there is a team that is dealing with this case, but it is strange that
 10 only one prosecutor and one investigator are in court, and the DPP that I expected to be involved in this does not seem to know about this case, because he is not with them, and I saw him in the office. But, and I could see that they were not ready, there was no bail statement, but after that, my involvement literally ended there.

And what we do in the office, when I would have expected Advocate Hlatshwayo to do the reporting to the ID, that is what we do when we come back from court, especially in this type of cases, this was a very big case. I
 20 mean, Generals in the Intelligence Service you know, one would have expected a report to be given to the ID, to say this is how we fared, this is what happened, and the case has been postponed to such and such a date. Personally, I did not, at least at this stage, I did not make any report because I was not part of the case. My involvement was to

help on that day, and I think I did my level best on that day, and that was the end of it.

ADV POOE: I suppose the question is, I understand the report as it relates to what happened in court, and where it landed, where bail was granted, conditions, and all of that, but in this instance, what you knew that day was that there was no DD, there was no senior prosecutor, they certainly did not appear to be ready for the bail proceedings, you had to step in as somebody who is completely not involved.

10 This was run by the most junior prosecutor, you say, at the time.

ADV SERUNYE: Yes.

ADV POOE: It seems to me that beyond the reporting about the progress of the case and what happened in court, there was other issues related to how the matter was being conducted that ought to have been reported.

ADV SERUNYE: True, but remember, firstly, I am not designated to the team, formally in terms of the relevant provisions of section 28, and secondly, we have these non-
20 disclosure forms that we complete, so I cannot go beyond trying to find out even about the facts and getting myself involved that much. My request on the day to the ID was to be allowed to go and help in court, and that was granted. So I could not go beyond that unless I was designated formally into the case.

ADV KHUMALO SC: But the concern is that you knew that there was no DDPP and there was no senior investigator, and that your junior prosecutor did not have sufficient support, that is why you had to step in at the last minute. Now what you are saying here is after court, you left that there. So in other words, if there was going to be further appearances or further investigations, she would still be doing that unsupervised, without a DDPP overseeing her work.

10 **ADV SERUNYE:** Commissioner, at the time, yes, but like I said, the name of Advocate Ramsamy also was thrown in, so somehow I know that she is also part of the case. I was told that morning she was off sick.

ADV KHUMALO SC: But she is not a DDPP.

ADV SERUNYE: No, she is ...[intervenes].

ADV KHUMALO SC: You said in paragraph 20, and I think 26 ...[intervenes].

ADV SERUNYE: Ja.

ADV KHUMALO SC: That the DDPP must head every
20 matter and they are the project owner.

ADV SERUNYE: That is true, Commissioner.

ADV KHUMALO SC: So this matter was proceeding without a DDPP and a project owner, because even if Advocate Ramsamy was assisting Advocate Hlatshwayo, it would be two junior prosecutors. Was that not a concern

for you? For such a big matter, we are talking Head of Crime Intelligence in the country and other Generals at SAPS.

ADV SERUNYE: Commissioner Khumalo, it was. It was a concern and that is why I asked to go to court to assist. But I did not think of involving myself beyond that that point after the bail application was done, because I did not know why is this team so small. I did not know how it came about, but what I know is the case cannot be handled or
10 done in the IDAC without the ID knowing. Therefore, I do not know how this team was composed, but honestly speaking, I did not want to get myself involved in why was this done, why was not, because I was not part of the team at the time.

ADV KHUMALO SC: You give the impression that you did not want to step on the ID's toes. You did not want to ask her difficult questions, so you said if she made the decision, I will live with it. I will not even question it. That is the impression you are giving me.

20 **ADV SERUNYE:** And I will agree to that, Commissioner, because as the Head of the office she would have made the decisions. I cannot ask questions on, especially questioning how this team was composed, why not involve me or why not involving Advocate Paul Louw who has overseeing this either. At the time, I did not ask myself

many questions on the composition of the team, but it did not look right to me that the case of this magnitude was on the day of the arrest handled by a junior. I did not take it further than that, but it did not look right.

CHAIRPERSON: Sorry, you say in paragraph 34 your involvement ended after the court appearance, but I do not think you mean end-end, because in paragraph 35 you say you were called to a meeting on the 8th of August, and at that meeting the ID informed you that she had decided to
10 include you in the matter. So it was not end forever.

ADV SERUNYE: That is correct, Chair.

CHAIRPERSON: So there was an intervening period during which you were not involved, that is after the court appearance in June, and then in August you are brought in by the ID herself.

ADV SERUNYE: That is correct, Chair. I am saying my involvement ended there with the bail application, because I was not part of that team.

CHAIRPERSON: Yes.

20 **ADV SERUNYE:** I was not supposed to be part of the team. I went there and helped with the bail application, and my involvement in as far as that ended there.

CHAIRPERSON: Yes.

ADV SERUNYE: But coincidentally about two weeks after then I am called for a meeting where I am formally then

involved or designated by the ID onto the matter. After the bail application I did not work on this case. I did not discuss it. I continued my work. I am overseeing a group. I am also having my own cases. I am doing it. I concentrated on my work. I forgot about this case until on the 8th when I was called to a meeting by the ID.

CHAIRPERSON: The 8th of August.

ADV SERUNYE: On the 8th of August, then which is then on paragraph 35:

10 “On or about 8 August ...” [intervenes].

ADV BALOYI SC: Maybe before you discuss, you go to paragraph 8, let me ask my question, and again it goes back to wanting to understand the reporting and role of Mr Sesoko. You have this experience now on the 27th of June, and you note all these wrong things about it. Is that not typically something that would have had to go into the discussion, because part of it sounds like resource allocation, right. Is that not something that would have typically gone into the reporting to the, is it OMC or
20 something, when you make those monthly reports and get it addressed there? Is that not?

ADV SERUNYE: I agree, Commissioner. It is something that ought to have been raised in that structure. I am not sure if it was at a later stage, but from the date of the bail application, when the case was postponed until up to the 8th

I do not remember and I do not think we had an OMC. But these are type of issues that are dealt with in the OMC, resource requirements, where there is shortages, and even these challenges that how is the team dealing with such a big case, and there is not Deputy.

ADV BALOYI SC: So you say you do not remember whether it was raised or that you had a meeting after that. Is that ...[intervenes].

ADV SERUNYE: That is correct, between the 27th when the
10 case was in court and the 8th of August, when I was involved in the case.

ADV BALOYI SC: Ja.

ADV SERUNYE: But then from the moment I was involved, the Commission would see, as I am calling meetings of this team, I am also copying Mr Sesoko. I am involving him in the matter.

ADV BALOYI SC: And where is Mr Louw in all of this by the time you get called on the 8th of August, and you are now told this is your matter? Where is he?

20 **ADV SERUNYE:** He was never involved in the case at all, at all, Commissioner. He was not part of this case at all.

ADV BALOYI SC: Ever.

ADV SERUNYE: Even though the type of case resided in the group that he was overseeing, but he was never involved, he was not designated in this case.

ADV BALOYI SC: Okay, thank you. And do you know why? Did you ever get an explanation, even informally, why you are the one that has been called on the 8th of August and he is not involved?

ADV SERUNYE: I did not ask why, but as I am going through my statement, Commissioner, you will see that I take it when I was called in, maybe it might have been the ID got, like I left the message with her PA, and she then ...[indistinct].

10 **ADV KHUMALO SC:** Okay.

ADV SERUNYE: Maybe because I helped on the first day. Let me, let me, I nearly said *sommer*. Let me proceed with ...[indistinct] he helped ...[indistinct]. I think maybe ...[intervenes].

ADV BALOYI SC: You could have said *sommer*, we have heard worse.

ADV SERUNYE: Yes. Yes, so I believe she involved me and not him because I went to help on the first day and ...[intervenes].

20 **ADV BALOYI SC:** Okay.

ADV SERUNYE: Because when she called me on the 8th, she said, I have decided to involve a DDPP in the case, and I want you to be part of it.

ADV BALOYI SC: Okay, thank you.

ADV SERUNYE: Ja.

ADV BALOYI SC: All right.

CHAIRPERSON: Just to correct you on the intervening period, you said that after the court appearance, you were not involved until the 8th of August 2025, when you were called to a meeting and told that you would be included in the matter. The court appearance was on 27 June.

ADV SERUNYE: 27 June.

CHAIRPERSON: Yes, 2025.

ADV SERUNYE: I am very sorry ...[intervenes].

10 **CHAIRPERSON:** You said, ja, you said the intervening period was two weeks, so it was over a month.

ADV SERUNYE: It was over a month. I am thinking the appearance was on the 27th of July. It was actually on the 27th of June.

CHAIRPERSON: Yes, yes, all right.

ADV SERUNYE: That is correct.

ADV KHUMALO SC: And just to add an important fact, it may or may not be relevant, between the court appearance and the 8th of August, 6 July happened.

20 **ADV SERUNYE:** Indeed, Commissioner, the address to the nation by the General, is it General, by, ja, Mr Mkhwanhazi, that happened, and that was in July. That was in July, yes. That happened, and I must say, I remember watching, I was home that Sunday, I remember watching the press conference as he was briefing, and then he mentioned this

case, and I thought, how come? I did not really, you know, I thought, you know, for the moment that I was in court, and left the court, I, much as I did not know what happened before, I did not see anything sinister that, that when he mentioned the case, and how it was handled, then, that I would, to be honest, I doubted his remarks at the time, to put it blankly.

I doubted his remarks at the time about this case, and, and for the longest of time I did, and until now, 10 recently, in the last, maybe two, three weeks of the evidence that we had in this Commission, that is when I started realizing, maybe, and I said it to one of our colleagues even this morning, when we were having tea, that it appears I, I sort of found myself in an offside position, or at least handled a ball with my hands.

I, in fact, I sort of feel a little bit angry, if I think about it, that it feels like I was set up, not only me, but Hlatshwayo as well. I think, junior as she was, I do not think she was supposed to have been involved in this case, 20 and looking at it now, it appears to me she was, she was set up.

CHAIRPERSON: But I think you are being unfair to yourself. You are still going to come to this later in your statement. You have placed before us an annexure in which you actually questioned the merits of the case, and

you prepared quite a lengthy document, raising a number of concerns that you had about the merits of the case itself. Of course, I am sure that what you are talking about now is possible impropriety with regard to why the case was investigated in the first place. I am sure that is what you are talking about.

ADV SERUNYE: Indeed.

CHAIRPERSON: But it is, it is not as if you, you just gobbled up everything, every and anything that was placed
10 in front of you.

ADV SERUNYE: Indeed, Commissioner.

ADV POOE: Chair, I see the time, and we are about to go into his involvement. It might be an opportune time to take the tea adjournment.

CHAIRPERSON: Let us adjourn and resume at half past
11.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Ms Pooe?

20 **ADV POOE**: Thank you, Chair. Chair, for the next couple of paragraphs, the witness goes into their involvement in the two matters and you will note that there is a few annexures where he would have emailed the team or the ID regarding challenges that he had in relation to the matters. We do go into some detail on those at a later part in the

statement. So he will read through those paragraphs and we will go into detail on the content of those concerns a little later, not much later, a little later in the statement. Advocate Serunye, we are now at the 8th of August, 2025, when you are called into a meeting with the ID to get involved formally into the matter.

ADV SERUNYE: Thank you. Yes.

10 “On 8th of August, 2025, the Investigating
Director convened a short meeting and
informed me that she had decided to
include me in the matter.”

That meeting was attended by myself and Advocate Drew Ramsamy and the ID, it was only the three of us.

20 “She asked me to oversee the two
matters, the Lushaba matter and the
Khumalo, and others (Mokwele matter)
with Advocate Drushantha Ramsamy as
remaining the lead prosecutor in the
Lushaba matter, and Advocate Hlatshwayo
remaining the lead in the Mokwele matter.
She further asked me to attend to an
anticipated bail amendment application
under section 63 of the Criminal
Procedure Act, in circumstances where
senior counsel, Advocate Mshololo, was

said to be coming on board, and she wished a senior person to deal with the matter.”

CHAIRPERSON: Is Advocate Mshololo senior counsel, or do you mean a senior, junior?

ADV SERUNYE: No, no, she, yes, I do not know if she is a senior counsel, but in the words of Advocate Johnson, she said, Serunye, I want you, I have heard that Advocate Mshololo is coming on board to represent the accused in
10 the section 63 bail amendment application, I therefore want somebody senior in my office to, so that they can, you know, match her, but I think at that time she was of the view that Hlatshwayo could not, you know.

CHAIRPERSON: No, I am raising it because senior counsel is a term of art.

ADV SERUNYE: Defence, senior defence.

CHAIRPERSON: Ja, and I think even though I do not really follow the proceedings in the case where she is appearing, I think her robes are the robes of junior counsel.

20 **ADV SERUNYE:** I appreciate that, Commissioner.

CHAIRPERSON: Please continue.

ADV BALOYI SC: Before you go on to the next paragraph, on this bail issue, because the issue was raised with Ms Johnson, now that you are on board from August, at this point, did you come to understand that Ms Johnson knew

that the bail condition that was imposed was not asked for?

ADV SERUNYE: Commissioner, I did not know at the time, like I indicated earlier, I would have expected the prosecutor, Advocate Hlatshwayo, after the bail application to give a report to Advocate Johnson. Therefore, I did not know how much she knew of what happened in court on that day, and what she did not know. But as she is saying to me in that meeting, I want you, I am bringing you in to oversee the two teams, the two cases, but also to attend to the
10 section 63 bail amendment. That is the specific instructions I am getting to attend to the section 63 amendment. My role was going to be that, but I did not know how much she knew, and whether the condition had been asked for or not.

ADV BALOYI SC: Thank you.

ADV POOE: Advocate ...[intervenes]

ADV SERUNYE: But as she is saying to me, sorry, Counsel, as she is saying to me prepare for the bail amendment application, my understanding at the time would be, whatever application is coming up, I must have a look
20 into that, prepare for that thoroughly, since there is somebody senior also defending the accused in that application.

ADV POOE: Advocate Serunye, in this meeting, were you being asked to take overall oversight of the matter? I know you specifically mentioned that you were asked to take over

the bail amendment application, but did this extend to complete oversight of the two matters?

ADV SERUNYE: Indeed, it extended to overseeing the two cases, the Mokwele/Khumalo matter and the Lushaba matter. But with the two colleagues remaining as lead prosecutors, Advocate Ramsamy to lead the Lushaba case, and Hlatshwayo to lead the Khumalo/Mokwele matter. So I was coming in as a supervisor. Remember now, now it is clear to me there is no DDPP appointed into the matter, so I
10 am coming in after the fact as a DDPP to oversee the two cases.

ADV POOE: Now, you had expressed a concern earlier that when you found out that it was Advocate Hlatshwayo who was lead on the matter, that she was junior, this was a big matter involving Generals and all of that, did you express this view in that meeting when you were being told that she would remain as the lead prosecutor in this matter?

ADV SERUNYE: No, I did not raise it, Commissioners. It was a short meeting, Serunye, I decided to include you as a
20 DDPP on this matter to oversee. It was a very short meeting, being told what to do, and it was the end of the meeting.

ADV POOE: So you considered it more of an instruction and less of a consultation?

ADV SERUNYE: It was an instruction, more than anything.

ADV POOE: Thank you. You can continue.

ADV SERUNYE: Right.

“After this meeting at 36, because of the instruction to oversee the case, I then proceeded to request the docket and the section 27 referral, to familiarise myself with the two matters.”

Because now I am told these matters came via a 27 referral. So I remember talking to the investigating officers and to
10 the prosecutors to say, please give me the docket, I want to start reading these dockets. This would have been in preparation, especially for the impending section 63 bail amendment. On 16, I think the dockets were given to me on the 18th of August. I am continuing to read from the statement, line 2.

“On 16 August 2025...”

Which, Commissioners, was a Saturday;

“...I decided let me go to the office. I want to read these dockets so that I can
20 prepare thoroughly for the application. I read the docket for the first time.”

When I am saying docket, I am referring to the Mokwele/Khumalo docket. It consisted of four volumes.

“Having done so, I then issued a trial preparation note to the team. I read it and

finished it that Saturday and I issued a trial preparation note to the team, together with an attachment setting out a series of questions and concerns. I then forwarded the email to Ms Sekhukhune, who is the personal assistant of the ID. And this email and attachment attached to my affidavit PS3. I deal with the substance of those concerns below. The investigating team ...[intervenes]"

10

ADV BALOYI SC: Sorry, you asked for the section 27 referral. Did you receive it?

ADV SERUNYE: It was never given to me, Commissioner Baloyi. It was not given to me. I asked for it. I spoke with Mr Brian Padayachee on about three, four occasions. And every time when I was asking for that, he could not give it to me. I do not think he had it, because he would say, okay, Advocate Pete, I will come back to you about it. And up to about 31st of October, I was still asking for – I am saying 31st of October because I remember when I am checking my emails, I can see on that day I raised the issue again with Mr Sesoko. I said the accused have asked for further particulars and one of the issues that they are raising there is they want to be provided with a section 27 referral. I am still looking for this document, do you

20

perhaps have it? I was then raising the issue with Mr Sesoko. It was on 31st of October. So from August, I was looking for that document, but no one could give it to me. I spoke to the prosecutors. I was getting... Hlatshwayo did not know about it at all, she said she has not seen it. Advocate Ramsamy said she saw it, I think in the earlier part of the case when they were starting the investigations. But it appears either it was lost or disappeared. I remember she could not also give me a copy of that. She
 10 said she gave it back to the ID. But it appears the ID was also looking for it from her. So I do not know whether it was lost or not. At least up to that stage.

ADV BALOYI SC: Yes. Ms Ramsamy, when you ask her or when you discuss with her the section 27 and you ask for it, did she express anything about its contents, the one that she has seen? Did she express any concerns whatsoever relating to the section 27 and the charges?

ADV SERUNYE: No, she did not.

ADV BALOYI SC: Okay.

20 **ADV SERUNYE:** She did not.

ADV BALOYI SC: Thank you.

ADV SERUNYE: Thank you.

ADV KHUMALO SC: Advocate Serunye, several times now you keep referring to Ms Ramsamy as Drew, when we read the transcript two months from now, we are going to have a

problem. So I am going to suggest that you use the surname. I know you are used to how you speak to her in the office, but just for our benefit.

ADV SERUNYE: I am very sorry about that, Commissioner.

ADV KHUMALO SC: Thank you.

ADV SERUNYE: Yes.

ADV POOE: Just before you continue, for completeness, Commissioner Baloyi, the email referenced is at page 101 and that would have been sent on the 31st of October to Mr
10 Sesoko where Advocate Serunye was indicating that one of the accused is seeking further particulars and needed to see the section 27 referral. Is that what you are referring to?

ADV SERUNYE: Indeed. It is on which annexure?

ADV POOE: It is Annexure 10.1 at page 101 of the annexures.

ADV SERUNYE: Indeed, Commissioners. On Annexure 10.1, on the 31st of October at 12.20, I sent an email to Mr Sesoko. I copied the project manager, Mr Tsepo Tlale,
20 Advocate Ramsamy, Advocate Hlatshwayo, Mr Padayachee, and Chief Daylan Perumal with the subject Khumalo and others:

“Good afternoon, Mr Sesoko. We are in the process of answering the request for further particulars received from General

Lushaba, accused 1. The defence wants to know how the IDAC got involved in the investigation of this matter, whether it was section 28 or 27 or 28 referral, and who referred it to the IDAC. (Proof of such referral is needed.) Do we have a section 27 referral in this matter? And if so, where do we get a copy of saying was it by way of a letter, as we hear from the
10 evidence presented at the Ad Hoc Committee, or by way of an affidavit?”

And I must say, Commissioners, I did not receive a response to this email from Mr Sesoko and/or from any of the colleagues who are copied on the email.

CHAIRPERSON: This is October, but you say you asked for it immediately after you had been brought on board, so this would have been in August already.

ADV SERUNYE: From the moment I was brought in on 8 August, I started asking for these documents and the
20 docket, and by 31 October, I am still looking for that section 27.

CHAIRPERSON: Did you ever ask for it from the ID Advocate Johnson directly?

ADV SERUNYE: I did not ask it from the ID, Chair, but what happened is, as I was asking the investigating

officers, I think somebody informed her that I am asking this many questions about this section 27, and I think I am dealing with it on the affidavit. There is a stage where the ID called us to a meeting, me, Advocate Ramsamy, and Advocate Hlatshwayo. It was also a very short meeting, it was about during lunchtime, and when we got into the boardroom, she was already seated there.

She looked very angry, I must say, and immediately when we sat down and she addressed me, the meeting was
10 about her addressing me, she said, Serunye, I hear you are looking for a 27, you are asking many questions, sort of do you not believe my investigators? And she said, I have seen the 27, the ID has seen the 27, what more do you want? And I said, but ID, I am the designated DDPP in the case and I am told this case came by referral, I want to see this document and the accused are also asking for it as part of the disclosure or application for better particulars.

And she said, no, guys, go back and work, the ID has seen this document. So that was the end of the
20 meeting.

CHAIRPERSON: All right.

ADV POOE: Chair, Commissioners, this is explained at paragraph 63 of the statement.

CHAIRPERSON: Perhaps let us not go there, let us come back here.

ADV POOE: Yes. Advocate Serunye, you can proceed.

ADV SERUNYE: Thank you. At 37, remember now, on the 16th of August, the Saturday 16 August, I sent an email to the team members with an attachment having a number of queries that I was raising. And at paragraph 37:

10 “The investigating team then responded to
my questions and I also in turn reply. My
questions and their responses, their
responses were in blue to my email,
annexed as PS4, and my reply is on 17
August 2025, annexed as PS5. In the
course of discharging my responsibilities
for the matter, and in an attempt to
address the difficulties with the charge
sheet described below, I settled an
amended charge sheet. The amended
charge sheet reduced the matter to two
counts, including a count of conspiracy
under section 21 of the Prevention and
20 Combating of Corrupt Activities Act 12
2004, commonly referred to as PRECCA,
and I attached in my affidavit as PS6 the
charge sheet which I settled.”

ADV BALOYI SC: Before you proceed, Ms Pooe, are you planning to come back to these annexures and deal with

them? I mean, I am looking at annexure PS3, what is attached seems to be an important document that the witness is speaking to. I am assuming the following... what is the intention?

ADV POOE: Commissioner Baloyi, at the section that deals, at page 13, you will see there is a section that deals with the concerns regarding the Mokwele matter. It will be followed by another section dealing with the concerns raised around the charge sheet, and then concerns around
10 the Lushaba matter. It is the contents of those annexures.

ADV BALOYI SC: Okay, thank you.

ADV POOE: Advocate Serunye, you can continue.

ADV SERUNYE: Paragraph 39:

“In or about September 2025, during a postponement held in the Magistrates' chambers, the accused were brought closer to the table.”

I must say, the court building was under, there was some construction going on in the building at the time, and most
20 of the courts were waterlogged, and therefore we could not sit in the courts. Mr Mahlangu called us to his office, and that is where the matter was then postponed, in his office.
On line two:

“I then recognised accused number 4...”

Accused number 4 is Mr Lekalakala.

“I recognised accused number 4 as a person known to me. We come from the same township and had played soccer together, a fact I had not previously appreciated. I consider that this personal association precluded my continued involvement in the matter, and I submitted a memorandum to the Investigating Director requesting to be recused from the matter.”

10

Commissioners, at the time when I was compiling the affidavit and signed it with the evidence leaders, I could not locate the said memorandum. I have, however, managed to locate it, and I gave a copy to the Advocates this morning, the memo that I prepared and forwarded to the ID. I do not remember getting a signed memo from the ID, so I gave them the memo that I prepared which I gave to one of our admin personnel to hand over to the ID.

“I have, however, at the time, I only annexed as PS7 an email communication which I sent to the Head of Investigational Operations, which was confirming that my memo was submitted to the ID.”

20

Maybe just to explain here, I wrote the memo, sent it to one of our PAs at the time, a Ms Dikeledi, I do not remember

her surname, she then took it to Mr Sesoko. So when I was preparing, at a later stage, about three days or so, I then sent an email to Mr Sesoko because I was not getting any feedback from the ID. I asked if my memo asking to be recused from the matter had been submitted to the ID. And Mr Sesoko confirmed in that email, PS7, that yes, I have submitted your memo to the ID and she is attending to an EXCO meeting. She said she will deal with the matter when she comes back.

10 **ADV POOE:** Just one moment. Commissioners, the document that was just handed up is the email and the original memo prepared by Advocate Serunye. We have marked it Annexure 7.1 because it is associated with that paragraph. And the email the witness was referring to, to Mr Sesoko, can be found at page 74 of the annexures. It is the email at the bottom where he was asking, my apologies, his email, the original email is on page 75, so we will have to work up.

20 You will see there, there is an email from P Serunye to a Senyane wherein he indicates that he handed over a memo addressed to ID and Mr Sesoko notifying them of his recusal and he explains there how he knows the accused. Then Mr Sesoko responds on the next page, not the next page, the previous page, at page 74 where he confirms that the memo had been brought to his attention

and he had brought the memo to the ID's attention but that she was attending a meeting. Yes, you can continue.

ADV SERUNYE: Can I quickly read the memo into the record, Counsel?

ADV POOE: Yes.

ADV SERUNYE: That is Annexure 7.1, I wrote this memo then on the 16th of September. I then emailed it to, as per page 1 of the batch, you will see I then emailed it to the admin personnel, Senyane Manshidi, with the subject:

10 “Recusal from the matter of state General
 Khumalo and others”

Attachments. It appears I wrote that email on top of another, I wrote the memo on top of another document, that is why the attachment appears with the subject:

 “A subpoena request to NDPP”

So I worked on top of another memo. On page 1 the memo is directed to Advocate Johnson, Investigating Director and to Mr Sesoko, Head of Operations and Investigations from Advocate P Serunye, Deputy Director of Public

20 Prosecutions, subject:

 “Recusal as prosecutor in the matter of
 state General Khumalo and others”

The memo is dated 16 September 2025, paragraph A:

 “1. Purpose

 The purpose of this memorandum is to

inform the Investigating Director IDAC and the Head of Operations and Investigations of my recusal from the aforesaid matter.

2. Background

10 About four weeks ago, the ID formally authorised me to be part of the prosecution team in the matter of State versus General Khumalo and others. The matter was already on the court roll, having been first enrolled on 27 July 2025.”

And it seems on the email I am repeating the same mistake of date of 27 July, actually it should be 27 June 2025.

20 “In August the matter was remanded to 8 September 2025 for a formal application in terms of section 63 of the CPA Act brought by accused 1, 3, 4 and 7. On 8 September 2025, I presented the state's case assisted by Advocate Joyce Hlatshwayo. The application commenced on that day but not finalised. The matter was remanded to 15 September 2025 for continuation. On 15 September 2025

the matter could not proceed due to the fact that the Magistrate Court building was waterlogged and some of the courtrooms did not have electricity. The matter was then postponed in Chief Magistrate's office, in Chambers. The accused were called into the said office and stood behind us (us referring to the lawyers), facing towards the Magistrate. Accused 4 was standing closest to me. When I turned back to look at the accused, I then noticed for the first time since their first appearance that accused 4 is the person that is known to me. Accused 4 and I grew up together in the township in Mabopane. We actually played soccer together for many years, albeit for different teams. For all intents and purposes, accused 4 (Josias as we used to call him) and I are homeboys. Between yesterday and this morning, I have verified that accused 4 is the same person I grew

up with. Thus, I have formally decided to inform IDAC management and recuse myself from handling any case in which Mr Josias Lekalakala and his family members (and associates) are accused persons. I have already disclosed this fact to my fellow IDAC managers in an earlier management meeting held this morning.

10

3. Conclusion

To avoid any negative perceptions and in the interest of justice, I am formally recusing myself from this matter and any matter that may involve family members and/or associates of Mr J Lekalakala. On 29 September 2025, I am formally going to recuse myself in court before the Magistrate, since I was still addressing the Court when the matter was adjourned on the last occasion. I did not recognise Mr Lekalakala in court on the three previous occasions, otherwise I would not have been part of the prosecution

20

team right from the onset. Whilst I was part of the case, I prosecuted it to the best of my ability, and the record of the proceedings will bear testimony to that fact. I just do not want any wrong perceptions to be created by my continued prosecution of somebody that I grew up with. My name and integrity mean a lot to me,
10 so are the interests of justice.”

This memo I had, you will see it was dated 16 and addressed to Mr Sesoko and Advocate Johnson. As I indicated to the Commissioners, I did not, I tried to locate the signed copy, I could not find it, but it is backed up by the email PS7, where Mr Sesoko confirms that the memo was brought to my attention, referring to himself, Mr Sesoko, and:

“...I have also brought it to the attention of the ID. However, because she is
20 attending MANCO, and I was also on leave yesterday, we are only going to discuss it tomorrow when she is in the office.”

But what followed on this, if I go back to my affidavit, on paragraph 40:

“Approximately two weeks after I had

submitted this memo, two weeks later, the Investigating Director informed me that she had considered my request and granted it, but asked that I first complete the section 63 bail application before withdrawing from the matter.”

I remember that day, it was me and the ID and Mr Sesoko, I was called into her office and she said, I received your memo and it is only fair that you recuse yourself from the
10 case because you cannot prosecute a person that you know and his colleagues and associates. But she said, but because the bail amendment application has already commenced and it was almost halfway, please finalise that and then you can formally withdraw from the matter and that is how then I proceeded with that application.

“On or about 14 October ...[intervenes]”

ADV POOE: Advocate Serunye, do you know if anyone then replaced you as the DD after your recusal was accepted?

20 **ADV SERUNYE:** Yes. Advocate Manilall, his name is Santos, Santos Manilall replaced me. It is him and a number of prosecutors, I think two or three other prosecutors, the Advocate du Plooy, Isaac du Plooy, and Advocate Bastian Theunissen, I think that is the surname, I am sorry if I am not pronouncing his surname properly, but

they were only... Yes, they came on board. I do not know at what stage, but it is that period I proceeded to finalise the 63 and the bail appeal that followed later.

But I know that they were later then involved with Advocate Santos Manilall being the DDPP and project owner of this case. When I ceased to be the prosecutor in the case, I think so was Advocate Ramsamy and Advocate Hlatshwayo. So the team led by Advocate Manilall took over the two cases, and I think they are still the
10 prosecutors.

ADV BALOYI SC: You say the team without, it is a new team without, well new, in that it now does not have Ramsamy, Advocate Ramsamy and Advocate Hlatshwayo.

ADV SERUNYE: That is correct, Commissioners. The team of Advocate Manilall took over the two cases and Advocate Ramsamy ceased to be the prosecutor in the Lushaba case, so did Advocate Hlatshwayo.

ADV BALOYI SC: Okay, can I...

ADV SERUNYE: I do not know at what stage they were
20 told to no longer be part of the case, but I know for a fact they are no longer part of the two cases.

ADV BALOYI SC: Maybe just correct my assumption or what I thought things meant. When you were setting out the four different streams that you have, each one of them led by a DDPP, I assumed that therefore there is only four

DDPPs in IDAC. You now make a reference to Advocate Manilall.

ADV SERUNYE: That is correct.

ADV BALOYI SC: As a DDPP.

ADV SERUNYE: Yes.

ADV BALOYI SC: So does that mean you have more than just the four and where do they fit in, in these different streams that you have?

ADV SERUNYE: No, Commissioner Baloyi, at the time,
10 when the streams were set up, Advocate Manilall was still a Senior State Advocate, he was not yet a DDPP and he was reporting to one of the DDPPs, Advocate Witbooi, and he only later became a DDPP. I think he went for interviews at some point for the position and was then appointed formally as a DDPP and became part of the DDPPs.

And at that stage, then it would have been me and Advocate Manilall, Louw, and Advocate Witbooi, even though Witbooi, her position was on contract, which ended last year in December, 2025. And there was Advocate
20 Annamarie Friedman. So at some point we were five with the appointment of Advocate Manilall as a DDPP. We then became five.

ADV BALOYI SC: So when Advocate Manilall gets appointed, you say he gets promoted, he becomes a DDPP.

ADV SERUNYE: Yes.

ADV BALOYI SC: When he gets appointed to replace you in these matters, DDPP Louw is again overlooked. He is again not part of it. He is the default.

ADV SERUNYE: Ja, that is correct, even though the case fell under...

ADV BALOYI SC: Under his team, his stream?

ADV SERUNYE: Under his stream.

ADV BALOYI SC: Okay. Thank you.

ADV SERUNYE: Thank you.

10 “On or about 14 October 2025...”

I am reading from paragraph 41;

“...when the matter was due to proceed, the Magistrate recused himself on the basis that he had been subpoenaed by the Commission. I was of the view that the reason given was not legally sound, and after consulting the team and Investigating Director, I...”

It is supposed to mean we, because I was not doing it for
20 myself but for the team, we then launched;

“...I launched an application to review the recusal.”

We consulted with the ID, we informed her about the recusal, and that the Magistrate, the reasons that he gave were not in line with the established principle of recusal

with reference to the decided cases, and therefore the unit then decided we should not leave it lying. I must say, Commissioners, it came as a surprise to both me and Advocate Mshololo, who were defending on the day, that before we started, the Magistrate just said, I want to address the two of you, I have been subpoenaed by the Commission, and as a result, he was recusing himself.

He did not give us an opportunity to address him on what he was anticipating to do, and that is one of the
 10 reasons why we then took up his decision on review to say, in line with decided cases, at least you ought to have had us, engaged us and, but in any event, the reasons that he was giving were falling short of the established principles, and that is why we took the matter up on review.

ADV BALOYI SC: But that same consideration that he did not give you the opportunity to address him when he decided to recuse himself, why was that not your consideration on the bail issue? Because in the bail issue, he did not give the accused, we later learnt in the appeal,
 20 that the accused were not given the opportunity to address him on that condition. I am not probing at this stage, it is because you have touched on it, but it is a subject of interest that I would like to hear you on, not necessarily now in full, but it is something that I would like to engage you on.

ADV SERUNYE: I understand that. Can I quickly just take out a copy of my book here, just to make... Ja, Commissioner Baloyi, the reason for that was, and we looked at the provisions of section 60 of the Criminal Procedure Act, especially at 60 subsection 12, if I am not mistaken, I want to go there. Section 60, subsection 12:

10 “The Court may make the release of an accused on bail subject to conditions which, in the Court's opinion, are in the interest of justice.”

And section 60 says:

 “The Magistrate must weigh up the facts presented before him and the evidence before him.”

And at the time, even though neither of the parties had addressed him on this specific issue or condition, but our understanding was that he has the powers in terms of section 60, subsection 12, to impose any conditions which, in his opinion, were in the interest of justice, allowing him
20 to release the accused on bail.

 We objected to the appeal on those grounds, but when one reads the record of the matter at the High Court on appeal, and the presiding Judge took me on that, and I had to concede to the Commissioners that, yes, much as I did not know much about the case on the day of the bail

application, I was seated there, but I remember that my fellow prosecutor and Advocate Hlatshwayo was not engaged by the Magistrate, neither were the defence before the Magistrate decided on this condition.

And for that, that is the first point, but secondly, the Magistrate did not give reasons for imposing this condition, and I think those two factors are what swayed the decision in favour of the defence, the High Court saying when reasons are not given, it is difficult for a party to the
 10 proceedings to know why a decision was made against them, and there is a constitutional case to that effect, and furthermore, the fact that you are not engaged to address the Court on that was also wrong, and that led to the conditions being set aside.

On hindsight, yes, we ought not to have opposed it on those basis, but at the time, looking at the Act, it says there is nothing wrong that the Magistrate did, he has the powers in terms of 16(12) to impose any conditions. Had he given reasons, had he engaged us to address him, that
 20 condition would have stood.

ADV BALOYI SC: Okay, we will come back to it, Mr Serunye, and because Ms Johnson did testify to this, you know, specific questions were asked of her about this, and she had certain answers and explanations, so I would like to hear your views about it, but we will get to it.

ADV SERUNYE: Thanks, Commissioner.

ADV BALOYI SC: Thanks, Ms Poee.

ADV SERUNYE: Thank you. Paragraph 42:

“The accused thereafter abandoned the section 63 application. That is now after the Magistrate had recused himself.”

The Chief Magistrate was trying to arrange another Magistrate to take over the 63 application, and the accused then, because of that delay, they then brought a section 65
10 bail appeal, section 65 of the Criminal Procedure Act bail appeal. We again had a discussion, discussed with our boss, and we were given a go-ahead to oppose the application, and both matters served before the High Court, and the judgments are attached as PS8, the judgement for the bail appeal and the order for the recusal is PS9.

“In the bail appeal, PS8, the High Court agreed that the presiding Magistrate's decision to impose the decision without engaging the parties and giving reasons
20 was wrong in law, and therefore ought to be set aside. On PS9 in relation to the recusal of the Magistrate, the High Court ordered in our favour to say yes, the Magistrate ought not to have recused himself for those reasons given, not

engaging you, and the reason given is
also not in line with your Rugby Union
matter.”

ADV POOE: Sorry, Advocate Serunye, just before you
proceed with the next paragraph, in practical terms you
would have had a conversation about the bail amendment
application, the 63. Did you have a similar consultation
with the ID regarding now the bail appeal, and did she give
positive permission or consent for you to proceed with
10 appealing, I mean opposing the appeal?

ADV SERUNYE: We did, Commissioners, and we informed
the ID, and then she gave us permission to go ahead with
the opposition on the section 65.

ADV POOE: And when you do that, does she have sight of
any of the affidavits that are filed, particularly in
opposition?

ADV SERUNYE: She does, Commissioners, and then I
must say everything that we were doing, we were sending to
the ID. The section 63 bail amendment application, all the
20 affidavits of the accused were sent to the ID, and our
response, our responding affidavit of Mr Brian Padayachee
was sent to the ID, and the defence then asked for a
postponement in that section 63 bail amendment
application.

They then, on the next date, submitted an affidavit

by General Masemola in support of the application, indicating that he had lifted their relocation to other offices and that affidavit as well was given to the ID. I remember sending an email to the ID asking her that we want to, after receiving this affidavit of General Masemola, we want to respond. Now, how do we do it? Do we subpoena information from General Masemola, or do we serve them with a 28? My question to her was, do we do it by way of a 28, or by way of a letter under your signature being the ID?

10 And she sends me an email to say serve the 28, which is what we did, and we got further information which then allowed us to prepare additional affidavits of two other officials, which affidavits we then also handed in in support of our opposition. So she was kept abreast at all times of what was happening.

ADV POOE: And do you recall whether Mr Padayachee's affidavit in opposition dealt with that specific bail condition related to whether or not you sought that condition to begin with?

20 **ADV SERUNYE:** What is the question again?

ADV POOE: Do you recall whether Mr Padayachee's affidavit in opposition set out that, or indicated that this bail condition was never sought, or anything related to that?

ADV SERUNYE: You mean the affidavit which was filed...

ADV POOE: In opposition.

ADV SERUNYE: In opposition.

ADV POOE: Of the bail appeal.

ADV SERUNYE: I cannot recall, but if I check on my emails, maybe those can juggle my mind.

ADV POOE: All right, thank you.

ADV SERUNYE: Yes.

ADV POOE: You can proceed to paragraph 43.

ADV SERUNYE: Yes.

10 “The bail appeal succeeded. While I
contended that the Magistrate was in law
entitled to impose the condition, I was
constrained to concede that he had failed
to give any reasons for imposing the
Crime Intelligence entry condition. And it
was on that basis, that is the failure to
reasons, that the condition was set aside
as irregular. The review of the
Magistrate's recusal also succeeded, the
Court holding that the reasons he had
20 given for recusing himself were not in
accordance with established principles.”

At 44:

“Having completed the section 65 bail
appeal and the review, I had no further
involvement in the matter.”

Paragraph reading:

“My concerns regarding the Mokwele matter. Once I was officially involved in the Mokwele matter, Advocate Hlatshwayo and Ramsamy came to me to voice their concerns about the lack of evidence in the Mokwele matter.”

This is as way back now as 8 August when I become involved.

10 “Since there had been no DDPP on the matter before my involvement, I could understand why they felt that they could not address these issues directly with Advocate Johnson due to the power dynamic. Having read the docket on 16 August 2025, I was not satisfied that the corruption charge was sustainable on the available evidence and current formulation of the charge sheet and I said so in

20 writing at the time. My concerns were not the product of hindsight, I recorded them contemporaneously.”

At the time, 16 August, that Saturday, I produced those queries and I raised a number of questions. I remember one of my questions to them is why were these Generals

arrested? I could not understand. I could not understand, why are they charged with corruption?

ADV POOE: Before we deal with your specific concerns, just one aspect here, where you say:

10 “That since there was, there had been no
DDPP on this matter before my
involvement, I could understand why they
felt they could not address these issues
directly with Advocate Johnson due to
power dynamics.”

What do you mean by power dynamics?

ADV SERUNYE: Ja, look, the two colleagues are juniors and it is not easy for, it would not have been easy for them to go straight to the ID to raise issues. I am talking about issues that they were raising with me, they had a lot of complaints that the investigators were not listening to them, they were not carrying out the instructions that as they were delivering to them. It appeared to me, in fact, the relationship was not that good between the investigators,
20 especially Brian Padayachee and Advocate Ramsamy. They were not in speaking terms when I came into the team.

So I tried to put them together. In some of my emails, I am saying to them, look, we are playing for the same team. Let us have meetings. Let us talk. Let us iron out whatever problems that we are having. So they could

not, the two juniors could not approach Advocate Johnson and that is why maybe they felt at ease to come to me and make all those complaints, relate them to me.

Not that it was easy for me as well to approach Advocate Johnson. I respect her a lot. I have known her for many years and I view her as my senior and therefore I could not just barge into her office and say, but what is happening here? Why did you arrest these people? That is why I put it in an email. I raised all my queries in an email
10 and I forwarded it to my colleagues, then I forwarded it to her via her PA.

And it was not only this one email. You will see, I think I sent about two or three, where I was saying there is a problem with this case. The way it was investigated, it was rushed. I remember I sent an email directly to her and I said, it appears this case was rushed. If anything, there might be a case of fraud there, but the way the cases were done were just not on with me.

ADV POOE: Just before you continue to your specific
20 concerns, when you say that it was difficult to approach Advocate Johnson, was it purely because of her seniority or was there something in her management style that made it difficult to approach her?

ADV SERUNYE: Ja, look, I do not want to sound otherwise, but yes, management style as well. She could

be unpredictable at times and you know. She is a very good manager, make no mistake, for as long as she was in the IDAC, that organisation, and even now, I mean, we are headless as it is for the last week. She resigned last week, Monday. But the organisation, it continues running itself.

It is like a steam train, which is on the track. It is all because of the good work that she has put in. The discipline is there amongst the colleagues. So she has done so much work that even when we are not having an
 10 acting head or permanent head, the organisation can continue to run itself with the help of, obviously, the CEO, Mr Sesoko, and the three deputies that are there.

So I think it was more because of fear that how is she going to react, you know, when we take these issues to her, which was also the same, I mean, for me, at the level of DDPP. Not that I could not raise issues with her, but you do not know how it is going to end. I referred earlier to a meeting where she was angry with me for raising the issue of section 27.

20 So she told me straight in front of the two juniors, why are we making an issue about this? Go and work. I have seen the document. Why do you keep on questioning a second guessing your investigators? So that is what I referred to.

ADV POOE: So in a sense that she, on the one hand, like

you said, she is a good manager. But on the other, if you were raising concerns and questioning her decisions, she did not take kindly.

ADV SERUNYE: She did not take kindly to that, and yes, she will tell you straight.

CHAIRPERSON: Were there many instances of this, or was this the only instance? The one instance relating to the section 27 referral?

ADV SERUNYE: To me, Chair, it was only that one
10 instance of the 27. Like I said, I have known Advocate Johnson for many years and we have had, even though we never worked in one, with the same office, but we have always had a very cordial and good relationship when we met in the conferences and so on. And I have known her to be a very good prosecutor, hard worker. And when she came in as a manager at IDAC, the management was, for me, of a very high level.

CHAIRPERSON: Thank you.

ADV SERUNYE: Yes.

20 **ADV POOE:** Thank you.

ADV SERUNYE: At 46:

“In my first trial preparation note, I raised,
among others, the following questions to
the team.”

But all these are covered in my email. 46.1 ...[intervenes]

ADV POOE: Perhaps, as opposed to reading the summary, we can go to the actual annexure. If we can go to PS3, you will see it starts with the email that you sent to Ms Sekhukhune, who is the PA to the ID, where you brought this memo to her attention. And then below that would have been the email you sent to the team members, wherein you gave them Saturday homework while you went and watched a nice game, I see. And then the next page, on page 25, would be where you deal with your concerns. Can we go
10 there?

ADV SERUNYE: Yes. Counsel, you will see, I agree. You will see at page 24 is my email. Actually, the first email would be the last one.

ADV POOE: Yes.

ADV SERUNYE: You will see it was, I sent it at 2.51 on the Saturday to the team members, Advocate Hlatshwayo, Advocate Ramsamy, Mr Brian Padayachee, Chief Investigator Daylan Perumal, Investigator Charles Eales, Investigator Patrick Mlambo. And I also copied the Project
20 Manager, Mr Sipho Tlale. I referenced the subject as:

“Trial preparation, note 1. Colleagues,
here is your Saturday homework. I am
knocking off now to watch Pirates and
Sundowns. PS. It was 2.51, I have been
in the office since in the morning.”

ADV BALOYI SC: Can I just ask a question? What is the difference between a project owner and a project manager? Because we have encountered Mr Tlale's name before as a project manager.

ADV SERUNYE: Yes. The difference, Commissioner Baloyi, is that Mr Tlale is one of the four project managers that we have. They are involved right from the beginning of the case. They prepare our monthly reports. They are also a link between us and HR in terms of where we need
10 resources. And they also prepare some documents. Some 28s, when I prepare a memo, an application. And once it is settled, they are the ones that forward it to the office of the ID and when we receive a report back.

They do a lot of work in the team. They help with preparing for the budget of the team. When we are travelling, they are the ones who prepare memos for travelling. And when we need resources like computers and memory sticks, so they manage the whole project in that sense.

20 **ADV BALOYI SC:** So we are in a... I think we have encountered Mr Tlale and we have had a discussion about him, where his name appears, I think in a summons, and it says enquiries. My direct question to you is, does he make the decision I want a summons, and then he prepares the application, or his is an administrative function?

ADV SERUNYE: It is more of an administrative function, Commissioner.

ADV BALOYI SC: Okay.

ADV SERUNYE: He does not make, that decision lies solely with the DDPP on what type of investigations [indistinct], after consulting the team, whether we go at 28(13) or 28(1)(8). Project managers do not make those decisions.

ADV BALOYI SC: Thank you.

10 **ADV SERUNYE:** Yes.

ADV BALOYI SC: Thank you.

ADV SERUNYE: I am copying him because he must know what we are busy with, what we are doing. He keeps the file of this matter. So that is why I wanted him also to know that investigations are still outstanding in this matter. And when we are doing a case plan, he must file those. Everything that we do, the project manager must know. So I sent them this email, and the email had an attachment containing queries and later, the very same day at 3.58, I
20 forwarded to Ms Innocent Sekhukhune.

You will see the message to Ms Sekhukhune has an attachment, document1.docs. The email, the document, that is my document, is now on page 25 with the heading:

“Dear Team,

1. I have just finished reading the first

docket, Brooklyn CAS (General Khumalo, and others).

2. Starting from Monday, I want to sit with the prosecutors, Drew and Joy, to start working on refining the charge sheet, to have it ready for the bail condition amendment application on 22 August, and for disclosure.

10 3. As part of our preparation for the case, the response to the application for federal particulars (which I am sure we are going to be served with in due course) and preparation for the trial, I want to know the following (the questions are directed to all the team members)."

I was saying.

"3.1 Why were the accused charged with corruption?

20 3.2 Who corrupted who?

3.3 Do we have evidence in the docket to prove allegations of corruption against any of the accused? If so, what evidence is that?

3.4 Do we agree that in terms of PRECCA,

the Corruption Act, the giving and/or accepting of a gratification should be for a certain aim or objective? PRECCA uses the word “in order to act personally or by influencing another person so to act, in a manner described in Roman figures 1 to 4”.

10 3.5 That means a person gives another a gratification and the other one accepts or receives in order to act in an unlawful manner, as set out in Roman figure 1 to 4.

 3.6 Now following paragraphs 3.4 and 3.5 above, why did these Generals in the SAPS go out of their way, rig the appointment process, risk their jobs, and flound the National Instruction 11 of 2017 to appoint a 29-year-old inexperienced civilian to the rank of
20 Brigadier in Crime Intelligence?”

I am asking the question:

“Who is this young lady (Mokwele) for whom six Generals in the SAPS are risking losing their jobs for? What did the Generals stand to gain or expect

to gain (quid pro quo) by giving her gratification, which is the position or the job? What did they stand to gain? I do not have that evidence in the docket.

3.8 What are we saying? Are we saying the Generals gave Mokwele a position/a job in Crime Intelligence in order for Mokwele to do the following, to do what?"

10

I am asking them;

"3.9 What did Mokwele have to do in terms of Roman figure 1 to 4 of PRECCA?

3.10 Did she give or promise to give any quid pro quo to the Generals? In law, she does not have to, but there must at least be an understanding between Mokwele and the Generals that the job is given to her for a particular unlawful reason (in order for her to act unlawfully as set out in Roman figure 1 to 4).

20

3.11 She was just a young lady occupying an ordinary position at BMW at the

time. I cannot see that there was anything she could offer to these Generals (except giving them cash as a thank you or if she was having a relationship with one of the male panel members/Generals. I am trying to find out why are they giving him a job which according to the state she was not deserving to get and what did she do in return or what was expected from her.

10

3.12. Did the team subpoena the bank accounts of the Generals and Mokwele to ascertain if she did not make any payments to them for giving her a job? If not, why not?

20

3.13 Were the cell phone records of the Generals and Mokwele obtained and analysed for any communication relating to the application for the post, preparation for interviews or discussions about payments? If not, why not?

3.14 Were computers that were used by the Generals during the period in

question seized and/or mirror imaged to look for communication between them and Mokwele (or anyone related or associated with Mokwele prior to or during and after the interview process)? If not, why was this not done?

10 3.15 Did the team investigate any possible family relations between Mokwele and any of the Generals that formed part of the panel?

4. Colleagues, the appointment of this young lady to such a position does not make sense and is suspicious, but suspicion alone is not enough. There is a reason why she had to be appointed and that reason is our answer. It is the quid pro quo. We must look for it.

20 5. Otherwise, we remain with fraud regarding the flaunting of processes to appoint her. Yes, her shortlisting and eventual appointment was fraudulent because she was inexperienced (which was one of the

requirements for the position). Many other applicants were disqualified for lack of managerial experience. How did she make it to the top five and eventually top three?

6. She also made representations in her CV (fraud). The investigators should follow up the validity of the project management certificate at Stellenbosch University.

10

7. She also claims to have been top of her class in her first year studies for MBA. She does not say where she was registered for the MBA and whether she eventually completed it.”

I must say later, with the investigation, it became clear that she had finished the MBA, so that information was secured after I raised all these questions. But when she submitted the application, she only completed it after submitting, I think a month after, in May 2024, whereas the application was in...

20

ADV KHUMALO SC: Let me just correct you there, because in her application on page 265, that very issue you are raising, she did say that she is still busy with the MBA and she will only complete it. If you look at page 66,

bottom of the page, it is expected. So at the time of submission, she did not have it and she said so in her CV.

ADV SERUNYE: I see.

ADV BALOYI SC: And in fact, in her job application on page 263, the only three qualifications she lists as being relevant to her application. In other words, she says, I have this many other qualifications, but they are not necessary for this application because what the job description requires is these three. And then she lists all
10 three of them on page 263 of file 2. She says BTech Industrial Engineering and then she says the National Diploma in Mechatronics Engineering, Mechatronics.

So she was saying to SAPS, for the purposes of my application, you need only look at these two because that is what the advert requires. I have these other things, but they are not relevant to the application. So she made that very clear. There should have been no reason to go look for things that she is not relying on for the purposes of the application. They are mentioned only in her CV because
20 she gives a full description of what she is doing and what she is all about.

ADV SERUNYE: I agree, Commissioner Khumalo, and I can say that those were later clarified. The fact that she has a project management certificate was clarified and an affidavit was obtained from Stellenbosch University that in

fact ...[intervenes]

ADV BALOYI SC: There was not even a need to do that because she was not relying on that qualification to apply for this position.

ADV SERUNYE: Yes.

ADV BALOYI SC: It is a by the way that is mentioned in the CV to say, by the way, I have done these other things, but for the purposes of my application for this position, I am only relying on my BTech and my diploma. That is all.

10 **ADV SERUNYE:** I agree, Commissioner. It is just that when the markings were done for the interview, one of the, and I think it also comes up in the email where I am saying:

“But also she was given more scores by the panel for educational qualifications compared to Van Vuuren and Baphela. And SACAI only confirms her matric diploma and degree in engineering. I will wait for your input, Sipho arrange a meetings.”

20 Indeed, for purposes of this position, those qualifications were not even relevant. But the fact that when the panel members are scoring, they consider that the educational qualifications of applicants, comparing one to another, we needed to certify ourselves that she has those, in case they were taken into consideration when the panel was marking.

ADV BALOYI SC: Yes, but you can say then she committed fraud. I mean, if the panel takes additional things into consideration, the applicant can be accused of fraud.

ADV SERUNYE: No, she...

ADV BALOYI SC: What the applicant has put forward is what is required and those have been verified.

ADV SERUNYE: True, I agree, I agree with what the Commissioner is saying and I do not think there was any
10 misrepresentation that was alleged in the charge sheet regarding the project management and the MBA. Because as the Commissioner is saying, indeed, in her application, she says that the MBA is going to be finalised in the future. In fact, it was only finalised a month after the application was submitted.

ADV BALOYI SC: And this thing here in paragraph 6, she also made misrepresentations in her CV. I mean, that is not correct.

ADV POOE: Commissioner Khumalo, perhaps because we
20 also tried to get clarity on this, perhaps explain what you meant by misrepresentations amounting to fraud in her CV.

ADV SERUNYE: Right, I am calling it fraud, Commissioners, because she says in her CV, I have been a middle manager in BMW since, I think she says 2016 or 2017, from the year she started working. And we obtained

affidavits, or at least at the time when I read the documents, there were affidavits from BMW, from Human Resource official and from a person to whom Mokwele was reporting. Both of them say Mokwele was never a manager in BMW. She was not a supervisor in BMW. And therefore, for her to claim in the application that she was a middle manager amounted to misrepresentation.

ADV BALOYI SC: Advocate Serunye?

ADV SERUNYE: Yes, Commissioner.

10 **ADV BALOYI SC:** What you say in paragraph 6 and what you are being asked are two different things. You say in paragraph 6:

“She also made misrepresentations in her CV (fraud). The investigators should follow up on the validity of the project management certificate.”

But you confirm that that was done. So that is not the issue. And then the CV itself is on file 2, page 265. I have been through this CV and what you are saying is simply not
20 in this CV, unless you can point to me where that misrepresentation which amounts to fraud is set out there. File 2 on page 265. And it is a short CV. It is only 3 pages, so it is not very long.

ADV SERUNYE: Commissioner, I am looking at the CV and maybe in relation to where she says middle manager. It is

not coming out of the CV, but out of the application itself. But what she says on the CV, which is a misrepresentation, is on page 267, on the last page of the CV, under accomplishments, where she says that she saved over one million in IT security project costs by trading and equipping the internal maintenance team to carry out some of the project work.

ADV BALOYI SC: Advocate Serunye, let us agree that 267, where you are reading, it deals with successes
10 achieved in the current role. Because she says I successfully implemented the first robotic process. I saved the company one million in IT security. I saved 500,000 in annual maintenance. I reduced the electronic tools management. That is all she says. And in fact, the affidavit from the BMW manager says, well, I cannot confirm these things because maybe other people can. That is what he says.

But looking at the CV as it stands, you can say this is misrepresentation, this is fraud. I think for now, let us
20 just accept that unless you can show that what is stated there, those are not accomplishments and that is false, there is no fraud there.

ADV SERUNYE: Commissioner, that is what I am saying. BMW cannot confirm that, that she saved them one million, as she is stating in here, then she is making a

misrepresentation. And if I am a panel member and I am reading this CV, it is very impressive that we are looking for a manager. If we can get a person who can save a company so much money, then probably this is one person that I can shortlist. But BMW says that information.

ADV BALOYI SC: I think what I wanted to do was to show you that in the CV, the misrepresentation that is mentioned in the memo, is not in the CV. I know where the problem could be on the issue of whether she has appropriate
10 management experience, but that is a different topic and maybe we will deal with that later on. For now, continue with the rest of your memo because I was not probing you, but I just wanted to point out to you that the MBA issue, what she said in the CV is actually correct.

ADV SERUNYE: True.

ADV KHUMALO SC: And all the qualifications that she listed in her job application and CV have actually been verified and you have confirmed that.

ADV SERUNYE: I do, I do, Commissioner.

20 **CHAIRPERSON:** So where there might have been a question mark is on whether she has appropriate management experience. But that is an issue for interpretation because it is a term that is defined in another document and even the way it is defined, it is a bit vague. But the CV as it stands, the qualifications are there and

there is no issue with them.

ADV SERUNYE: I agree. With regard to the qualifications, I agree. And like I said, those were verified, Commissioner. The issue of her having, the issue of her being a manager, like I am saying, if we have witnesses from BMW saying she was never a manager with us, that is the only information that we are working from. I cannot say, well, I must interpret her CV or her application otherwise. If BMW say she was not a manager and safety, she says she was a
10 manager, then to me it is a misinterpretation.

I was going to call those two, if I was doing the trial of this case, I was going to call those two witnesses from BMW, Human Resource and immediate supervisor, would have said to the Court, she was never a manager with us. And therefore, how is she then shortlisted if one looks at the requirement of three-year managerial experience in the field of the post? That is what to me, at least at that time, I have got the thought.

ADV BALOYI SC: And that is a fair question to ask, but I
20 will deal with it with you when we get to the national instruction.

ADV SERUNYE: Thanks, Commissioner.

ADV BALOYI SC: I have a slightly different question, but maybe before I ask you my question, let me say in tongue-in-cheek that if you called those two BMW witnesses, I

would have asked, is this an IDAC matter after all? I say that tongue-in-cheek. My question is, your memo seems to me, at least, to cover or to raise questions that I would expect a prosecutor to ask before there is an arrest, before there is charging and people are made to appear in court. You seem to be asking basic questions. Am I correct in that observation?

ADV SERUNYE: You are hundred percent correct, Commissioner Baloyi. These questions, the team ought to
 10 have asked themselves these questions. When I came in two months after the arrest, I was not supposed to be asking these questions, especially if a person is charged. That is why I am saying, why did you charge them with corruption? Because I am looking for the evidence of corruption in the four volumes in the docket. I cannot find any evidence of corruption.

The question that I am asking, the team ought to have asked itself before making a decision that we are now ready, we are going to arrest. They should have asked
 20 themselves, are we going to be able to prove the gratification? Are we going to prove that Ms Mokwele received the gratification and the intention element, which the author Snyman and them say, 'in order to' denotes the intention element.

That is why I keep on asking, in order to do what?

She does not have to do anything to say, oh ja, no, she gave them R500 or this or that. But the understanding between the parties that we are giving you this, we are corrupting you and basically she is receiving on that understanding. These are questions that the team should have asked themselves.

But the Commissioners will see as we go on in one of my other memos, even if that had happened, I am raising another question later, so that but your charge sheet is
 10 defective in that you are charging them with section 4 of PRECCA, which says for subsection 1, paragraph A, a person, a public officer who is, so it talks to a public officer who is given a gratification and who accepts or receives or promise or agrees to accept a gratification from paragraph B, a person, from another person.

Therefore, the reading of PRECCA will tell you that the way they drafted their charge sheet, it was vice versa. They are saying the Generals gave to a civilian. The Generals being public officials, if one were to stick to the
 20 language of section 4, it ought to have been the other way around. The civilian should have been the one who was giving the gratification to the Generals, not the other way around, because the Generals are referred to in 4(1)(a).

They should receive, not give, and this civilian should give, not receive. But in their charge sheet, they

were having it the other way around. So these are issues that ought to have been looked at and maybe the charge sheet also interrogated, but in relation to this, this is about evidence. Do we have enough evidence to go on through your internal charge of corruption? My view at the time, Commissioner Baloyi, was that no. They should have been asked right from the beginning, but then you arrest. After arrest, it is only when you start investigating.

Now somebody can say, okay, what if Serunye did
10 not come in on 8 August? I would not have asked these questions. Were you going to go on with that evidence that you had at the time? Was that sufficient? Would we have convinced the Court that you have a *prima facie* case of corruption?

ADV BALOYI SC: Colonel Padayachee thought so, that there was enough to persuade a Court that she would have committed a crime in the future, therefore she is guilty of an offence, an unknown crime. So someone in your office thought that there was a good case here, including of state
20 capture.

ADV SERUNYE: Ja, I do not agree with that. Definitely, it shows if you read this as an independent person, it tells you immediately there was a lot of investigation still outstanding and you could not have arrested, go through the processes, bail applications and stuff and only do the investigations

after. Especially, Commissioners, that were dealing with a high profile case or a case that involves high ranking officials in government. You do not just arrest people, put them into the court system only to postpone for investigations.

These cases, we prepare them over a period of time. It is like in the lower courts where we receive decision dockets. I must prepare it in such a way that there is at least a *prima facie* case. When I put it on the court
10 roll, the one thing that I must do is to postpone to seek a trial date. If the defence says give us copies of the docket to postpone for disclosure. But not to put a case on the Court roll which we have worked on.

This case I understand started in December or November of 2024 and by June of 2025 they put it on the roll. For that six months, these issues ought to have been covered. You do not put it on the roll only to postpone for investigations.

ADV BALOYI SC: Is it fair to say that your memorandum,
20 the questions that you are raising, suggest that your view at this point was that you do not even have a *prima facie* case yet, at this point?

ADV SERUNYE: Clearly there is not a *prima facie* case. When I asked them, the first question, why are the accused charged with corruption? Who corrupted who? I cannot see

it. There is no corruption. Who corrupted who here? So there is no *prima facie* case, not even on the lowest standard of corruption. There is not.

ADV BALOYI SC: Did the ID engage you about this memorandum where you are saying we do not even seem to have a *prima facie* case? Did she come back to you and tell you, no you are wrong, we do and these are the reasons.

ADV SERUNYE: No, Commissioner, I was never engaged by the ID on this memo. At least the investigating officers
10 tried to respond to some of my questions, but what they did basically was just to recite what the Act says and not to deal with the questions.

ADV BALOYI SC: Thank you.

ADV KHUMALO SC: You are actually playing devil's advocate because this is engagement between you and your colleagues. It was not you forming a conclusion one way or the other. You were simply saying to them, let us cover all the tracks, let us make sure we have investigated this, we have investigated that, and I think all your questions, to be
20 honest, are fair questions to ask if you are given a docket for the first time and you look at it. And then you say something very important somewhere in your statement because you say even the arrest warrant should not have been issued on these facts.

ADV SERUNYE: True. Indeed, Commissioners, on these

facts there was no case. It could not have been. And maybe on the issue of the warrant, Commissioner Khumalo, when I first read the docket, because the statement applying for the warrant forms part of the docket, I remember having a discussion with the Advocate Hlatshwayo and asking her how, how did the Magistrate authorise this? And I remember she told me on the first occasion when Brian Padayachee went to court to ask for a warrant, the Magistrate turned him away to say the
10 statement ...[intervenes]

ADV KHUMALO SC: So the one that was issued was the second one?

ADV SERUNYE: It was the second one.

ADV KHUMALO SC: There was one where the Magistrate refused to grant the warrant?

ADV SERUNYE: There must be one where the Magistrate refused to issue a warrant because the Magistrate was not convinced that there was a case. The Magistrate sits and does this. So the Magistrate sent him back and he went
20 and compiled another one, went back, succeeded with the second one. But still when I looked at the second one...

ADV KHUMALO SC: But why do you say it looks more like heads of arguments than an affidavit?

ADV SERUNYE: It is because when I read it, it is like a person is trying to, it is like an argument, he is trying to

justify why we want to have a warrant issued.

ADV KHUMALO SC: Chair said it has more conclusions than facts, that is how Chair put it. What is your view?

ADV SERUNYE: Which I agree with, Commissioners. If you have a case, you have a case. You are not going to struggle with drafting an affidavit to apply for a warrant. And as a prosecutor you are not going to struggle to draft a charge sheet. If you have a case, you have a case. And I always say to the juniors that come in, as part of training, I
10 say, you will see when you struggle to draft your charge sheet, you must know that there is something wrong with your evidence.

If a person stole an item at OK on the 4th of August, 2026, your charge sheet reads, theft on such and such a day, at or near OK Central, this person stole this item, you even describe it, worth so much. But if you are struggling to put it into words, what did the person steal? Where, when, then it tells you, you have a problem. Which is what I was encountering as I was writing this email. Who
20 corrupted who, how? There was no evidence to support all that.

CHAIRPERSON: After your recusal, you may not necessarily have details, but I am interested to know whether your questions, I know there was a response, but whether the substance of the issues that you were raising,

to your knowledge as we sit here now, was the substance of your questions ever answered cogently?

ADV SERUNYE: Chair, they were not. And maybe that is why I wrote a second, or at least in the third, trial preparation note. They were not. And I was saying to the evidence leaders as we are preparing this affidavit, and I said, well, I recused myself, at least a month and a half after getting it, but if I had gone on and those questions were not answered, I would not, I would have withdrawn this
10 case.

I would not have prosecuted this case on the basis of the evidence available at the time, unless if all of these questions were answered. I would not have proved the case in any event, even if I went on trial, at least with the available evidence. So I kept, I asked questions and I made a follow-up, and I think I sent a third trial note. Where I got the response was confirmation of Ms Mokwele's qualifications, and one or two other things, but by and large, my questions remained answered.

20 **CHAIRPERSON:** Yes, I will make a comment that I have made repeatedly during the testimony of the IDAC witnesses. We are not asking these questions so as to pronounce on whether the Generals or the SAPS officers are guilty or not, but we are asking questions that may touch on whether there was a case at all, because for us at

issue is whether charging the Generals at all was improper. So questions of whether there was a case to start off with may be relevant to that question, which is relevant to what we are about.

Now I thought I should just again, for those who may be asking themselves, but are they a Court that is going to answer the question of guilt or not? So I thought I should just again repeat that comment. It is probably for the third time that I am making that comment. Let me ask
10 another question. When you sent your email with your several queries on the 16th of August 2025, just before you went to watch Pirates and Sundowns, you also copied the Advocate Johnson's PA, or you sent her separately and your cover email to which you attached the queries. You say FYI, which means for your information.

Here is what I want to understand. On internal IDAC processes, what would your intention have been? Would this have been for the information of the PA only, Ms Sekhukhune, or did you believe that she would not hog this,
20 but that she would forward it to her boss, Advocate Johnson? And if your response is the latter, why did you not say this is for the information of Advocate Johnson? Then that way there would be no question that this would end at Advocate Johnson's desk.

ADV SERUNYE: Thanks, Chair. Chair, that is how we

communicate with the ID, she is receiving, I would want to believe, numerous, numerous emails on a daily basis. And therefore, the practice then is we send to a PA, who then sends emails to her. But if there is something urgent, urgent, urgent, she has said that to me on a number of occasions. It was on a private matter when I was off sick, and then I sent the email to Sekhukhune. And she said, no, Peter, when it is that urgent in the morning and you are not feeling well, please send it directly to me. You can copy
10 Inno, but also send it to me.

So if it is urgent, urgent, then you even call her, say, ID, I have sent you an email, please check. But when I send it to Ms Sekhukhune, I am not, I am sending it to her to forward it to the ID. That was the practice, or that is the practice in the office. And I am sure that she gave her this email. I did not receive any response from the ID on this one, but on the other emails where I did something similar, the ID would have responded to me to show that Ms Sekhukhune forwarded it to her.

20 **CHAIRPERSON:** All right, all right. That was going to be my next question as to what your experience is with regard to feedback. Would you get feedback that would indicate that Advocate Johnson would have received something that was sent to the PA, saying for your information and saying this to the PA? You have answered my question. Thank

you.

ADV BALOYI SC: Before you move on, the role of the prosecutor, and you can clarify for me which prosecutor, because there is a junior, you have got a senior, you have got you, the DD, but then there is also the prosecutor at the NPA, as we have understood, they get to approve something. When it comes to the warrant, applying for a warrant of arrest, what are the approvals level? Who finally says something that enables, let us say, Colonel
10 Padayachee to go to a Magistrate and eventually get their J50?

ADV SERUNYE: Commissioner Baloyi, what happens is when the team that is working on a case comes to a point when they are ready to enrol, they make a presentation to the ID and with the CEO, Head of Operations, the so-called sitting in. So it is at that level where decisions are taken to apply for a warrant. I must be honest, I do not expect, and I have never seen the ID leading to a point of reading the IO statement. I do not expect her to do that.

20 But in these memorandums that are sent to her, prosecutors would have summarised the evidence in the docket. This is A20, it is the affidavit D of Brian Padayachee, which says the following in brief, therefore. But in the actual engagements with the ID, they must say to her, we are ready. These are the charges that we want to

proceed on. Our application for a warrant is ready. Here it is, ID. Our bail statement is ready in case you are going to oppose bail or not, but we have drafted and those decisions have been taken. Go ahead. Or no, I am of the view that you still have to do one, two, three.

ADV BALOYI SC: It is the internal prosecutors that look at this application and the affidavits before Mr Padayachee takes it to Court. Takes it to a Magistrate who approves the J50. What I am trying to understand, and it has been a
 10 question of concern, at least for me, that but where were the lawyers? Maybe Colonel Padayachee can be excused because he is an investigator, but there must be some meaning to prosecution-led investigations.

So you say to us, Colonel Padayachee went to the Magistrate the first time and he was turned back, right? Then the question is, well, does it mean the lawyers in there, the prosecutors, had never looked at his work before he went to the Magistrate? So I ask the question to try and understand how it works, because it is an important
 20 question. What is the role of the prosecutors in what turned out to be a big mess in process?

ADV SERUNYE: Indeed, Commissioner Baloyi, the prosecutors are there to do exactly that, to advise on legal issues, to read these affidavits. The affidavit would have been drafted by the investigating officer, but before he goes

to the Court to ask for a warrant to be issued, internally the team looks into the affidavit. Each member of that team has a copy of the docket.

They read the docket, they discuss these things, and the prosecutors are there exactly for that purpose, to advise on those issues. And the other thing is, once they agree that you are going to arrest them, the investigating officer, Padayachee, would have drafted a warrant, a J50 warrant. That warrant is first authorised by the internal
10 prosecutor.

ADV BALOYI SC: In this case, the internal prosecutor, you were not there at the time. In this case, the internal prosecutors would have been either or both Ms Hlatshwayo and Ms Ramsamy.

ADV SERUNYE: And Ms Ramsamy.

ADV BALOYI SC: Yes.

ADV SERUNYE: One of them would have then authorised that warrant, and for one to authorise the warrant, you therefore have to read first this affidavit, and to say, yes,
20 we have a case, I agree with this, and the warrant also states the charges, I agree with the charges. Then the prosecutor authorises that. Then the IO, Mr Padayachee, takes his affidavit and the warrant, the J50, he goes to the Magistrate to ask for a warrant to be issued.

ADV BALOYI SC: Okay.

ADV SERUNYE: There is always a Magistrate who is on standby, who is dealing with these issues. The Magistrate will also do the same, go through the statement. If there is a charge sheet attached, go through the charge sheet, and if he is convinced that there is a *prima facie* case, then issue a warrant.

ADV BALOYI SC: Thank you.

CHAIRPERSON: Let us take the lunch adjournment. Let us adjourn and resume at ten past two.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Yes, Ms Pooe.

ADV POOE: Thank you, Chair. Commissioners, the engagement before we took the lunch adjournment, most of the answers are covered in aspects of the statement, and so I am not sure if we should rehash those. The paragraph 47 in particular, you will see the witness dealt with why he was sending that, and even confirms that he wanted that this verification and outstanding investigations ought to
20 have been done before the arrest and not after.

At paragraph 48, he explains why the charges of corruption did not make sense, in particular that to contend that a future corrupt act would be purely speculation, as observed by the Commission would be fortune-telling. So all of that was covered in the engagement prior to the

break. Paragraph 49 is where he deals with the investigation team's response, and this is where I propose we start, so that we can note the response that was given and then take it from there.

CHAIRPERSON: Thank you. Advocate Serunye, I am sure you agree with that, that we skip and go on to paragraph 49. Is that fine?

ADV SERUNYE: It is in order, Commissioners, I agree with you.

10 **CHAIRPERSON**: Thank you, thank you. 49 then.

ADV SERUNYE: Thank you very much. From paragraph 49, now after they have responded to my email now, I am saying:

20 "A number of the assertions advanced by the investigating team in response to my questions did not appear in the docket. By way of example, the responses referred to Ms Mokwele's father said to the suspended Brigadier in the Directorate for Priority Crime Investigation, who had attempted to corrupt investigators, and to a theory concerning the capture of a sensitive intelligence resource. I could find no evidential foundation for these assertions

in the docket, and their relevance to the charges was not apparent.”

ADV POOE: Advocate Serunye, can you just stop there for a second? Commissioners, the response that we are referring to there is at page 29. It is Annexure PS4. Again, we will have to work up from page 30, actually. So you will see at page 30, the email there is from Advocate Serunye to the team. What follows thereafter is a response by Mr Perumal, where he attaches his comments in text. You will
10 see the comments, if you go to page 31, the blue would be the additions. Is that correct, Advocate Serunye?

ADV SERUNYE: Indeed, the blue is the answers of Mr Perumal.

ADV POOE: And you testified earlier that for the most of it, what they did was to recite provisions of the legislation, and did not answer substantively to the questions that you had posed.

ADV SERUNYE: Correct, Chair and Commissioners.

ADV POOE: And the example you were making is at page
20 36 in the response, and that is in respect of 3.7. Is that correct?

ADV SERUNYE: That is correct, Chair and Commissioners. That is where they are saying something about the father of Ms Mokwele being a Brigadier in the force, but this is not supported by any evidence and it does not really take the

case any further.

CHAIRPERSON: And I noticed that there are no answers to some of the questions.

ADV SERUNYE: I agree, Chair. Some of the questions were not answered.

ADV POOE: And the remaining that were answered, they indicated that some of those subpoenas would still need to be issued. Is that correct?

ADV SERUNYE: That is correct, Chair.

10 **ADV POOE**: Commissioners, that should deal with the response.

ADV BALOYI SC: You have got question is 3.6, so the answer to 3.6 is at page 35.

ADV POOE: Yes. Advocate Serunye, there you had asked why the Generals would have gone out of their way to rig the process. So it seems that there was an explanation covered there in relation to the use or abuse or capture of TSS.

ADV SERUNYE: Indeed. But this, in brief, their response
20 to my question was as follows:

“Senior Investigator B Padayachee,
Colonels Bapela and Van Vuuren, and
General Khan will explain what TSS is. It
is the most valuable intelligence
resource, and accused 1, who did not

need to chair posts for a Brigadier as a Major General, could have chaired the panel. Accused 1 had a desire to ensure full control over TSS, need to know of its operations. He clearly did not have any confidence in any of the vastly skilled and experienced Colonels of the Crime Intelligence, capture of the section TSS.”

If you read that response, clearly it is not answering the
 10 question I was asking about why these Generals in the SAPS would go out of their way to rig the appointment process and risk their jobs to flout the National Instruction 11 of 2017 to appoint Ms Mokwele. Their response talks of the intelligence resource, TSS being, it does not really answer the question. It is irrelevant.

ADV BALOYI SC: Then 3.3, and I just want to understand what you understood there. You have got that question, do we have evidence in the docket to prove allegations of corruption? And then the answer is yes. But I am more
 20 interested to understand what you understood this to mean, which is, if you read in that 3.3, that answer, the second line from the bottom, it says:

“They acted in an incomplete, biased, dishonest manner designed to achieve an unjustified result.”

And then this is the part:

“Accused 1 needed to ensure control
over TSS.”

And then in brackets you have KZN Colonel and then post withdrawn, re-advertised by accused 1. In brackets you have Khan, it says, and then accused 1 moved to advertise, solicits accused 5. There is a Van Vuuren again mentioned, and Bapela Van Vuuren. What did you understand these names here to mean? And maybe let me be more direct.

10 Where it refers to General Khan, what did you understand that answer to be?

ADV SERUNYE: Thanks, Commissioner Baloyi. He says there that the initial advertisement, which was placed by General Khan, had been withdrawn and the post was then re-advertised externally to allow civilians to apply, but that still does not answer my question on what is the evidence in the docket ...[indistinct] allegation of corruption against any of the accused?

And by the way, the withdrawal of that advert, I do
20 not know what relevance the withdrawal has to the advert being done the second time around and being advertised internally and externally to allow civilians to apply, because there is nothing wrong in doing that. We do not know what the results of the first advertisement were, if the SAPS managed, from the people that they managed to interview,

they could identify potential shooters to the post.

We do not therefore know why they did not go through to appoint people and then re-advertise. And therefore to want to bring the fact that the first one was, which was drafted by General Khan, was withdrawn, I do not know what is the relevance of that, honestly, to the question what is the evidence of corruption in the docket.

And TSS Colonel in KZN, I do not know who they refer to there, and what the relevance of this is. It is like a
 10 person having their own theory to say this is how, this is why they did it. They did it for this particular purpose, or maybe they had information, other information which is not in the docket and which they are not telling me. But for that I cannot understand, with this one paragraph, what message they are trying to portray to me. It appears as they were investigating this case, there is this other information in the background which is not given to me or to the prosecutors, or it does not form part of the docket, and that is not going to help to prove our case, honestly.

20 **ADV BALOYI SC**: Okay. Lastly from me on this, at question 6, the answer to your question 6, where you say she also made misrepresentations in her CV, fraud in brackets, the investigators should follow up on the validity. And then the answer from Mr Perumal is section 28 to be authorised urgently and be concluded on 26 December, and

then he goes on to say Boxing Day, and he underlines it. What were you made to understand was the urgency here? Was urgent about this, about this matter? That is the first question. The second question is, did you consider it an urgent matter that needed to be brought to trial very quickly?

ADV SERUNYE: Commissioner Baloyi, I do not know what the urgency was about, and like I said, my impression after reading all these documents was that the matter was rushed
10 to court, and it was done so when it was not ready to be enrolled. I do not know why it had to be done the way it was done. We talk about these things in the office. We have training. We have a manual that guides us on how to do our work.

Like I said earlier, we do not arrest people only to place the matter on the roll and postpone for further investigations, which is what happened here. I do not know exactly what was the motivation for this urgency or rushing this case to court.

20 **ADV BALOYI SC:** Thank you. Thanks, Ms Poee.

ADV POOE: Thank you. Then, Advocate Serunye, if we can ...[intervenes].

ADV SERUNYE: Sorry, Counsel. Maybe just to add, I have worked on a number of these matters in the IDAC, and I must say, looking at the history of this case, where the

authorisation was done in December of 2024 and the arrest is done in June, say six to seven months. This is one of I have never seen a case being done so quick, where in December authorisation and in June... This was done so hastily. If investigations were completed and it was ready, I would have said, well, the investigators did a very good job in this, but they rushed it to court, and clearly, it was not ready. I do not know why.

ADV POOE: Is your point that there may have been
10 something to the urgency, because normally, you would not be able to investigate a complex matter that quickly?

ADV SERUNYE: In six months, it is impossible.

ADV POOE: And it is also very clear from the docket that the investigations were incomplete.

ADV SERUNYE: In six months, it is impossible. I did not know or suspect anything at the time, but things did not look right. But knowing what I know now, what I have heard in the Commission, it clearly shows that there were other things happening in the background, which really led to all
20 of this. I wish I could, at the time, have the ability to see into the future. Then I would not have involved myself in this. Maybe I would have quitted more. Maybe I would have acted further. But unfortunately enough, just a normal human being who do not have those powers. Only seeing things now, as they are coming out here.

ADV BALOYI SC: Maybe another statistic and to ask you to comment, really, is that you may not be aware of, if you are not, is that the investigation in terms of 28(1) was authorised, I think, the 28th or the 30th of May in 2025, and the arrests were in June already. How does that compare with your experience from investigation to now we go to court, in terms of timeline?

ADV SERUNYE: Thank you, Commissioner Baloyi. Yes, I think I was listening on the news. I have heard that. That
10 can only mean one thing, that as of May, when the 28 was authorised, the investigations were so advanced to a point that one could say it is actually ready for court. That is why when they authorised the investigation in May, then the next month the arrest follows.

I do not know if between the date of the authorisation in May and 27 June, if there is any investigations that were done and how many statements were obtained in between that period. I doubt if there is any. It appears the moment they authorised the
20 investigation, for them the case was ready for court. It was just an issue of drafting affidavits for warrant of arrest and doing the consultation between the DPP and the IDAC, and to get the matter to court.

ADV BALOYI SC: Thank you.

ADV POOE: Advocate Serunye, you can then move on to

paragraph 50. I think you have dealt with the first part of it. What you had not dealt with is your request that an HR expert assess all the applications.

ADV SERUNYE: Yes. Thanks, Counsel. I am at paragraph 50. Now, with all these questions that I am having and being new into the matter, I wanted the investigations to be covered. And my affidavit reads:

10 “As regards the qualifications relied
 upon, ...[indistinct] confirmed only Ms
 Mokwele's matric, diploma, and
 engineering degree. Her project
 management certificate and her MBA
 were not verified at the time. Verification
 was only obtained belatedly after the
 arrest and after my repeated prompting.
 In addition, no HR expert had been
 engaged to assess the full body of some
 76 applications, so as to determine
 whether the disqualification of other
20 candidates and Ms Mokwele's
 progression to the short list and
 appointment had been proper.
 Determination of that nature could not be
 made without such expertise.”

I raised this in one of the queries that, please, take all the

76 applications that you received. Appoint an HR expert. You cannot. You are not HR experts. You cannot say this one was favoured over this one, this one received more scores.

You do not know how the scores were done, why a particular candidate would have been given, especially now the last three candidates. Only an expert, HR expert in that field can be able to do that investigation for you and compile a proper report. And from there on, we know we
10 have, if the HR picks up, if the expert picks up mistakes or favour things, he will say so, but you as investigators do not have that capability to say this one was favoured over that one. You do not know why it has got 68, 69%, and Van Vuuren got 48%.

ADV KHUMALO SC: Advocate Serunye, I think you have dealt with this earlier, but just maybe clarify which qualifications were verified before and which ones were verified belatedly, as you say in paragraph 50.

ADV SERUNYE: Yes. Thanks, Commissioner. The
20 affidavit we got from SAQA confirmed the matric and the diploma and the engineering degree. Yes. And these two that I had questioned about, the certificates that I questioned about, the project management and the MBA were verified.

ADV KHUMALO SC: They were also verified, but after.

ADV SERUNYE: After.

ADV KHUMALO SC: After you became ...[intervenes].

ADV SERUNYE: After I had asked those questions, yes. On that email of mine, I am saying, please verify because I can see that in her CV on application, she is raising an issue of an MBA and a project management. MBA, one of those, we have dealt with it earlier. She clearly states I am still in the process of finalising this. I think it was only finalised a month after her application was in April. It was
10 finalised in May, but on her CV she states it.

ADV KHUMALO SC: And the importance of that is that would have been before the interviews, even before the appointment.

ADV SERUNYE: That is true, Commissioner.

ADV KHUMALO SC: She would have had the MBA before the October appointment.

ADV SERUNYE: That is correct, Commissioner, yes. When she sat for interviews already, the MBA was completed.

20 **ADV KHUMALO SC:** She had already obtained MBA when she sat for interviews and when she was appointed.

ADV SERUNYE: That is correct. Yes, Commissioner, yes.

ADV POOE: And, Advocate Serunye, was an HR expert ever appointed or engaged, as you suggested, to your knowledge?

ADV SERUNYE: It was not done, Counsel. The appointment, or at least efforts to appoint an HR were not followed up, were not made. I am not sure now as the matter stands now because I am no longer part of it, but this was not done.

ADV POOE: Now ...[intervenes].

ADV BALOYI SC: Ordinarily, would you prepare a charge sheet which contains a charge on such an issue, this HR aspect, let us say, even before you consult with an HR expert?

ADV SERUNYE: I would not, Commissioner Baloyi, because what I am going to allege in that charge sheet would be information that is not verified. So at least if I have an affidavit and a report of an expert and I consult with them, and I am satisfied that the expert gives me more information, then I can allege those issues on the charge sheet. But before that, I cannot. Otherwise, I am just speculating, and information comes afterwards. There was nothing wrong with what you are alleging, like it happened with some of these things.

ADV BALOYI SC: Thank you.

ADV SERUNYE: It is like if I were to give an example of, I would say in a murder case where allegations are that the deceased was shot with a firearm, or the deceased was shot with a firearm, and people find a body lying there and they

assume the person has been killed by being shot with a firearm.

But still, the post-mortem has to be done. Experts have to check, is this wound consistent with an injury that can be caused by a bullet, and then make their report and say this injury is consistent with a bullet wound, and only then can I, as a prosecutor, then certainly say this body, the person was killed with a firearm.

But otherwise, I can make a mistake and we can
10 assume that the injury was caused by a firearm only to find that it was a stab wound, or the person fell on top of a rock, and so on. So these experts are important in that sense.

ADV POOE: Advocate Serunye, at paragraph 51 you deal with your response. I just wanted to note, on the 17th of August, you responded twice. The first response is at page 29, PS4 at the top. You will see there that was your first response.

ADV SERUNYE: Indeed, Commissioners.

ADV POOE: Would you like to put that on record
20 ...[intervenes].

ADV SERUNYE: That response was after receiving the response to my first trial note, I was asking questions. After receiving the blue notes, you see I am sort of frustrated by that, and I am saying to the two, Julius Hlatshwayo, Advocate Hlatshwayo and Advocate Ramsamy,

that I am asking questions. Instead of providing me with answers, I am provided with a citation of PRECCA.

I know what section 1, 2, 3, and 24 of PRECCA say. I do not want to sound critical, but reference to section 24 is misguided and misunderstood. Section 24 would be relevant if the Generals were the ones that had received gratification from Mokwele, who was seeking to obtain employment from the public body.

The law must be applied to the facts. What I want
10 to know are the facts. It does not help to hide around the fact that the awarding of the position or post to Mokwele was a gratification. The fundamental question is why are we saying it was a gratification? In brackets, in the context of the case, that is on the facts before us. Why are we saying it is a gratification?

It does not help me to cite what section 1 of PRECCA says, that a gratification includes employment. I know that. Why are you saying in this case this appointment of Ms Mokwele is a gratification? They do not
20 provide me with the evidence.

ADV POOE: And this response was just to the two junior prosecutors?

ADV SERUNYE: Yes.

ADV POOE: You then do a second response, which is at page 52, and that response is then to the whole team.

ADV SERUNYE: Ja.

ADV POOE: I do not propose that we go through the entire response. A summary of it is at paragraph 51, so then we can take it from there.

ADV BALOYI SC: Before you do that, did you get a response from your junior prosecutors to the email at page 29, Ms Ramsamy and Ms Hlatshwayo?

ADV SERUNYE: I did not get any response, Commissioner Baloyi.

10 **ADV BALOYI SC:** Thank you.

ADV SERUNYE: Yes. Counsel, on page 52, after sending the email to Advocate Hlatshwayo and Advocate Ramsamy, I then responded to the email, the blue explanation. You will see the first person that I am sending the message to is the one that I would have received the email from, being Chief Perumal, and the rest of the investigators, but again to the prosecutors. In brief, saying to them, my email inputs received ...[intervenes].

ADV POOE: Advocate Serunye, my proposal was for us to
20 look at your summary that you have done in the statement.

ADV SERUNYE: Okay.

ADV POOE: So at paragraph 51, page 15.

ADV SERUNYE: Okay, yes.

ADV POOE: You will see in short.

ADV SERUNYE: Correct. In a nutshell, that email I am

repeating here by page 51 of my affidavit, paragraph 51 of my affidavit, where I am saying:

10 “In my reply of 17 August 2025, I set out my analysis of section 4 of PRECCA. In short, section 4(1)(8) contemplates a public officer who accepts gratification from another person, and section 4(1)(b) contemplates a person who gives gratification to a public officer. On the state's own allegation, the position was the other way around. It was alleged that the Generals (who were public officers) gave the gratification in the form of employment to the civilian, Ms Mokwele, without even being shown what Ms Mokwele was thereby to do. That allegation does not fit the wording of section 4. I further explain that the presumption in section 24 did not assist
20 on the available facts. Since it would have been available only had Ms Mokwele been given, had Ms Mokwele been the giver of the gratification to the Generals. I concluded that the corruption charge, as it stood, was defective and did

not comply with the definitional elements of PRECCA and was liable to be challenged in terms of section 85 of the Criminal Procedure Act. I remained of the view that if corruption were indeed present, its existence depended upon establishing a motive or quid pro quo through further investigation. The bank statements, cell phone records, and
10 computer data of those concerned, and any family or other relationship between them, and that, absent such a motive, a charge of corruption could not properly be sustained. This work had not been done before the arrests were effected. Taken together, the questions I raised remain unanswered on the material in the docket. The significance of this is twofold. First, it demonstrated that the
20 arrest had been premature, as I put it in my correspondence at the time. The matter had been rushed to court when it was not ready. Second, and more fundamentally, the nature of the unanswered questions demonstrated that

the preliminary investigation had not been properly conducted. Alternatively, that there was no case. These were not peripheral queries. They went to whether the essential elements of the offence charged could be established at all. I also raised the question as to the basis upon which the matter fell within IDAC's mandate. I record for completeness that

10 I consider the matter of this seriousness involving senior officers in the intelligence environment to be one that could be appropriately be handled within the IDAC space. Whatever difficulties attended, the matter should have in fact been investigated and prosecuted.”

ADV KHUMALO SC: I want you to go to PS11 on page 102.

ADV SERUNYE: I am there, Commissioner.

20 **ADV KHUMALO SC:** Are you there, Advocate Serunye?

ADV SERUNYE: Yes.

ADV KHUMALO SC: It is an email that you sent to your colleagues on the 26th of August 2025. Do you see that?

ADV SERUNYE: I see that, Commissioner.

ADV KHUMALO SC: And the very first question you ask

after the greetings, but this relates only to the Lushaba matter, as I see. It does not relate to both of them, but you ask the main questions:

“Colleagues, does this case fall under the mandate of IDAC?”

ADV SERUNYE: Indeed, Commissioner.

ADV KHUMALO SC: So this is maybe two weeks after you came into possession of the dockets. You were already concerned about IDAC's mandate.

10 **ADV SERUNYE:** Indeed, Commissioner.

ADV KHUMALO SC: Now, going back to the Mokwele/Khumalo matter, once you discount the corruption, which you say as far as you are concerned, based on your understanding of PRECCA, it just was not there. So if you remove corruption and you leave whatever that remains, would that fall within the mandate of IDAC?

ADV SERUNYE: Definitely not, Commissioner Khumalo, because if I discount the corruption, then let us say what I am left with is fraud, and that would be the fraud against
20 the civilian. Because in that case, then, the Generals would have been my witnesses, that is the persons to whom the representations were made, and it is clearly a Lower Court matter. A Regional Court, maybe District Court. It clearly ...[intervenes].

ADV KHUMALO SC: And you cannot have it both ways.

You cannot say they colluded and then they were defrauded.

ADV SERUNYE: Yes. If I am ending up with a fraud, if I am ending up with a fraud, they are victims. They have been defrauded as well. There have been ...[indistinct] made to them. Then I cannot charge them with her, but if investigations, which I wanted them to do, where I am asking questions, on your theory if there is corruption, then there is collusion. If things did not happen this way and
10 happen that way, if the national instructions were breached, then we are talking collusion.

If one says, if I were to say these high-ranking officials in the Intelligence Unit, could they not pick up if there was fraud? Could they not pick up this fraud? And if I come to the conclusion that they closed their eyes to it, then that means they colluded with her. That is why, then, the collusion, but that would have been if the evidence points to that.

But on your initial question, if I ended up only with
20 fraud, then clearly it does not belong in the IDAC space. It was not, even the Magistrate questioned it on the first appearance. He said this is not that kind of fraud or corruption that I deal with on a daily basis.

ADV KHUMALO SC: And you would have had to send it to an HR person, as you say. An HR person would have had to

assess whether is this a misrepresentation or is it a simple case of people interpreting a provision differently? The reason why I am asking you this, maybe we should deal with it now so that we do not come back to it. If you go to File 2, on page 179, I know you had it next to you.

ADV SERUNYE: Yes, I did. On page?

ADV KHUMALO SC: 179.

ADV SERUNYE: 179.

ADV KHUMALO SC: The first bullet that you see on page

10 179 says:

“Must have a minimum period of three
years appropriate managerial
experience...”

And this is the important part:

“...in the field of the post.”

So, not just any managerial experience. Managerial experience in the field of the post. And then when you go to page 60 of your statement, your annexures on page 60.

ADV SERUNYE: Is that paragraph 60?

20 **ADV KHUMALO SC:** Paragraph 17.

ADV SERUNYE: 17.

ADV KHUMALO SC: Page 60, it is PS6.

ADV SERUNYE: Yes, I am going there.

ADV KHUMALO SC: And then paragraph 17.

ADV SERUNYE: I am looking at 17, Commissioner.

ADV KHUMALO SC: Yes. So, the definition of appropriate management, managerial experience, it comes from Clause 2 of the National Instruction 11 of 2017, and it defines that as experience at a level higher than the supervisor. That is all it says. It does not say you must have been a manager at your job. Because if you were a manager at your job, then you would have to say at my employment, I was a manager. So, if you go back to 178, if an Advocate had applied for this position, for example, and it was an
10 Advocate who had been practicing for 20 years at the bar, the education qualification would be the LLB. And then when it comes to this requirement, he would have to tell you, because there are no managers at the bar, I can tell you that, but I would have to then explain to you why my experience is an appropriate experience at a level that justifies appointment.

ADV SERUNYE: Yes.

ADV KHUMALO SC: And I assume it is the same if somebody was a prosecutor for 25 years. They may not
20 have been managers at NPA, but because they meet the educational requirements, now what you want to know is, do you have the appropriate managerial experience for the role? Not that you must be a manager at your job. Now, I do not know if you have File 3 with you.

ADV SERUNYE: I have it.

ADV KHUMALO SC: On page 908.

ADV SERUNYE: I am on that page.

ADV KHUMALO SC: If you start on 907, what you have is the job description of Ms Mokwele at BMW.

ADV SERUNYE: That is correct.

ADV KHUMALO SC: On 907.

ADV SERUNYE: That is correct.

ADV KHUMALO SC: And then it describes the role, maintenance and fastening [?] planner, and then there is
10 the job description, job valuation, PZP3. If you go to 908, there is then the description of the role. And halfway down the page, you will see that role of the described function, please check where appropriate. Do you see that?

ADV SERUNYE: I see that, Commissioner.

ADV KHUMALO SC: And then there is a tick, she is an employee. And then project management and functional leadership. So, that is since 2007. That is the role.

ADV SERUNYE: Yes.

ADV KHUMALO SC: And then if you go to the next page,
20 909, it sets out the key responsibilities of this person. It is a lot of them.

ADV SERUNYE: Yes.

ADV KHUMALO SC: It is about 16. Now, all of them are leadership in nature because they are about directing, they are about leading, they are about controlling, they are about

being responsible, they are about being responsible, they are about being responsible. Do you see all of those?

ADV SERUNYE: I see that.

ADV KHUMALO SC: So, they are not about, no, no, somebody will tell you what to do and you will do it. This function requires that she be responsible for all those things.

ADV SERUNYE: Yes.

ADV KHUMALO SC: So, it was her responsibility to make
10 sure that the people below her, whether they report directly to her or indirectly, make sure that those things happen.

ADV SERUNYE: Indeed.

ADV KHUMALO SC: And then one has to interpret whether that qualifies as appropriate management experience. And as you say, an HR person should have done this, but what IDAC people did was they went and obtained a 4 July 2025 affidavit from Mr Simon at BMW. But the question they asked is the wrong question because their question was, is Ms Mokwele a manager at BMW? But that is not what the
20 role requires.

ADV SERUNYE: Yes.

ADV KHUMALO SC: As you quoted the instruction on page 60 of your, it is appropriate experience at a level above the supervisor. That is all you are required to show.

ADV SERUNYE: True.

ADV KHUMALO SC: But those are HR matters that somebody who is steeped in HR is better placed to deal with, including, for example, the public service, the PSC, the Public Service Commission. It is not for IDAC investigators to say you are a manager or you are not a manager.

ADV SERUNYE: I fully concur with you, Commissioner Khumalo. That is why I said to them get an HR expert and take all the 76 applications. Look at them. It is not up to
10 us to say this one qualifies, this one not. Yes, there are those that, on the face of it, when you look at the application, the person would have been disqualified because they do not have the necessary qualification or the application was received late.

ADV KHUMALO SC: It becomes a matter of interpretation if you go back to 909, whether somebody who has done that for, let us say, from 2017 to 2024. That is about seven years?

ADV SERUNYE: Yes.

20 **ADV KHUMALO SC:** More or less, ja.

ADV SERUNYE: Ja.

ADV KHUMALO SC: So you can say, does that then qualify as appropriate managerial experience as defined in the National Instruction? So that is how one should deal with it.

ADV SERUNYE: I concur, Commissioner.

ADV KHUMALO SC: And quite rightly, you said, we are not qualified to do this. Get an HR person to analyse these things and give us an answer. And you say that was not done.

ADV SERUNYE: It was not done, Commissioner. It was not done.

ADV KHUMALO SC: Thank you.

ADV SERUNYE: And I agree with what you are saying,
10 Commissioner, that looking at the functions, it is a question of interpretation. Some of these are responsible for evaluation of statistical data. These are not functions that you can give ...[intervenes].

ADV KHUMALO SC: Chair has just directed me on 909.

ADV SERUNYE: 909, yes.

ADV KHUMALO SC: One of those bullet points. I think it is number five. It says:

“Leads special projects and technical-
related project teams.”

20 **ADV SERUNYE:** Yes.

ADV KHUMALO SC: That is a leadership role.

ADV SERUNYE: It is. Indeed, it is.

ADV KHUMALO SC: Advocate Baloyi is referring me to another one. It is the same one? No, it says:

“From all departments and levels,

including management.”

Do you see that?

ADV SERUNYE: I see that, Commissioner. In fact, the majority of them, Commissioner, if you look at the responsibility to initiate and follow up on corrective actions, time and cost-wise, most of these are management-related.

ADV KHUMALO SC: So most of the functions she was performing at BMW for a period of seven years are of a management nature, although she did not occupy the
10 official title or official position of manager.

ADV SERUNYE: I agree.

ADV KHUMALO SC: Because when you direct, control, and oversee, whatever your role is, you are managing. You are responsible for projects. You are responsible for people. You are responsible for ensuring that things get done.

ADV SERUNYE: Indeed, indeed, Commissioner.

ADV KHUMALO SC: So the question asked of the BMW person was a wrong question because what he was asked
20 was, was she a manager at BMW?

ADV SERUNYE: Yes.

ADV KHUMALO SC: But that is not what the advert requires, and that is not what the national instruction requires.

ADV SERUNYE: Indeed, Commissioner. And I think maybe

to add on what Commissioner is saying, they also underplay this role where, and I think it is common cause between her and Mr Saaiman, that she was saving about 15 people that she was supervising or at least teaching. It cannot be, that task cannot be given to the most junior of your officers.

ADV KHUMALO SC: Ja.

ADV SERUNYE: Or even if you do, that comes with a lot of responsibility, that you trust the person and they are imparting knowledge and skill. It is also a management
10 function.

ADV KHUMALO SC: The mistake they made was not to show Mr Saaiman the national instruction and to say to Mr Saaiman, please tell us what Ms Mokwele was doing at BMW. Is it experience at a level higher than the supervisor? And what were those functions? What they went there to ask was, was she in senior management for seven years? That is a wrong question.

ADV SERUNYE: True.

ADV KHUMALO SC: And to then go to court and say she
20 must be arrested for fraud because she does not have seven years senior management experience. Before we even get to the charge sheet, just asking the Court to authorise arrest on those facts, that is problematic.

ADV SERUNYE: I concur, Commissioner Khumalo. These are things that goes back to my earlier position that the

investigation was rushed or at least the arrest was rushed. These are issues that ought to have been dealt with and determined before arresting.

ADV KHUMALO SC: And to your credit, once you saw the docket, you asked these questions.

ADV SERUNYE: I did, Commissioner, because a lot did not make sense. I was worried that people had already been arrested and not that any person has to be arrested, but the most senior people in the police. And at a very sensitive
10 unit for that matter.

ADV BALOYI SC: Mr Serunye, you may well have answered in the way you started in this discussion with Commissioner Khumalo, but I just want to be clear about the position that you express in paragraph 54 of the statement. You raised a question on whether this matter fell within IDAC's mandate, but then you go on to say that you considered a matter of this seriousness involving senior officers in the Intelligence environment to be one that can be appropriately handled within the IDAC space. That is a
20 bit confusing for me. What are you conveying? What are you saying in paragraph 54?

ADV SERUNYE: Commissioner Baloyi, as seen on the other email with the Lushaba matter, I questioned whether this fell within the IDAC mandate. When one reads the docket right from the onset, you are seeing offences, fraud,

but then you go deeper into the merits. You do not have evidence, but that is why the first question is, does this really belong here?

But if you were to follow these queries or find evidence of, let us say if they followed the queries of, even before I asked, they did an investigation and they found evidence of corruption, then I would have said, then that is where it comes up to say that if you look at the role and rank of the officers, maybe. I do not expect the District and
10 Regional Courts to be able to handle a matter of that nature, but the problem is there was no evidence to break it up to say this case belongs here.

The allegations are serious when you hear of them, but once you start reading the docket, you do not find evidence to back those allegations. So if there was evidence of reading of the applications and the lawful appointment of a person who was going to occupy a position paying her over a R1 000 000 a year, and there was collusion with the police, definitely you would have met the
20 criteria of the IDAC.

That is what I am trying to say, but the problem is that there is no evidence. Even if one were to say we are transferring it to the Lower Courts, the Lower Courts are still going to sit with the same problem of, but where is the evidence to prove all these allegations?

ADV BALOYI SC: It is another way, I am just trying to understand what you were saying here. It is another way of what you are saying in paragraph 54 that if the allegation of, because this case is about gratification, that is how they formulated it.

ADV SERUNYE: True.

ADV BALOYI SC: Are you saying, are you conveying in 54 that if we can make out a case for gratification, considering that it involves the senior officials, the matter would fall
10 within the mandate of the IDAC? Is that what you are saying?

ADV SERUNYE: That is the message I am trying to convey, Commissioner Baloyi, that it would have been meeting this requirement of corruption involving high-level persons to a point that it then falls within the mandate of the IDAC.

ADV BALOYI SC: Okay.

ADV SERUNYE: But it did not come close to that, at least with the evidence. I would have expected right from the
20 onset the person who read the docket or those after compiling the evidence, once they said and presented, a decision ought to have been taken there and there to say, look, let us refer this matter to the Lower Court, if there is evidence of prosecuting somebody with anything. Because it does not also help to refer the matter to the Lower Court

to say, deal with this problem for us, there is no evidence, see what.

If we can make a decision ourselves at IDAC to say, there is a case or there is no case, if there is no case, we close it, we make our report. Why are we saying there is no case? And then we file the documents. If there is a case, then we prosecute, but there was for me, there was no evidence backing up those allegations.

ADV BALOYI SC: Now, Ms Johnson was asked more than
10 once whether the way things developed up to the point where these Generals and Brigadiers are arrested and then presented to court and they are getting these postponements, ongoing postponements, whether no one in the office of the lawyers, an office which has many lawyers, whether no one ever raised concerns about the strength, whether, firstly, whether this metaphors within IDAC's mandate, but two, the problems that we were discussing with her.

You have discussed some of them with
20 Commissioner Khumalo. What is gratification? Ms Mokwele seems to have met the requirements. How do you have a charge of corruption under PRECCA, gratification, when you say that she would have done something in the future which is unknown?

All of those were discussed with her. And then she

was asked more than once, does this mean no one in your office ever raised concerns about this case, the merits of this case and the mandate of IDAC? And she firmly said, no, no one ever did, none of the lawyers. What do you say to that?

ADV SERUNYE: With respect to Advocate Johnson, I did. I raised, I think earlier we read one of my emails where I referred his queries to her. And it was not only that one email, but there is two, maybe even three others that I
10 referred to her, even with the Lushaba case. The Lushaba case is worse, that is what I am saying. So I did. I do not know ...[intervenes].

ADV BALOYI SC: So she was not being truthful?

ADV SERUNYE: Maybe she did not have my email communications to her. But I did, I raised my ...[intervenes].

ADV BALOYI SC: Do you have reason to doubt that she received your emails and your memos?

ADV SERUNYE: No, she received them.

20 **ADV BALOYI SC:** She received them?

ADV SERUNYE: I can confirm because once I send an email, in a sense, and there is one email, for example, where she responds to me when I am asking her, should we serve a 28 or is this office, referring to her office, going to write a letter to the National Commissioner? I sent it to

Innocentia, but the ID then responds to me saying serve a 28.

So, and when I send an email, and this is the practice in the office, to the PA, if you see that you are not getting a response, you make a follow-up with the PA. Did you give my email to the ID? Sometimes you go straight to the ID's office or call or send it.

ADV BALOYI SC: So, in short, she did become aware, she was made aware of concerns about this case, the Lushaba
10 and the Mokwele matter?

ADV SERUNYE: She was, I did that personally.

ADV BALOYI SC: And she was not truthful to us if she did say to us, as I say she did, that no one in the office raised concerns about this? She was not being truthful?

ADV SERUNYE: Commissioner, if that is what she said to this Commission, then ...[intervenes].

ADV BALOYI SC: She was not being truthful.

ADV SERUNYE: I do not agree with that.

ADV BALOYI SC: She was not being truthful.

20 **ADV SERUNYE:** She was not being truthful.

ADV BALOYI SC: Thank you.

ADV SERUNYE: And I am saying that with the utmost respect.

ADV BALOYI SC: I appreciate that. I understand that. Thank you.

ADV KHUMALO SC: Advocate Serunye, I want us to put away File 2. But before we do that, there is a stand-alone allegation that a young woman has been parachuted to the rank of Brigadier, and I think Mr O'Sullivan, when he was here, made that allegation, and it is one of the things he wants us to look at. So, on 178 still of File 2.

ADV SERUNYE: I have it, Commissioner.

ADV KHUMALO SC: My understanding of item 3.2 is that the moment you get a suitable person from outside and you
10 appoint them as Section Head Technical Support Services, what then follows is that they will be given the rank of Brigadier. So, and you get that rank because you are appointed to this position. Not because you are 43 or 26 or 35 or you are male or female.

That does not matter. If you meet the minimum requirements, you go through the interviews and you are vetted and you get appointed to this role, you will be given that rank and you will become Brigadier.

ADV SERUNYE: That is true, Commissioner. The advert
20 was not referring to a specific race or gender or age. In fact, and I am trying to look at this thing again. I think, if anything, it was trying to promote. I just want to see on the advert. I think it would have, if it is talking to promoting. Okay, it is not there, but I think ...[intervenes].

ADV KHUMALO SC: It is in the national instructions.

ADV SERUNYE: It should be in the national instruction ...[intervenes].

ADV KHUMALO SC: What you are looking at is in the national instructions.

ADV SERUNYE: It should be in the national instructions. I have seen it somewhere where, in fact, it is encouraging.

ADV KHUMALO SC: It is encouraging that you promote females.

ADV SERUNYE: That female persons will be considered
10 ...[intervenes].

ADV KHUMALO SC: It is in the national instructions.

ADV SERUNYE: Indeed, indeed, Commissioner. But the fact that she was of a certain age, female, it is not about ...[intervenes].

ADV KHUMALO SC: So the point is simply this. If you meet the requirements and you are appointed to the role, it cannot be a fraud or corruption that you are given this rank of Brigadier. It follows as a matter of course, once you have been offered this job and you have accepted it, that
20 you will be given the rank of Brigadier.

ADV SERUNYE: Indeed, Commissioner. And maybe to add on, the fact that she was competing with experienced Colonels and members of the police who have been in the same environment does not mean if she performs better than them and she scored higher than them, then that

means there is something wrong.

We do not know what questions were asked, technical questions were asked, and she might have performed, or she performed. On paper, she performed better than them. That is ...[intervenes].

ADV KHUMALO SC: Between you and me, and you would know because you are an Advocate, there are 30-year-olds who sometimes perform better than me.

ADV SERUNYE: Indeed, indeed, Commissioner. Indeed.

10 **ADV KHUMALO SC:** And I am sure you have been in matters where somebody a lot less experienced, less junior in terms of years, on the day performs better than you.

ADV SERUNYE: It depends on the nature of interviews, Commissioner. It is how prepared a person is for the interview. How much did they prepare, and how you perform. A person can freeze on the day, and another one performs better. It does not mean we were supposed to take the Colonel because the advertisement was for both internal and external people. Therefore, the fact that a
20 civilian was appointed, there is nothing wrong with that.

ADV KHUMALO SC: I think we can put three and two away now because we have covered File 2 and 3.

ADV SERUNYE: Indeed, indeed. Thanks, Commissioner.

ADV POOE: Advocate Serunye, just before we move to the next section on the charge sheet, just to understand, did

anyone in the team then respond to your email of the 17th of August? Now, this is the one that was sent to the whole team.

ADV SERUNYE: Yes, I think I did get responses from either Mr Brian Padayachee or one, I remember Mr Pat Mlambo who said thanks for the advice, we will do as you, the issues that you are raising, we will follow up on those. I think he said something along the lines of we are taking one on the chin, but then I said, it is not like we are not fighting
10 or anything, it is not in bad faith, but we have to be ready, prepare this matter for court. So yes, I did get a response from, promising that investigations are going to be done as I was raising issues.

ADV POOE: Okay. And then just to understand your approach in this regard, so at this point you would have seen the docket, the complete docket, you would have also then given feedback to your team about matters for investigation, the investigators would have also then responded to you, in part not answering, in other respects
20 trying to give you a better explanation. So you are now at a slightly better position. Ordinarily, when do you call it? When do you say I have looked at the docket, I have given direction on investigations, I have received feedback, this is not getting better? When in the process do you call, assuming that this is an anomaly, ordinarily you would not

be here.

ADV SERUNYE: The problem with this is, remember now, from the 16th of September, I am no longer part of the case. I submitted a memo on 16th of September to recuse myself. So, I did not go all the way with it, but I know that some of these queries still remain, and I cannot say now what is the position with the docket.

But if you are asking me if I was still part of the case, because I came afterwards, I raised these questions.
10 I am not getting positive answers. I raised questions again on the second trial note and maybe on the third. I would not have proceeded with the trial of this matter when there is so much still outstanding. Otherwise, it is going to be an acquittal.

You are not even going to jump the 174 stage. The Defence was – in fact I doubt even if we are going to start with it. The Defence was going to query the charge sheet right from the onset, and I am saying it somewhere, section 85. They would have gone for a squashing of the charge
20 sheet, as it was. If I succeed in that, and then I am risking starting a trial which has so many gaps, lead one or two witnesses.

Once you close your case, and then there is an application for 174, there is no way that we would have succeeded with that. I would not have proceeded with this

trial or started the trial if all of these issues were still outstanding, if I was still the prosecutor.

ADV BALOYI SC: Can I just ask, and again, part of it is to understand what processes were followed here and how that accords with the law. You probably would have heard when Ms Johnson was testifying there was a debate at some point or a discussion with her about how section 28(13) was used and its purpose, and the concern being that it appears it was used, it was abused, it was misused, basically.

10 Now, I am looking here at your email of August 17. Now, we know that by August 17 the matter was already in court, because these people – so it seems to me, in the way that I have understood your processes, and you can correct me if I am wrong, at this point, 17 August, your 28(13) process happened, and then it was followed by your 28(1)(A) decision to investigate.

 So, you have done your 28(13), and you go to 28(1), and then there is a J50, and then people are now presented to court by all appearances, or from what you are
20 explaining, by that stage, we must have completed our investigations. That is why we are in court. And yet your email of August, your emails, in fact, let me say emails of August, they are still talking about investigating.

ADV SERUNYE: Yes.

ADV BALOYI SC: And I am looking at your page 53, in

particular, the very last paragraph of that email of the 17th of August. Well, maybe before I do, the last paragraph, you say that:

“We should therefore not try to convince each other.”

No, before that, the preceding paragraph, you say:

10 “Once the alleged conduct committed does not meet the definitional elements of the offence, as I am finding it to be in this case, that means no crime (corruption has been committed).”

So, we know that at the 17th of August, you held that view, and you expressed it. And then in the last paragraph then, you say:

20 “Having said the above, I am still of the view that if we investigate further and dig more, we are going to find the evidence of corruption of the Generals by Mokwele and not vice versa. Our answer is in the bank statement, cell phone records, and computer data of the Generals. There is no way that these people did not communicate prior to advertisement, and during/after the interviews. If the Generals gave Mokwele a job she did not

deserve, it is for the particular reason,
and we must find out this reason. Did
she bribe them?"

And then you ask questions. You conclude what was the
quid pro quo for the Generals to act in the manner they did.
Now, in this paragraph, firstly, what I have a difficulty in
terms of how you have understood your processes is you
are past section 28(13), because there has been a decision
to investigate.

10 You investigated. Now you have charged. So, you
are now in the realm of court, and you, DDP, hold the view
that as matters stand, we have nothing. And then in the
last paragraph, you say let us go search, and it seems to
me that now what is going to happen with that last
paragraph is to meet or satisfy a theory that has been
formulated.

 We have nothing to work with, but our theory is
these Generals are corrupt, let us go find something. And
you can explain it, and if that is what is happening here, it
20 seems to me that even on your own email, you are
participating in an inverted process. What is the stage of
things?

 You are in court. These people are appearing.
Why are you saying we do not have a case, but I am sure if
we dig some more, we will find something. That, to me, on

the face of it, is deeply problematic. But also, your position, it is inconsistent with the position that you take earlier on, where you say we do not have a case and then you say, but I am sure if we search, we will find something. That is not like a typical, typical fishing process.

Can you just explain how to make sense of your contradictory positions, and what I suggest is a fishing expedition that is suggesting should happen? And it is not simply a fishing expedition. It is, in fact, an abuse of your
10 investigative/prosecutorial powers.

ADV SERUNYE: Thanks, Commissioner. Commissioner, I came into the matter after arrests have been made. These emails, especially that paragraph, I am still raising questions. I am still saying, but why are these people arrested? I am saying to them, investigate, dig some ways, investigate, which I said should not happen. We should investigate, finish our investigations. Once we satisfy that we have a good case, this is a *prima facie* case, then we go to court.

20 In this case, it is vice versa. I am coming in after the fact. I am trying to rectify wrong things that have been done by saying, do your job. Do what you ought to have done right from the onset. Looking for information is like, investigate. I am asking them, did you look into the cell phones? Did you look into the computers? Did you mirror

image computers?

So I am playing that part which ought to have been done right from the beginning. And for me, at the time, all this does not make sense. I am still asking myself, how did this matter get to a point where it did? But do I have powers to say there and there we are cutting this off, or should I first satisfy myself that indeed there is no evidence, and then only then call it off?

It is a pity we do not have some of the emails
 10 where I keep on saying I am going to write a report at a later stage to the ID, because I could see that this thing was started wrongly. So I am not saying dig for something that is not there. I am saying investigate. Digging for information is investigating. And if you find the quid pro quo, then that is your solution. That is your solution, but otherwise, there is no evidence of corruption here.

ADV BALOYI SC: Can I, let me ask you this. Was it, and I ask this, I am not very – I am not particularly familiar with the NPA Act and the powers that it gives. Would you have
 20 had the authority, considering the Act, as DDPP, would that – you may not have exercised the option if you had it, but is it one of the options that ordinarily are available or within your powers, where if you came in the way you did, you came in late, things had moved along, and you have formed the view that you express where you say we do not have a

case as matters stand.

Is it within your powers to say let us stop and go back to the drawing board? I know you say people must go investigate, but I am asking a much, a bigger question as in you have people who are under bail conditions, who have been told they may not go to their offices anywhere in the country. You have people who are appearing in court, being postponed, so there is a disruption to some people's lives.

Is it something within your powers that you could
 10 have come in and said, hold off, let us stop what we are doing, let us go back to basics and start from scratch? And we are not going to court, whatever we have in court, we are going to – I have heard of, it is not a withdrawal, it is something, removal from the roll, which is not a permanent withdrawal of a matter. Does that kind of power lie in your hands as something that you could have done here?

ADV SERUNYE: Yes, Commissioner, and that is why I was asking, we should remember this is maybe nine days after I had become part of – this is actually the second document
 20 that I am writing to them to say, do the following. But like I earlier said to Advocate Poee, if this had persisted, up to a point, if I was still a prosecutor up to a point where the case, I would not have prosecuted this case.

At some stage, I was going to call it off. Unfortunately now, just a month after I then got off the

case, but I could not just on a week or two weeks after getting into the case and say, no, no, let us withdraw, let us withdraw this. But it is after testing, what was the basis of starting this whole thing?

And I realised there is no evidence, there was no basis for this. I should have done that maybe after consulting with the ID, sit down with her and say, look, this is the position, this is the evidence, I have read this, these are queries I raised, they are still unanswered, there is no
10 evidence. At some point, I was going to get to that point. That is what maybe one is in management for, to raise these issues with the ...[intervenes].

ADV BALOYI SC: So, Advocate Manilall, who succeeded you in this position and who has overseen this matter after you recused yourself, and on the assumption that up to when Ms Johnson was testifying, Advocate Manilall was responsible for this matter as the DDPP, he has, what you are saying is he has got that power.

He could at any point, after your many notes and
20 his own observations, he actually does have the power to say let us stop this. Even if it means let us go and redo the work, but let us stop what we have put in motion. He has the statutory power to do that.

ADV SERUNYE: He does, just like I have those powers, he does. But like I said earlier, I do not know at what stage he

was appointed, and what I know is with the evidence of the former ID two weeks ago, we got together, me and Manilall and Hlatshwayo and the two other prosecutors who are now part of this, and our decision was that based on what came out after the evidence of the ID, there is no way that this case can be saved and not resuscitated, and we then asked for a meeting with one of the Deputy Directors, National Deputy Directors.

We met with her and we said to her we know now
 10 that the matters are seized with the NDPP, but this is our proposal. I forget her name now. I think it is Advocate Bell. And I know that Manilall thereafter penned a memo to them based on those discussions with Advocate Bell, setting out our views, and then we were overtaken by events where I heard that the NDPP has decided that the cases must be provisionally withdrawn.

ADV BALOYI SC: Thank you. Thank you, Ms Poee.

ADV KHUMALO SC: Are you saying there was an independent review by IDAC, separate from the one by
 20 Advocate Mothibi's team?

ADV SERUNYE: There was, by the old and the new team in IDAC. We did meet.

ADV KHUMALO SC: The IDAC team?

ADV SERUNYE: The IDAC team, yes ...[intervenes].

ADV KHUMALO SC: Separate from ...[intervenes].

ADV SERUNYE: That is correct.

ADV KHUMALO SC: No, you do not have to go into the details. I just wanted to be clear that there was a separate process ...[intervenes].

ADV SERUNYE: There was a separate team. My team and the team of Manilall, we met and we agreed that it appears we are flogging a dead horse.

ADV BALOYI SC: In that kind of decision, at that point, what is the role of the DPP? It is the DPP, I think, from the
10 evidence of Ms Johnson. She submitted the charge sheet to the DPP. The DPP says I agree with your decision to prosecute. There was that kind of discussion. When you get to this point where you are now reviewing and you finally express the view that this is a dead case and we know how it has played out, the DPP's role is what there? Do they participate in that discussion?

ADV SERUNYE: Commissioner, the DPP did not participate in that discussion because the DPP is sitting at the provincial office, DPP's office. We are separate, IDAC.
20 I am not sure if our communication, the memo that was penned out by Advocate Manilall after our discussion, which was forwarded to the NDPP, if the Provincial DPP Gauteng has been copied, but the DPP was not part of these discussions.

ADV BALOYI SC: Thank you.

ADV SERUNYE: The DPP's role would have, I believe, ended when they were doing consultation with the ID. Because the ID wants to prosecute in the DPP's space, there must be that consultation, and I believe it happened in this case, and the DPP would have agreed, but the role of the DPP ended there.

ADV BALOYI SC: And on the question of now we are reviewing and we are, if it is a withdrawal, forgive my use of the word withdrawal, I do not use it in its technical sense,
10 but where the decision is made to remove the matter from court, you are saying the DPP, as far as you know, does not get to play a role in that. And I ask because from the evidence, once the ID, and you know this better than me, once the ID has made the decision to prosecute or to prefer the charges, that charge sheet was sent to the DPP, and the DPP wrote back and said, yes, I concur or something to that effect.

So that is why I am asking about now that you are changing course, does the DPP get to look at this and say,
20 yes, I agree that we really are bad, or they just hear from the client, the client being IDAC?

ADV SERUNYE: Ja. In this case, we did not involve the DPP, Commissioner, because from what we gathered, the matter was now already in the Office of the NDPP. That is why we wrote directly to the NDPP asking for a meeting with

them, and we were then allocated Advocate Bell to meet with us. And the discussions took place between us and Advocate Bell, who was representing the Office of the NDPP.

ADV BALOYI SC: Okay.

ADV SERUNYE: But I understand what Commissioner Baloyi is saying.

ADV BALOYI SC: Yes.

ADV SERUNYE: Ideally, the DPP in a way ought to have
10 been at least informed. The DPP in 2025, May or June, we consulted you on this matter and we informed you we are prosecuting, you agreed with us, and we have since taken another decision. I am going to believe that ought to have been done ...[intervenes].

ADV BALOYI SC: And ...[intervenes].

ADV SERUNYE: We went straight to the head office.

ADV BALOYI SC: Yes. And the ID in that kind of situation that you end up finding yourselves, where you, Mr Manilall, and somebody else are now looking again at this case, what
20 is the role of the ID, if any?

ADV SERUNYE: Yes. Commissioner, it should be remembered by that stage, that is when the ID was testifying. I think our meeting with the NDPP's office took place either on the Friday or the very first, or last week Monday, when we heard that the ID has resigned.

ADV BALOYI SC: Okay.

ADV SERUNYE: Ja. So she could not take part in those, because in any event, she was still testifying in the Commission and ...[intervenes].

ADV BALOYI SC: Well, I guess my question still remains. Ordinarily, would the ID have to approve your decision, or this is a purely prosecutor's decision that are seized with the matter, and they make that decision?

ADV SERUNYE: No, no. If she was still there, she would
10 have to approve. We were supposed to sit with her, pitch it to her, show her reasons why, and once she gives that approval, then it can be done. No prosecutor can withdraw the case in the ID on my own, going to court and just withdraw. Even if something happens and I am in court, say the Court is refusing me a postponement, I must let them know that I am having these challenges, there is nothing I can do, the matter is struck off, but it must be authorised.

ADV BALOYI SC: All right. Thank you.

ADV POOE: Advocate Serunye, let us then go back to your
20 statement. You are now dealing with the charge sheet and your efforts to amend that at paragraph 55.

ADV SERUNYE: Okay. At 55, ja, like I said earlier, the charge sheet as it stood at the time I became involved did not make, in my view, did not, in my view, make sense:

“My principal difficulties with it were the

following. First, the corruption counts inverted the giver and the receiver. One count charged accused number 7, Ms Mokwele, with corruption on the basis that she had agreed or accepted the gratification in the form of an appointment. A further count charged the General with corruption on the basis that they had given or agreed to give that same gratification in the appointment to her. On the ordinary structure of section 4 of PRECCA, the public officer is the party who accepts and the private person is the party who gives. Here the pleading had the public officers giving employment to a civilian, which is the reverse of the concept, and critically did not identify any unlawful act which Ms Mokwele was to pay for in return. Secondly, a further corruption count appeared to be a repetition of the count against accused number 7 being directed against her in respect of the same gratification. Thirdly, the fraud counts gave rise to a contradiction. One count alleged that Ms

Mokwele had misrepresented in her curriculum vitae, whereas that its contents were true and correct when they were false. A further count alleged a like misrepresentation in her SAPS application form. And a further count alleged that the Generals had misrepresented to SAPS and to the public that the selection process had been conducted in accordance with the applicable instruction. The difficulty is that these allegations cast the Generals simultaneously as the victims of Ms Mokwele's misrepresentation and as the perpetrators who had rigged the process in her favour. The same persons cannot be both victims of and the parties to the fraud. If, as the charge sheet alleged, the Generals colluded to appoint her, they were not deceived by her. The conduct would not be fraud of that kind, but at most a conspiracy. It was for these reasons that I settled the amended charge sheet referred to above..."

...[intervenes].

CHAIRPERSON: But would it not have been fraud against the state, not necessarily the Generals?

ADV SERUNYE: Indeed, Commissioner.

CHAIRPERSON: Assuming that all things were equal, of course.

ADV SERUNYE: Yes.

CHAIRPERSON: And based on the questions that my co-Commissioners have put to you, it appears that that was not the case. That is, it was not the case of all things being
10 equal.

ADV SERUNYE: Indeed.

CHAIRPERSON: But assuming that all things were equal, is it not so that the fraud would have been committed as against the state and not necessarily the Generals?

ADV SERUNYE: Indeed, Commissioner. Against the state as represented by its officials being the Generals.

CHAIRPERSON: Yes.

ADV SERUNYE: So ideally there would have been witnesses in the fraud case:

20 “My view that the matter was rushed was
communicated.”

I am reading from paragraph 60:

“My view that the matter was rushed was
communicated to the ID on 25 August
2025. My views are set out in Annexure

PS10.”

ADV POOE: Just one moment before we move on. At paragraph 59 you reference the amended charge sheet, and that is at page 54, PS6 of your annexures. And the charges that you had amended are at page 69 of that charge sheet. Just in relation to this charge sheet, what came to be of it once you have drafted it and shared it with the ...[intervenes].

ADV SERUNYE: It was disclosed. Remember we were
10 under pressure now from the Defence. They had asked for further particulars, asked for a copy of the charge sheet. They were never given a charge sheet, or at least the only charge sheet they had was the one that was used during the bail proceedings. So around September, they are now asking for a final charge sheet, and they were submitting a request for federal particulars. So it was disclosed to the Defence.

ADV POOE: So this would have been the charge sheet that would have gone to trial if it had, or the closest, barring
20 another amendment.

ADV SERUNYE: True. If my queries had been answered, if I was the prosecutor, yes, but those who came after me, they have a right, as long as the accused has not pleaded, they have a right to ask for an amendment of the charge sheet. They can always change it.

The only problem is if the trial has already started, the accused pleaded, and we have led evidence. Once we have led evidence, then you cannot. The least you can do is to ask for amendments on certain portions. But the prosecutor comes in, they can always, when they are not comfortable with their colleague's charge sheet, ask for the charge sheet to be replaced with a new one based on their understanding of the case. So I, ja. Okay, I was on PS10 where I penned an email to the ID, informing her that my
 10 views that this case was rushed, and that communication is on 25.

ADV BALOYI SC: Sorry, can I just understand? At page 69, you say this is the amended charge sheet. It has only one count, if I am reading it correctly.

ADV SERUNYE: 69 of my affidavit?

ADV BALOYI SC: Yes.

ADV SERUNYE: Yes, that is true, Commissioner.

ADV BALOYI SC: Okay. So this is a move from the charge which has seven counts, because we have been
 20 discussing on the – we have discussed with other witnesses, including Colonel Padayachee, on the basis of a charge sheet that has seven counts. You are saying this, now this is the amended one. This is version two.

ADV SERUNYE: That is true, Commissioner.

ADV BALOYI SC: And it is before the Court, and it was

disclosed to the parties.

ADV SERUNYE: It was disclosed to the parties
...[intervenes].

ADV BALOYI SC: To the accused.

ADV SERUNYE: Yes, to the accused.

ADV BALOYI SC: Ja. I see Ms Pooe wants to testify.

ADV POOE: No, I do not want to testify. I suppose my
confusion is that in the docket this one is not there. So we
operated on the assumption that this was a proposed
10 amended one, but that never saw it to pass. So this is the
first time in testimony that we are learning that this is the
one that was actually disclosed. Unless the team that came
after produced another, this would have been the one, the
operative one.

ADV SERUNYE: No. This charge sheet, with its preamble
starts at, I think it is at page 54. This is the charge sheet
that I drafted. Me and, at the time, it is only me and
Advocate Hlatshwayo, the team. Otherwise, if I involved
investigating officers on the Mokwele and Khumalo charge
20 sheet. This was disclosed to the Defence. It is
...[intervenes].

ADV BALOYI SC: And you know that for a fact?

ADV SERUNYE: I know that for ...[intervenes].

ADV BALOYI SC: This was disclosed to the accused?

ADV SERUNYE: Indeed. I know that for a fact. In fact, I

think I am the one who sent the email to one of the attorneys, who represents accused number 1, who represents Mr Lushaba of this charge sheet. And thereafter, it was then sent to the other attorneys.

ADV POOE: Advocate Serunye, if you can just make that email correspondence available to us?

ADV SERUNYE: I will do so.

ADV BALOYI SC: Let me ask then about this one. That you say in that first paragraph, you set out what is
10 supposed to have been done by the accused and you say:

“Acting in furtherance of a common purpose, did conspire with one another to give or offer to give gratification to accused 7 for the benefit of accused 7.”

I am battling to understand, given your position, your correct position, I thought, that you have taken that the way that they are formulating the charges, they formulated the charges, is they have inverted the position. It would have been for 7 to give gratification to these other officers, but
20 you seem to have gone ahead anyway, unless I do not understand this, you have gone ahead to formulate a charge that says they gave her gratification.

ADV SERUNYE: Ja. Yes ...[intervenes].

ADV BALOYI SC: I am not asking about the merits of this.

ADV SERUNYE: Yes.

ADV BALOYI SC: I am asking about, because you would have heard from evidence that when we were engaging with Ms Johnson, that there was a question of, but why was this done? This which looks so obviously wrong, why was it happening? Commissioner Khumalo went so far as to say there is a third, either he said there is a third hand or a hidden hand, it looks like, because things do not make sense. How this team of investigators and lawyers would do something so obviously wrong on the face of it, and that
10 does not make sense.

If I read paragraph 1, or I understand it correctly, you are repeating that which you have criticised. You can correct me if I am wrong, but you seem to have repeated that which you criticised by saying they granted gratification to Brigadier Mokwele. And I am trying to understand, why would you craft a charge like that?

ADV SERUNYE: Yes, I ...[intervenes].

ADV BALOYI SC: If your position, as I understand it, was that it is nonsense to charge her or them with gratification.

20 **ADV SERUNYE:** Okay, thanks, Commissioner. It is not a repetition of this section 4, which they were alleging and which in my statement I am saying is defective. I drafted this. It is pending the investigation, outcome of what the investigation is going to uncover.

But my logic in this is, and Commissioners will see

the misrepresentations that we are alleging on the alternative count of fraud. For example, if one looks at the misrepresentations, the first one on page 70, because I said conspiracy, section 21, they conspired, all seven of them, alternatively fraud.

Our understanding at the time is, if the evidence that we are alleging that the application of accused number 7, Mokwele, was submitted late, because we were going to call a witness who was going to say this application was
10 received on the 26th, yes, which the closing date is the 25th of April.

The application date stems from the 26th. A witness would have said it was received a day later. Therefore, without going into the other misrepresentations, if the panel members know and can see that this application has been received a day later after the closing date, why did they not disqualify her?

And by not disqualifying her, they acted in colluding with her, they are conspiring with her, to commit what I can
20 only sense at the time, that she be given this position. That is how the conspiracy comes into play. If all of these misrepresentations that I am alleging here, our understanding at the time that she had said I am a middle manager, if what we went through earlier with Commissioner Khumalo.

If all of those were then found to be true, that the last one, for example, of the misrepresentations, where accused 7 meets with one of the panel members and, I think it is General Ncube, it should be Ncube, a day before the interviews, accused 7 meets with accused 6, Ncube, who helps her to apply for security vetting.

They then use the Inkwazi system, which we are told is meant for service providers, because she could not be loaded onto the prescribed SAPS system because at the
10 time, she did not have a PERSAL number. That is only reserved for police officers. It was already on the system.

Now, accused 7 and Ncube then decide they register her on a thing. So that in itself, a day before the interviews, there is this collusion, and her advertisement, according to us, is received late. And according to us, she does not meet this managerial experience. Well, we can drop that now, but at the time, she was not.

Therefore, if you look at all those things, and you are asking, how could this panel of Generals in the
20 Intelligence Service not pick up all of those things? And even the fact that one of them was with the applicant a day before, the only thing that one could argue before a Court was they were colluding with her to commit an offence under section 21.

ADV BALOYI SC: Ja. I can see, without commenting on

the merit of it, I can see how you would list all of those things under your alternative count of fraud. So that is not my issue. My issue is the PRECCA, the main charge.

ADV SERUNYE: Ja.

ADV BALOYI SC: And it gives me a sense that, and I am seeing this amended charge sheet for the first time, keep that in mind. But it gives me a sense that you have that main charge under PRECCA because you are forcing this case to be under IDAC. It has to be a PRECCA offence.
10 Even if we cannot prove it, we lose, but at least we have the alternative.

So instead of starting with your alternative, making it the main charge, which I suspect it much more obviously raises the question, why is this an IDAC matter? If it is a fraud and you are listing HR matters, because it is HR matters, about meeting the requirements for the position, da-da-da-da-da.

So I do not understand the PRECCA decision. With you in particular, because you hold a view about this and
20 then you go and formulate the main count in the way that it has been formulated. I do not think you believed it. Otherwise, you have to explain all the other notes that you have been writing and the questions that you have been asking about this.

ADV SERUNYE: Yes.

ADV BALOYI SC: I do not think you believed that this case falls under PRECCA. Then the question becomes, what compelled you? Was it to make the ID happy? Was it that you do not want to rock the boat because you were brought in when you did and you found things to be what they are?

When you have expressed very strongly that we do not have that kind of case. Can you just explain that? I appreciate that you came in, tried to be the voice of reason,
10 and maybe Ms Ramsamy and Ms Hlatshwayo, if she does ever appear, will come and tell us why were they not discussing these things with you once you raised them and why did they not warn their bosses and their investigators.

But you hold a view from the outset after you brought into this matter and you are consistent about it and then when you get the opportunity to amend the charge sheet, you could have used the alternative to be the main count. You would have a debate about, but is this an IDAC matter, which is not the debate we are having now.

20 **ADV SERUNYE:** Yes.

ADV BALOYI SC: But why do you appear to force a PRECCA count in this charge sheet?

ADV SERUNYE: Yes. Thanks, Commissioner. I was not forcing it, Commissioner. I was not trying to please them. I speak my mind. Everybody knows that. I was saying

investigations are still outstanding. Cover these things up. But if the little that you have in the docket is believed, if indeed Mokwele's application was received on the 26th, then she ought to have been disqualified, and she was not. And if she is not disqualified, then she is being favoured. By whom? By the panel.

Because the panel seats, they have all those 76 applications, then people are disqualified one by one for not meeting the requirement. But why is this one, which is
 10 received a day late, gets to a point where she is shortlisted to top five and then to top three? If her application was received a day late, it is collusion with the panel members. If ...[intervenes].

ADV KHUMALO SC: Why do you keep saying if, if, if, if, as if there was no evidence when you were drafting this charge, it was something that you still wanted to be established?

ADV SERUNYE: No, Commissioner, it was there. I am talking about the receiving of the thing late. Her application
 20 is date stamped the 26th. I am saying as if I were in the court and the Court were to believe me. But again, the one thing that was not there, one of the issues that I raised in one of my emails was, go and obtain the affidavit of the secretary of the panel because that is the only person who can talk to when was this application received, and that was

done after I had left the case, but I am told that affidavit is there and the person confirms that the application was received for the 26th.

Therefore, she ought to have been disqualified. And that is why I am saying, if the evidence were to be believed that the application was received a day later, she ought not to have made it to top five and to top three and ultimately to top one, and that is why the collusion.

Section 21 talks of conspiracy to commit the
10 offence of PRECCA. Section 4, which was drafted earlier, talks of a public officer being given a gratification by another person. Section 3 is a general offence of corruption, which can be committed by anybody. Maybe if they had drafted their indictment in terms of section 3, much as I was going to ask questions, but where is the evidence? Maybe I was not going to say your charge is defective because it is putting things the other way around. The giver is said to be the receiver and vice versa, if they went for section 3, but I was still going to ask the questions
20 that I asked.

Where is the evidence to prove your corruption? But if I am going conspiracy, I am going conspiracy because I am looking at these pieces of evidence that the applicant meets with one of the panel members a day before. They try to put her in the vetting system. They cannot do that

because she does not have a PERSAL number. They then register her in a system called Inkwazi, which is meant for service providers.

What do I call that looking at the evidence? She is colluding with one of the panel members, at least Ncube. If an application was received late by a day, it ought to have been disqualified. She is colluding with all of them. They conspired to commit corruption based on the evidence that was before me, and that charge made sense in that way.

10 **CHAIRPERSON**: How was an outsider like her supposed to be vetted?

ADV SERUNYE: Sorry, Commissioner?

CHAIRPERSON: How was an outsider like her supposed to be vetted?

ADV SERUNYE: On the reading of these national instructions ...[intervenes].

CHAIRPERSON: Sorry, because you said, for example, because she was not on PERSAL, she could not use the vetting system used by those applicants who were internal,
20 internal within SAPS that is. So how was she supposed to be vetted?

ADV SERUNYE: Only at the point where if she had been appointed, the moment she is appointed, after passing the interviews and she is appointed, then they give her about six months to do the vetting. In that six months, now she

has a PERSAL number. She can be loaded onto the SAPS vetting system, and then she does the vetting, or she can do it private ...[intervenes].

CHAIRPERSON: So ...[intervenes].

ADV SERUNYE: But she could not use ...[intervenes].

CHAIRPERSON: In so – continue, continue.

ADV SERUNYE: Sorry, Commissioner. She could not use the SAPS vetting system because that you can only do when you have a PERSAL system. Secondly, the use of the
10 Inkwazi system, it is fraudulent in itself because it is meant for service providers.

CHAIRPERSON: But do you include her in that? Is she supposed to know anything about Inkwazi and whatever else if it is not Inkwazi? Is she supposed to know that?

ADV SERUNYE: I do not think she would have known that, but now she meets with one of the panel members the day before the interviews and taken through this, and she submits an application, and the application is processed. And based on ...[intervenes].

20 **CHAIRPERSON**: That is exactly my question. Is she supposed to know that that ought not to have happened? Because if vetting is mentioned and all of this is taking place, and from where she was sitting, that was an attempt to satisfy the vetting requirement or not.

ADV SERUNYE: That is true, Commissioner. I do not think

for her as a civilian she would have known even the difference between the SAPS vetting system and the Inkwazi ...[intervenes].

CHAIRPERSON: That is ...[intervenes].

ADV SERUNYE: But here is one of the panel members who is taking her through.

CHAIRPERSON: You see, my question does not relate to SAPS members.

ADV SERUNYE: Ja.

10 **CHAIRPERSON:** It relates to her. Should she have known anything about any of this? That is what my question is about.

ADV SERUNYE: I doubt that she would have known, but if we argue the matter in court, it is something different. How did she know that she has to avail herself at the office of Ncube where she has to be taken to the vetting office for the vetting to be done before the interviews are done, the interviews are going to be done the following day? And then ...[intervenes].

20 **CHAIRPERSON:** Let us leave it there.

ADV KHUMALO SC: Advocate, you may not know this, but all the shortlisted candidates were given a letter to say they must make themselves available for the purposes of vetting.

ADV SERUNYE: Yes.

ADV KHUMALO SC: So, they were actually being

disadvantaged because the advert said you must only do that six months after appointment. So, whoever said to them come and do it before the interview was not benefiting them. They were actually disadvantaging the candidates because the advert, it is the one on 178, File 2, that I took you to.

ADV SERUNYE: Yes.

ADV KHUMALO SC: When you do that, you are not benefiting the candidate. You are actually disadvantaging
10 the candidate because you are subjecting them to a process that the requirements do not provide for. And it applied to, because it is that letter that General Khan even said, well, I do not know anything about this letter and all of those. But Commissioner Baloyi's question remains.

You said there is no PRECCA offence here because after gratification, or rather gratification must be given, and then you said in brackets or in inverted commas, in order to. And you said because the in order to is missing, you cannot sustain a charge under PRECCA.

20 **ADV SERUNYE:** Ja.

ADV KHUMALO SC: Now, Commissioner Baloyi says if that was your position, why do you then draft a charge sheet that still includes gratification? Because even if you go to section 21, all section 21 says is that you conspired to commit the PRECCA offences. So it takes you back to the

offences, which means your gratification must still have that condition that it is in order to do something.

So if they had conspired to give her gratification in order for her to do something in return, then that would have been fine. But as Charge 1 stands now, the main count, that in order to part is not there. So why do you still have a gratification offence if the remaining elements of it are missing? Because you cannot just say you have conspired to give somebody a gratification full stop.

10 **ADV SERUNYE:** Ja. I understand that, Commissioner. Maybe then instead of section 21, one should have raised the ...[indistinct] and said conspiracy in that ...[indistinct].

But I am saying we are coming to the conclusion of conspiracy based on these pieces of evidence that things were not done properly. A person who ought to have been disqualified because the application was received late was not disqualified and ...[intervenes].

ADV KHUMALO SC: But that is the alternative charge. That is not the main charge. The main charge says you
20 conspired to give a gratification full stop.

ADV SERUNYE: True.

ADV KHUMALO SC: And Commissioner Baloyi's point is you have already said that gratification must be followed by something else. So if your main charge does not have that something else, then it contradicts your memo where you

said absent that something else, there is no charge. And I get your alternative where you say the alternative count has a potential of all these things.

ADV SERUNYE: Ja.

ADV KHUMALO SC: But forget about the alternative for now. Look only at Count 1. What is the offence in Count 1?

ADV SERUNYE: Yes, I see that, Commissioner. And what you are raising is important in that there is that debate amongst colleagues that, when we are referring to 21, does
10 it take us back, like you rightfully said, does it take us back to – because 21 says any person who, a, attempts, b, conspires with any other person, or, c ...[intervenes].

ADV KHUMALO SC: Look at the last part ...[intervenes].

ADV SERUNYE: [Indistinct] ...[intervenes].

ADV KHUMALO SC: Look at the last part.

ADV SERUNYE: Ja, another, to commit an offence in terms of this Act is guilty of an offence.

ADV KHUMALO SC: Yes.

ADV SERUNYE: To commit an offence in terms of this Act
20 ...[intervenes].

ADV KHUMALO SC: So it takes you back to the offence.

ADV SERUNYE: It takes you back to the act. Like you rightfully say, maybe a question of interpretation, but the intention at the time is – so on hindsight, when one says, ja, but still, your conspiracy does not fit in.

ADV KHUMALO SC: Because look at Count 1. What is the offence in terms of this Act in your Count 1 on page 69? Because remember, it must be in order to commit an offence in terms of this Act.

ADV SERUNYE: Yes.

ADV KHUMALO SC: Ja, so what is the offence in terms of this Act in your Count 1?

ADV SERUNYE: The act that has to be committed.

ADV KHUMALO SC: Yes. The offence, the offence.

10 **ADV SERUNYE:** Well, it is contravention of section 21.

ADV KHUMALO SC: No, no, but 21 says you commit an offence if you conspire to commit an offence in terms of this Act. So it takes you back to offences in terms of PRECCA. Look at the last part of section 21.

ADV SERUNYE: Yes, I see that, Commissioner.

ADV KHUMALO SC: Yes.

ADV SERUNYE: But that last portion would then take you back to say if people conspire in terms of this Act, they must conspire to commit an offence in terms of this Act

20 ...[intervenes].

ADV KHUMALO SC: In terms of PRECCA.

ADV SERUNYE: Section 3, 4 ...[intervenes].

ADV KHUMALO SC: So in the charge, where is that offence?

ADV SERUNYE: Well, we did not cite the offence because

I could not go back to what I was criticising ...[intervenes].

ADV KHUMALO SC: Exactly.

ADV SERUNYE: I cannot say ...[intervenes].

ADV KHUMALO SC: Exactly.

ADV SERUNYE: I cannot say you conspire to commit section 3 or 4, which are going to be was non-existent.

CHAIRPERSON: And it is not as if you are not aware that there had to be something else. Do you remember your very first query when you raised the many questions?

10 **ADV SERUNYE:** Yes.

CHAIRPERSON: You even said to do what, and then you have dot, dot, dot to show that you expect this something. You yourself, when you raised the queries, do you remember that particular query?

ADV SERUNYE: I do, I do.

CHAIRPERSON: Did it not relate exactly to this?

ADV SERUNYE: It does.

CHAIRPERSON: It must have. It must have related exactly to this.

20 **ADV SERUNYE:** I concur. I concur.

CHAIRPERSON: Did you suddenly forget now when you are couching the charge sheet about your own query?

ADV SERUNYE: Yes. Ja, Commissioners, I agree. And I must say, there is an ongoing debate. Like I am saying, now that it is being raised, I remember one of the

discussions I had with colleagues in the office. We debated this. We argued about this a lot and maybe I was for this side, and I can see now that, ja ...[intervenes].

ADV KHUMALO SC: Commissioner Baloyi says the reason you put it there as the main count is because you knew that if you started with the alternative count, then IDAC does not have, this does not fall within IDAC's mandate. So you had to put PRECCA as the main charge to justify IDAC continuing to prosecute this case.

10 **ADV SERUNYE:** No, I respectfully disagree because that would then question my motives. I come in here with clean hands. I came in to rescue a situation I have never, since I was involved in this case, involved myself in any shenanigans. And I stand here, I can say with a clean conscience, I did my work to the best of my abilities ...[intervenes].

ADV KHUMALO SC: A prominent South African once said my hands are clean, and we know what happened.

ADV SERUNYE: I do, Commissioner. But for me, listening
20 to the evidence, and like I said earlier, hearing what I have heard here, I wish, and I was saying to somebody during lunch, I wish I could turn back the hands of time. And I would not have gone to court on that day, on the 27th, when there was a bail application on the 27th of June because here I am now in the middle of something that I did not

start.

But what I can say is, I realised when I came in that this case was rushed to court. It was not ready. I raised those queries. And I would not have prosecuted a case like this if it was not ready. It is a pity I recused myself before I could make that decision. Otherwise, I would have made it.

ADV BALOYI SC: I have a generous explanation, attempt at explaining what happened with your amended charge sheet. It is you came in, you found a mess, and you tried to
10 help fix it because you knew that they are going for gratification because that is the most serious charge that would get people in court suspended, and you were trying to fix an unfixable.

ADV SERUNYE: I will take that, Commissioner. I will take that.

ADV BALOYI SC: Thank you.

CHAIRPERSON: And indeed, the several questions you ask do show that whatever impropriety there might have been, you are not party to that. Because if you were, you
20 would not have raised the many questions that you raised, and doing so more than once.

ADV SERUNYE: I accept that, Commissioner. I queried. I did not go along with something that was wrong, or at least something that I could see was not prepared thoroughly and ready for court.

CHAIRPERSON: All right, thank you.

ADV POOE: And then, Advocate Serunye, in relation to your paragraph 60, which you read into the record prior to engagement, just to note that you then sent an email to Advocate Johnson directly on the 25th of August, and that is PS10 at page 93.

ADV SERUNYE: Indeed, Counsel, I sent an email to the ID. If you look at page 93, PS10, I sent an email at 11:44 on the 25th of August to Advocate Johnson, copied her PA,
10 Ms Sekhukhune, and Mr Matthew Sesoko, with subject status Khumalo and Others, and then I put in an attachment. There is an attachment to that email. Trial Preparation Document 3. I said to the ID that:

“Khumalo and Others matter refers.
Attached, please find a copy of my trial preparation note 3 addressed to the team. My view is that the enrolment was rushed. However, there is a *prima facie* case of fraud (not corruption) at least not
20 on the available evidence.”

It is still consistent with what I have been saying all along, in terms of ...[indistinct].

ADV POOE: And then the attachment is at page 95, and you raise substantially the same issues and give directions about particular further investigations and affidavits that

should be obtained in order to complete the investigation.
Is that so?

ADV SERUNYE: That is indeed so, Commissioners.

ADV POOE: And was there a response to this correspondence, particularly the email that you sent directly to Advocate Johnson?

ADV SERUNYE: I did not get any response to this email.

ADV POOE: And did you know if she received it?

ADV SERUNYE: I sent it to her email, and this time copied
10 her PA. I am sure she got it.

ADV POOE: And then ...[intervenes].

ADV SERUNYE: She did not respond. I do not have proof of that, but I sent it to her.

CHAIRPERSON: But you did not get a non-delivery report either?

ADV SERUNYE: No, I had not.

ADV POOE: And then in an early engagement with Chair, you mentioned that whenever you are sending correspondence to Advocate Johnson where it is less
20 urgent, you would do so through the PA.

ADV SERUNYE: Yes.

ADV POOE: And an example of that would be on page 24, is that correct, where you send an FYI to her PA.

ADV SERUNYE: That is correct.

ADV POOE: And that then, with this one where you make

direct communication with her ID, are we to understand that it is because it was urgent and you wanted to draw these matters to her urgent attention?

ADV SERUNYE: Indeed so, and it was now the third document that I am writing where I am raising queries. So maybe in my mind, I was thinking let me also send it directly to her in case she did not get the others. But I know Eno [?] is very efficient, there is no way that she did not. But this one, I directed it directly to her and copied
10 Eno as well.

ADV POOE: You have also copied Mr Sesoko. Did he engage at all with this email and report?

ADV SERUNYE: No, he did not respond to me about it. He did not say anything to me about it.

ADV POOE: And then also prior to sending it to the ID, you had sent it to the team. Did you receive a response in that regard?

ADV SERUNYE: I sent it to the team. I would have received one of those emails ensuring me that, okay, now
20 we will cover the issues that you are raising. I am sure I received, I must have received, especially from Brian. Brian is one of those people, when you send an email, he does respond.

ADV POOE: All right, thank you.

ADV SERUNYE: Mr Padayachee, I am sorry.

ADV POOE: Then you move on to deal with the ...[intervenes].

ADV SERUNYE: I am sorry, Counsel. You will see in that preparation trial note to the ID, if you look at paragraph 16 or point 16, that is where I am raising the issue of an HR expert. That:

10 “An HR expert must be appointed to
 analyse the scoring of the three
 candidates and provide a report on
 whether the scoring of the three
 candidates was fair and/or in accordance
 with the prescribed manner set out in
 paragraph 6 (evaluation process of the
 National Instruction 3 of 2005).”

ADV POOE: Yes.

ADV BALOYI SC: Maybe also to point out that in paragraph 5, you say:

20 “After receiving input from colleagues
 and doing further reading on the
 corruption subject, my initial view still
 stands.”

And this initial view you are referring to is that there is no case ...[intervenes].

ADV SERUNYE: Is that there is no case of corruption. Indeed, Commissioner.

ADV BALOYI SC: Okay, thank you.

ADV POOE: Then we can deal with the procedural irregularities that you questioned. You have dealt with the issue of the charge sheet and the other thing that you dealt with was paragraph 62, which deals with the referral and your multiple attempts to get a copy of the referral and that your latest one was done when one of the accused persons requested disclosures or further particulars, and there you referred us to Annexure 10.1.

10 Can you then take it – no, I also think you have actually explained the meeting that was called by Advocate Johnson on the 1st of September, wherein she, I guess, questioned why you are not trusting her investigators and that she herself had seen the 27 and so you should proceed with your work. That is correct?

ADV SERUNYE: Indeed, that is correct, Commissioners.

ADV POOE: Then I think we can take it from paragraph 64, where you deal with when you were eventually shown the section 27.

20 **ADV SERUNYE:** Okay. Just in passing, PS10.1 is an email which I sent to Mr Sesoko where I was asking about the 27. We are now in 31 October 2025. If I go back to my affidavit at paragraph 64:

“Some days later, that will be now after
the 31st of October, following a

management meeting, the Chief Investigator, Mr Dylan Perumal, informed me that he had the section 27 referral and showed me a document in his office. He showed me the document whilst holding it. It was as if he wanted me to see its existence but not its contents...”
...[intervenes].

CHAIRPERSON: Sorry, what exactly do you mean by that?

10 It was as if he wanted me to see its existence but not the contents. How did you hold the document? Did you get to read the document? Based on what you are going to say shortly after this sentence, it seems to me that you actually did read the document because you even estimated the number of pages and you also suggest that you actually saw the content because you say it resembled the complainant's statement and basically contained nothing. So you actually read it.

So it is in that context that I say I do not
20 understand when you say it was as if you wanted me to see its existence but not the contents. We know that you actually saw the contents. So what do you mean by this sentence?

ADV SERUNYE: Thanks ...[intervenes].

CHAIRPERSON: Or at least I assume that you saw the

contents based on what you say about the number of pages and also the fact that according to you, this document said nothing.

ADV SERUNYE: Thanks, Chair. Yes, if I can demonstrate? We got into his office. I am seated on the other side of the table and he is sitting here. He pulled up the statement and he did not give it to me to read. He was holding it closest to him. I had to bend over and read. I think he thought when I see section 27, because it had a heading section 27
10 referral, I think the names of the persons, Fadiel Adams.

When a person is holding a document like this for you to - but I read it. I read and I could see as I am reading through that this affidavit is similar to the other affidavit of Mr Adams because there was nothing that stood out for me in that affidavit that ...[intervenes].

CHAIRPERSON: Did he page it as you were looking at it?

ADV SERUNYE: Yes, we paged it through. I paged it. I even went to ...[intervenes].

CHAIRPERSON: Who paged it, him or you?

20 **ADV SERUNYE:** I think I did. I think I was paging. Then I paged it through. I read through ...[intervenes].

CHAIRPERSON: I thought you were saying he was holding it.

ADV SERUNYE: Yes, he was. It is like holding it. I cannot take it, but I could page through and read. And I

even saw at the last page where the deponent had signed and the Commissioner of Oath had signed. I could see one of them signed it in Cape Town. I think it was the deponent. But then it had a stamp, IDAC stamp of Pretoria. I cannot remember who commissioned it, but I could see it was commissioned.

And that is what when I left that office, I said to Advocate Hlatshwayo I finally saw this elusive section 27. I have read it, but there is nothing. You know, I thought when
 10 this report or this affidavit is not given at least to me, because I was asking, there is things in there that people did not want me to see. But when I read it, I thought, it is just the same as the statement of the complaint. There is nothing to me, really, that is ...[intervenes].

CHAIRPERSON: So if he let you page the document, how is it that you say he wanted you to see his existence but not the contents? Because he could only have allowed you to page through the document if he had no problem with you seeing and reading his contents. So I do not quite get what
 20 you are saying.

ADV SERUNYE: Ja. I got a sense that he was rushing me. He thought I wanted to, because I have been asking about the 27, he thought I will just look at it, oh, it exists, and then leave. But then I wanted to read the contents of this and see what this affidavit was about.

CHAIRPERSON: I may be belabouring the point, but if you go to page 19, you even say on perusing it.

ADV SERUNYE: Yes.

CHAIRPERSON: Because lawyers usually use peruse when they mean that they read a document thoroughly. And you refer to perusing and yet to suggest that you were almost not given an opportunity to read the document.

ADV SERUNYE: Chair, I read the document. I read it up to the last page because I wanted to see what was in this
10 affidavit that I have been asking for since August, and no one is giving it to me. But when I finished reading it, I could not understand why this thing was being hidden away from me or from the team because it was just a normal statement by Mr Fadiel Adams, which was very similar to the one which was in the docket where he is saying he got the document, the document is underneath the door, and making complaints about a lot of issues that were happening in the Intelligence office.

CHAIRPERSON: All right. I interrupted you when you
20 were about to read right at the foot of the page, the last line, he retained the document in his hand.

ADV SERUNYE: Yes, the last line of that page ...[intervenes].

CHAIRPERSON: Page ...[intervenes].

ADV SERUNYE: Yes:

“He retained the document in his hand, and I was not given a copy. The document comprised only of some two or three pages...”

It could be more, I do not remember, because it is almost a year ago:

10 “...and appeared to be a repetition of the complainant's statement, containing nothing of substance. On perusing it, I observed what appeared to me to be an inconsistency in the commissioning of the document, in that the place at which it appeared to have been signed did not accord with the place at which it appears to have been commissioned.”

Like I said earlier, the complainant appeared to have signed the statement in Cape Town, but then there was a Pretoria stamp of IDAC, and then the Commissioner of Oath would have signed:

20 “And then I raised my concern with Advocate Hlatshwayo immediately afterwards. I told her that she was going to have a problem with the section 27 referral, because at the time I was under the impression that it was signed by the

deponent at one place and commissioned
by the Commissioner of Oath in another
place, based on the stamp...”
...[intervenes].

ADV KHUMALO SC: Is Mr Perumal your junior at IDAC?

ADV SERUNYE: No, he is not. In terms of the structure,
he comes after us as ...[intervenes].

ADV KHUMALO SC: So, you were the DDPP assigned to
the case, and you know that the section 27 is missing. You
10 know that the prosecutor assigned to the case, Mr
Hlatshwayo, has not seen the section 27. For the first time,
Mr Perumal says to you it exists, here it is, and you do not
insist on getting a copy of it so that you can discuss it with
Ms Hlatshwayo, so that she is empowered when she
continues with the prosecution of the case. I just do not get
that. I mean, what were you scared of? Was there a
reason why you did not tell him that, listen, I want that
document, give it to me now?

ADV SERUNYE: Commissioner Khumalo, I did not think of
20 making a copy because when I read the statement, there
was nothing substantial for me. It was just like the other
statements I have seen. So I thought at the time, but why
were they dilly-dallying from giving me this? Because there
is nothing really in this. But we had a very good
relationship with Mr Perumal. I have worked with him many

years ago in Kimberley. We did a case together there. So from me and him, he calls me brother. I call him Tony. So I was not scared of him. If I wanted a copy, I would have told him, Tony, please make me a copy of that.

ADV KHUMALO SC: And give Advocate Hlatshwayo a copy because we are at discovery stage. The accused are asking for the docket. They are entitled to this document. It should be available. You were formulating draft charge sheets or amended charge sheets, and you were at a stage
10 where you knew that the accused would be asking for discovery.

You were at a stage where you are raising a concern with Advocate Hlatshwayo. You are saying she is going to have a problem with the section 27 referral. Why do you not insist that it be made available to her if you know that she must look at it because there are serious issues with it?

ADV SERUNYE: Because, Commissioner, as I said earlier, there was a meeting where the ID called me and the two
20 prosecutors, and I was told to back off from demanding this section 27. The ID says, I have seen it, are you not believing my investigators? So I was not going to ask for a copy of that because I got clear instructions to stay away from this, just do your job, and then leave it ...[intervenes].

ADV KHUMALO SC: So you were scared. You were

scared of the ID. That is why you did not insist that it be made available to the prosecutor.

ADV SERUNYE: If one – I cannot dispute that. I did not want to upset her. She was clear. I have seen the 27. I am satisfied that it exists. Leave this matter alone. I hear that you have been asking a lot about it. Leave this thing off. So when Mr Perumal showed it to me that we were coming from a meeting and I did not even demand a copy because I knew I do not have to deal with this document,
10 but at least I have seen it.

And again, remember, I was no longer part of the case, in fact, by then. This is now in October. I have since been recused in 16 September. So, but I related the message to Joy. And the other thing is we were told now when I was still part of the case, when you are getting a request for further particulars, an email which I have to provide to counsel, one of the – I think that is the attorney for accused number two.

They wanted a copy of this. They said, how did you
20 get this referral? Was it by 28, 27? You want a copy? That is part of the request for further particulars, but we were told the 27 should not be disclosed. The ID said it is an internal document, it should not be disclosed to the Defence, and I think that is what we said to them even in our answer, response to request for further particulars, that

we cannot give it to you, it is an internal document based on what we have been told. But if you look at it, there was no reason really to hide this document. It was just the same as the other statements.

ADV POOE: Can I take you to the affidavit we have on record? If you can just have a look. It is File 2, page 512. If you can just look through that one to confirm if that is the affidavit you saw?

ADV SERUNYE: Ja, can you repeat that, please, Counsel?

10 **ADV POOE:** If you can just look through this affidavit just to confirm if this is the one that you saw?

ADV SERUNYE: In most parts, yes, it appears – I am looking for – no, it is not ...[intervenes].

ADV POOE: The only mark that I can see ...[intervenes].

ADV SERUNYE: The one that I saw, like I said, on the last page the deponent had signed it. It was clear he had signed it in Cape Town and the Commissioner of Oath had signed, but there was an IDAC stamp next to it, which was a Pretoria stamp, which is what I could not understand.

20 Where was this affidavit commissioned? So the one I am looking at now seems to have been commissioned in Cape Town.

ADV BALOYI SC: Maybe to assist you, I was going to suggest that you are making a mistake, it sounds like, because the one you are referring to, which is signed in

Cape Town and deposed in Pretoria, that is an A1 statement.

ADV SERUNYE: Yes.

ADV BALOYI SC: It is not a 27.

ADV SERUNYE: That is the one that was shown to me.

ADV BALOYI SC: Okay.

CHAIRPERSON: And it is dated, I think the 6th of January 2025.

ADV BALOYI SC: Yes, that is the Pretoria ...[intervenes].

10 **CHAIRPERSON:** The Pretoria, Cape Town one.

ADV SERUNYE: Indeed, Commissioners. That is what was shown to me. It is not this one. And even though it is almost a year ago, the one that I read, I do not remember this paragraph 5, which talks of Minister Bheki Cele. There was no reference to that in the affidavit that I read. There was no – I do not think there was reference to that in the affidavit that I read.

ADV KHUMALO SC: Please go to File 3, page 683.

20 **CHAIRPERSON:** In that case, and whilst you are looking, are you not mistaken when you say that the affidavit that you saw, which had Cape Town and Pretoria, that it had section 27 on it? Because on what we have been shown, the affidavit that had Cape Town and Pretoria is dated 6 January 2025, and I think between the tramlines it just says affidavit with no reference to section 27. Are you perhaps

not mistaken?

ADV SERUNYE: I probably make a mistake where I am saying the heading was section 27, but it had the names of Fadiel Adams, and I am looking at the one on File 3 now, that appears to be the one that I was shown. That is why even in my affidavit I am saying it was about two or three pages, and it had this IDAC stamp on it.

ADV KHUMALO SC: Go to page 684, that Pretoria-Cape Town anomaly.

10 **ADV SERUNYE:** Page 684?

ADV KHUMALO SC: Yes.

ADV SERUNYE: I am at 684,

ADV KHUMALO SC: Is that what you saw? Just below ...[intervenes].

ADV SERUNYE: This is what I saw, Commissioner. This is what I saw on the day.

ADV KHUMALO SC: Do you see it says dated and signed to at Pretoria on 6 January 2025, and then it says in my presence in Cape Town?

20 **ADV SERUNYE:** Exactly.

ADV KHUMALO SC: Is this what you were shown?

ADV SERUNYE: This is the one that I saw, that Perumal showed me.

ADV KHUMALO SC: But then this is not the section 27 affidavit that started the whole thing.

ADV SERUNYE: Ja, ja. This is what I was shown. That is why I am saying after reading what was shown to me, I did not make anything of it because it was not saying much. It was like a two or three-page statement, which really did not say much, and I was amazed, why has it not been shown to me all along? Because it is not containing sensitive information that I was not supposed to see or anything. If they had given me this all along, I would have stopped asking for it.

10 **ADV BALOYI SC:** If Mr Perumal showed you this document and said to you it is a section 27 referral, he misled you, because this is not the referral. This is a statement that was taken and marked A1 by him.

ADV SERUNYE: He would have misled me, Commissioner. Hence I am saying, after reading what he showed me, it was like I was reading one of the affidavits of Mr Adams which I saw in the docket. It was similar. So when one says, oh, here is that 27 you have been looking for, I hear you have been asking questions about this, so maybe I should stop
20 asking questions.

ADV BALOYI SC: Ja. I guess going back to the question that Commissioner Khumalo asked, that you are the DDPP at this point, because at paragraph 63 and 64 you do say that it is after the meeting of the 1st of September, and some days later, following a meeting, you went to Perumal

and said he had the section 27, and he told you, and he showed it to you.

So at this point, it seems like you are still involved with the matter because remember, at 63 you say it is on the 1st of September that the ID said to you, why are you asking about the section 27? And then in 64, you say some days later, I went and I spoke to Perumal. So it suggests you are still involved in the matter, which then the question remains, that if at that point you are still involved with the
10 matter, because you are not giving us a date, you just say a few days later.

ADV SERUNYE: Ja.

ADV BALOYI SC: Unless you are exact about when you were recused, and then we are able to see that, okay, in September he was no longer involved with the matter, the question remains that as the DDPP, Mr Perumal is not your superior.

ADV SERUNYE: Yes.

ADV BALOYI SC: You are responsible for this matter. You
20 are going to be making discovery to the accused. You need to prepare. How it is that he trumps your request to have the document, because there is a reason you want this document, at the very least, it is so that you can make full disclosure to the accused, but for your prep. So how is it, and why does he have the final say when you are now with

him?

Forget that this is not the 27 that he misled you. Let us assume it was the 27. How do you land at where he makes the final decision effectively that now you are not getting this copy that I have? And why is that okay with you, who is senior to him and in a different function? Why does it end there?

ADV SERUNYE: The only thing I can think of, Commissioner Baloyi, is that he had the support of the ID.
10 He probably knows that the ID had told me on the fact that I must stop asking questions about this 27 and just continue doing my work. So that is why maybe he is also just showing it to me and not giving me a copy, because he knows that I have been told not to ask questions about it and because I was following on what the ID would have said to me, that is why I also did not insist on getting a copy.

And the other thing the ID said to us, these 27s are not given to the Defence. So when we are going to answer requests for further particulars, we are not going to give
20 copies to the Defence. The instruction was these are internal documents and they should not be disclosed.

ADV BALOYI SC: But you knew she is wrong. It is not an internal document. It is a Mr Fadiel Adams document, so it comes from outside into the IDAC. It is what gets a docket opened in the first place, because without it you would not

have opened a docket. So I expect that the prosecutors would know that it cannot be right that it is an internal document, she cannot be right that it is not to be disclosed. Is that a fair proposition to make, that the prosecutors must know she is wrong?

ADV SERUNYE: Yes. But again, Commissioner Baloyi, I could not say to my boss you are wrong, I am going to disclose it anyway against your instruction.

ADV BALOYI SC: You may, for your reasons that you give,
10 not contradict her, but the fact is, as a matter of process, it means there is no full disclosure to the accused. And that has consequences. It could be any other document from where I am sitting, that if on something like this you have a head who says, no, we are not disclosing that, it is an internal document, and everybody around her knows that what she is saying is not correct, but they comply, then it does not give faith that on any other matter, if she says that we are not disclosing, that her prosecutors will not say, well, if I must lose my job, I am going to lose my job, but my
20 integrity and my responsibility to my profession and to the court is that I make disclosure.

That has a sense of discomfort about it. And either she was particularly powerful, and so nobody dared to say, but that is breaking the law when we do that, or she works with prosecutors who are okay to look the other way, which

is deeply problematic, and I do not know which is worse. But that is a sense, a sense of discomfort that all of this creates.

ADV SERUNYE: I understand that, Commissioners. Ja, it is difficult to be in a position where I was at the time. I could not, I did not have the guts to say to my boss you are wrong, I am going to disclose this, whether you approve it or not. I know there is going to be consequences. There can be discipline, there can be charge, and so on.
10 Especially that we have signed non-disclosure forms. So it was going to be, you disclose a document which we have told is an internal document, and therefore you are facing up to 15-years imprisonment for this.

So it was like that. If she did not say to me do not disclose it, it was going to be part of other disclosure, but we are told categorically it is an internal document, you do not disclose it. And it is on those basis that I would not have gone against it.

ADV BALOYI SC: All right, I have heard your answer,
20 thank you.

CHAIRPERSON: Another process-related issue. A witness, I think it was Ms Ramsamy, said that the section 27 referral affidavit becomes the A1 statement, but that you may supplement it should that become necessary. Is that your understanding as well?

ADV SERUNYE: Chair, that is my understanding because the section 27, when it is sent say by complainant, that forms the basis, that is the first document that we receive that says I have seen or I suspect that such and such an offence has been committed, maybe provide evidence to that documents, invoices.

And that is the first document that we have when we are opening an inquiry file as we are building up our case and investigating. Now, if it is not sufficient, we will
10 go back and obtain a further statement. Now, when it comes to the disclosure stage, why should we then give to the Defence all of these other documents but not this one, which was the basis of why we started this investigation?

I would understand if it contains sensitive information on informers and how government operates, like the Court says when we are doing normal disclosure. But if it is a statement like this one of Mr Adams, I do not understand why it had to be kept away from the Defence, because it is a complainant statement. It forms part of,
20 basically, the inquiry file, and later when the docket is opened, it should form part of the docket and be disclosed like all the other documents.

CHAIRPERSON: And also not just as a matter of process, it actually makes practical sense that it should be out there for all those involved in the investigation to see. Why?

Because it is the source document for the investigation. Why it should be kept by whoever, secretly, simply does not make sense whatsoever.

ADV SERUNYE: Indeed, it did not make sense, even at the time. And I think, maybe going forward, this is what, and I know some of the colleagues are listening too, these are debates you must have in your office. If we have to beef up our manual, we have to do that to be clear on these issues. And if at the end of this Commission, according to your
10 powers, Commissioners, you are going to make recommendations, maybe that will also come up in your recommendations on this 27, that it forms part of the inquiry file, it forms part of the docket, and it must be disclosed.

CHAIRPERSON: Thank you.

ADV KHUMALO SC: Just to complete the picture, the section 27 that you were showing, the one that we find in File 2, we know that on the 9th of October 2025 it did not exist because in File 10, on page 402, you do not need to go there. There was a scramble at IDAC offices because
20 people were looking for the section 27.

And Ms Ramsamy was asked about it, and Mr Perumal enquired about it. Nobody knew where it was, and they thought she had it, she had kept it since December the previous year. Even when Advocate Johnson went to the Ad Hoc Committee in October or November last year, she could

not produce it.

She raised various issues, but the simple point is on the 9th of October 2025, Mr Perumal did not know where the section 27 was, and everybody in the office was looking for it and they actually thought it is missing or it has been destroyed.

ADV SERUNYE: Ja.

ADV BALOYI SC: There is, in fact, now controversy about what is the section 27 affidavit that started this
10 investigation. You have followed that evidence. So, the reason why you would expect, and I hope for my part that those who are listening, your colleagues, they understand from this evidence that we have sent through why it is important for the lead prosecutor to have sight of that section 27.

ADV SERUNYE: That is true. I agree. Commissioners, I agree. It is very important. And I do not know about the other issue where the document was searched for because the ID had to report at Ad Hoc. But what I can say, during
20 that period of October 2025, I was also looking for it. And as I have shown through the email that I have sent to Mr Sesoko on the 31st of October, I was still asking questions about the existence of this document.

So when Perumal showed me the document, it must be after 31 October because by 31 October, as it appears

on PS10, my email to – no, it is not PS10. PS10.1. PS 10.1. My email to Mr Sesoko on the 31st of October. I am asking, do we have a section 27 referral in this matter? And if so, where do we get a copy of it? And, ja.

ADV KHUMALO SC: Maybe what is confusing about your statement is that paragraph 63, you talk about the 1st of September, and then you say some days after the management meeting. And that seems like you are saying second week of September.

10 **ADV SERUNYE:** Yes.

ADV KHUMALO SC: But in fact, when you go to your Annexure 10.1, it is the 31st of October when you are asking if we have the 27 referral.

ADV SERUNYE: Ja.

ADV KHUMALO SC: So maybe your statement is incorrect where you say some days after the management meeting because it looks like it is a month or two after.

ADV SERUNYE: It is actually about two months after because ...[intervenes].

20 **ADV KHUMALO SC:** Two months after?

ADV SERUNYE: Yes.

ADV KHUMALO SC: So maybe we should correct your statement, paragraph 64, to say on or about the 31st of October 2025.

ADV SERUNYE: I will be glad if that is corrected,

Commissioner, so that I do not create confusion. But obviously, if one looks at the date sequence, it should have been at least on the 31st of October or thereafter.

ADV KHUMALO SC: On or about.

ADV SERUNYE: Yes, on or about. So it could not have been, yes. So in paragraph 64, the first line reflects that to say my meeting with Chief Perumal happened on or about 31 October, or at least after 31 October.

ADV POOE: Advocate Serunye, then you were at
10 paragraph 65.

ADV SERUNYE: Yes. At 65:

“For the reasons already given, it was my
view that the arrests were premature and
that the matter had been brought to court
before the investigation was complete.
The verification of Ms Mokwele's
qualifications, the analysis of financial
and communication records, and the
assessment of the appointment process
20 were all matters that ought to have
preceded and not followed the arrest.”

I am saying. I then get to the Lushaba matter at paragraph
66 ...[intervenes].

ADV POOE: My apologies, Advocate Serunye. Chair, may
I ask for a short adjournment? I have been sent a note to

request a short comfort break.

CHAIRPERSON: We will hear from you when you are ready. Let us adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Ms Poee?

ADV POOE: Thank you, Chair. At this stage, I have stopped being optimistic, so we are now at the second last subject, which is the Lushaba matter. Advocate Serunye, if
10 you can proceed from paragraph 66?

ADV SERUNYE: Thanks very much, Counsel. Under the heading Lushaba matter, on paragraph 66:

“Ss set out above on 8 August 2025, I was also asked to oversee the Lushaba matter, in which Advocate Ramsamy was the lead prosecutor. Having considered the docket, I was of the view that it disclosed no case. In particular, I did not understand why the complainant, General
20 Lushaba, who on the face of the docket was the victim, had been charged. As I understood the matter, it concerned the complainant who had been drugged and robbed after encountering a sex worker, and who then found himself charged. On

the material in the docket, there was nothing to sustain a charge against him, and I regarded the matter as untenable. I reported my concerns or views to the team and to the ID, as can be seen on Annexures PS11, 12, and 13. In response to my concerns raised in Annexure PS11 to 13...” ...[intervenes].

ADV POOE: Perhaps before you get to the response to
10 your concerns, maybe if you could turn to the annexures? PS11, which is at page 102, is when you recorded to colleagues, asking them who are the suspects and what exactly they have done. You see that?

ADV SERUNYE: I do, Commissioner.

ADV POOE: And you were also enquiring about whether the charge sheet was ready, and you required the prosecutors to prepare a presentation so that you can then meet and discuss the case.

ADV SERUNYE: Indeed.

20 **ADV POOE**: A much more detailed – that comes after. Then PS12.

ADV SERUNYE: Yes. Maybe before you go to PS12, Counsel, the last sentence on that PS11, I am then saying to them:

“I am going to request Mr Sesoko to also

attend so that he can give feedback to
the ID about my views.”

I wanted him to be part of the meeting, and I can confirm
the meeting was then held.

ADV BALOYI SC: And Mr Sesoko was present?

ADV SERUNYE: He was present, Commissioner.

CHAIRPERSON: Putting aside your characterisation of the
case and your view that General Lushaba was in fact the
victim, please tell us what the charge was and what
10 allegations it was based on.

ADV SERUNYE: Yes. Chair, if I remember, he was
charged, among others, with defeating the ends of justice.
He was charged for fraud, but all that emanated from the
fact that he had lost his items. I think his laptop, his wallet,
which had his bank cards and a police card, after being
dropped off by one of his friends at his home with a certain
lady.

And it appears the following morning when Mr
Lushaba approaches his friend and he asks his friend,
20 where is my motor vehicle? What happened yesterday?
And the friend made a statement. He says, I could see that
there is something wrong with this man because I dropped
him off, I drove off with his car, now he is asking me about
his car. He looked disorientated and all that. And that is
when they went back to the house and they realised that

items were missing.

In the docket, there is, I think I picked up on the C-clip of the docket on the diary, that Lushaba and his friend went to the house opposite his because there were cameras, and they could see this lady jumping over the fence in the middle of the night, having some items. And I see him as a victim in that sense, that he has been drugged and robbed, his items were stolen.

And the items were then recovered after the
10 Intelligence agency, the Counterintelligence agency was activated. Fortunately, now the very same morning, somebody picked them up, apparently called the police officer. They were then, Lushaba was then called to the police station and then given these items after he had positively identified them.

But the charge sheet says the process of giving him the items was wrong. They should have been sent for forensic analysis of fingerprints and many other things, and therefore, that he was a suspect in that sense, together with
20 two or three of his colleagues, I think, that he was charged with. I could not understand what that charge was, and I think one of my emails are making that clear, that I am seeing this for the first time in my career.

CHAIRPERSON: Was the charge not about an alleged falsified report with regard to what had happened with his,

or in connection with his devices?

ADV SERUNYE: There were allegations that a statement, that Lushaba's original statement was missing from the docket, and that the statement which was part of the docket was actually made after the fact, but it did not really make sense. Why would he do that? It is clear he was robbed, and it was, he had reported how the theft happened. He was not hiding the fact that he had a visitor in the house. Why would he then make a statement, then withdraw it and
10 file another one?

All that, really, I felt, I do not understand this type of charges, and I wrote that down. I think I have one of the emails where I was saying, what has this man done? What is the crime that this man committed that warrants him being charged for fraud and defeating the ends of justice, when he is actually a victim of what appeared to be a syndicate?

Because it comes out from the investigation that this lady and a group of people were doing those kind of
20 things in the local places in around Pretoria, where they were drugging victims and robbing them. It appears the very same lady had a warrant of arrest issued for her in one of the courts for doing the same thing to one of the victims.

And you can see General Lushaba's bank card being used the following morning after he had lost it. So

somebody was buying liquor all over using the card. So I found it difficult how this man who had lost his items should suddenly then be charged. And it is on that basis that I said in the meeting with Mr Sesoko, this one, this is not the case.

I do not know how everybody arrives at this. And I then repeated it, and I sent an email to the colleagues, also on PS12, where my wording is a bit strong there, where after the greetings and I am saying:

10 “I first want to hear the prosecutor's presentations. Maybe there is something I am missing, but my preliminary view is that, if anything, this is a District Court matter, defeating the hands of justice against whoever is alleged to have removed Lushaba's initial complaint and statement in the docket. Thereafter, I am going to prepare a report setting out my views for the ID's consideration. The

20 Magistrate was not even supposed to have authorised a J50 warrant of arrest for Mr Lushaba because the application for same does not even disclose an offence.”

It is like one is reading heads of arguments, where Brian

Padayachee also quotes case law in an application for a warrant. I was seeing that for the first time. I am closing it by saying:

“I have never seen anything like this, but
I will prepare a report in due course.”

CHAIRPERSON: Thank you, thank you.

ADV KHUMALO SC: One of the issues here is that the complaint to IDAC actually related to the cover-up. So Mr Adams was saying there was a cover-up and the lady was
10 actually paid for her silence or to return the things or something like that. What IDAC then did is they went to the underlying docket and they started investigating the docket instead of the complaint that there is a cover-up by Crime Intelligence, and that is where this whole thing went a bit south.

ADV SERUNYE: It can be, Commissioner, because there is a statement in that docket from a police officer, a neutral police officer, who says, that is the morning following the theft at Lushaba's place, he was contacted by a person, he
20 named that person in the statement. This person says I picked up some items to the garage and because he knows the police officer is staying nearby, he took those items to the police officer and the police, this police officer activated Crime Intelligence because he could see from the card that this is a member's wallet and this member appears to be a

member of CI. And the items were then taken to the police station.

And that is how, about a cover-up, there is nothing in the docket about that. The only allegation is that it appears the original affidavit that Lushaba made was removed. But when I read that docket, I do not see anything of that sort. I do not understand why Lushaba would complain and then cause his statement to be removed and be replaced by another statement which is talking about
10 the same issues that relates to the robbery at his place.

ADV BALOYI SC: What we have also heard about this is that General Khumalo is charged in respect of this because he did not discipline, he was part of a cover-up, he did not discipline General Lushaba.

ADV SERUNYE: Okay. Commissioner Baloyi, in the docket that I read, they accused Mr Lushaba and two other Crime Intelligence officers, but not Mr Khumalo. I am not sure if there is a separate docket of Mr Khumalo, but I do not know about that. I do not know about that.

20 **ADV BALOYI SC:** Thank you.

ADV POOE: Is the charge sheet you are referring to at page 110 where it is General Lushaba and three others who are charged?

ADV SERUNYE: Yes. That is the charge sheet of this docket I am referring to.

ADV POOE: Okay.

ADV SERUNYE: Lushaba, Mr Mogashoa, Glenn Hudson, and one Eugene Pitout.

ADV POOE: Okay.

ADV SERUNYE: These are the accused. And Pitout and Hudson, I think, are members of Crime Intelligence. Mogashoa is a police officer at the station. The allegation was that how could he have commissioned Lushaba's affidavit because apparently on that morning he had
10 knocked off. So our investigators could not understand how he would have commissioned Lushaba's affidavit. So I think it is on that basis where they were saying this cannot be the original affidavit because Mogashoa knocked off at 6 o'clock that morning and he could not have commissioned that affidavit.

ADV BALOYI SC: We know that General Lushaba was arrested, is being charged. These other three, were they also arrested? Do you remember?

ADV SERUNYE: Speaking under correction, I think they
20 were, Commissioner, because I think they were on bail. I remember in one of the appearances when the matter was postponed, the warning from the Magistrate would have been, yes, your bail is extended on the same condition. I think they were arrested as well, but they were out on bail at the time.

ADV BALOYI SC: Okay.

ADV SERUNYE: I think this case, or the arrest of this case, happened before the General Khumalo and others' arrests. This one came first.

ADV POOE: In the series of correspondence noting your concern, this would be the third. That is PS13, which starts at page 105. You will see there you addressed two emails, the first being to the team, wherein you note that on the 28th of August, you would have had a meeting. This is the
10 meeting that you referenced earlier where Mr Sesoko was also in attendance.

ADV SERUNYE: Indeed, Commissioners.

ADV POOE: And you indicated that even after that discussion, you still were of the view that you do not have a *prima facie* or a winnable case and that you will provide a written report. I see also that this email was also then sent to Eno for the ID's attention. That is at the top.

ADV SERUNYE: That is true, Counsel. On the same day, 29 August, on the same day that I sent the email to the
20 team at 7 o'clock in the evening, I sent it four minutes after that. I then sent it to Eno with a message:

“Hi, Eno, for the ID's attention.”

You will see I was dissecting each and every one of those counts, starting from Count 1, and showing what I am picking up on those up to the last count. Some of them

were repetitions. The counts were repetitions. On other counts, it would be a duplication. One person would be charged, and then the other one would be charged. It was really badly crafted and not supported by evidence, most importantly.

ADV POOE: I see that you noted about exactly 73 points in relation to the 10 counts. Is it possible for you to give a summary of the key issues that you were raising?

ADV SERUNYE: At the most, it was questioning the
10 charges themselves. The elements of the charges are lacking. There is no evidence to substantiate those charges. Also to say, some of them are duplicate charges. For example, if you look under paragraph 55, I am asking:

“Is Count 8 not a duplicate of Count 6?

Why was Count 8 not cited as an
alternative?”

Same thing, Count 9 is a duplicate of Count 7. Count 10 is a duplicate of Count 5. It was a repetition of issues related to duplicate counts. The evidence itself, for me, it was not
20 at the least showing any *prima facie* case. That is why in the email itself, I am saying to them, I think around line six:

“Thanks for the fruitful and robust
discussions in the meeting. I went back
home last night, read the docket again,
and considered all the views and

submissions of the individual team members. I am sorry to say that I am still of the view that we do not have a *prima facie* or winnable case. I will provide my written report to the ID, Mr Sesoko, and the team in due course.”

ADV POOE: And did you provide a report in this regard to the ID and Mr Sesoko?

ADV SERUNYE: I did not, Commissioners. I am saying I
10 was overtaken by – everything was overtaken by events here. This is 29 August, and by 16 September, I then ceased to be part of the case. I did not write the report, but it is the emails I sent them to the ID.

ADV POOE: And did the ID respond, or even any of your colleagues?

ADV SERUNYE: No, the ID did not respond to me on the basis of this email, neither did the colleagues. The colleagues, at least, we had a meeting on the 29th. I remember it was a virtual meeting, a very robust one, where
20 I sent out my views, and all the things that I am telling here, I said in the meeting.

ADV KHUMALO SC: The subsequent management meetings, was it not discussed? You had been removed as the DDPP, but you still attended management meetings. Was it not discussed at those management meetings?

ADV SERUNYE: No, it was not discussed. I indicated in the management meeting, we would not have gone into the merits of cases because other people sitting in those meetings are not designated to be part of these cases. So, if anything, I would discuss separately with Mr Sesoko and the relevant people, but not with the other managers that are not designated in the case.

ADV POOE: Just on a procedural point, we know that you indicated the new team took over. Is there a handover
10 process when the docket and investigation is moving from one team to another? Because in this instance, these two matters moved to a completely new team, and none of the previous prosecutors were carried over to those new teams.

ADV SERUNYE: Yes. Ideally, in a normal setup, there should be a handover report. In this case, I am not sure if Advocate Hlatshwayo, who I left in the Mokwele/Khumalo case, did a handover. I am not sure if Advocate Ramsamy did a handover on this one.

ADV POOE: Thank you. We can then go back to your
20 statement at paragraph 68, where you deal with the – my apologies ...[intervenes].

ADV BALOYI SC: Sorry, maybe before you do that, this charge sheet, who would have prepared it? I mean, I ask because in your note where you list the problems with it, you raise quite a number of issues, including somewhere

where the charge sheet says, accused 1 gave a gratification to himself, you know, under Count 2.

ADV SERUNYE: Yes.

ADV BALOYI SC: You raise those kind of things. Who prepared this? Who would have prepared this charge sheet? Did you get to find out?

ADV SERUNYE: Honestly, I do not know who prepared this charge sheet, Commissioner Baloyi. Like I said, the matter is already in court. I do not know.

10 **ADV BALOYI SC:** But at this point, when you get involved and the matter is in court, Ms Ramsamy was – you said Ms Ramsamy was responsible for this matter.

ADV SERUNYE: She was the prosecutor in the case.

ADV BALOYI SC: So this is the charge sheet that she was working with at the point.

ADV SERUNYE: Which was also disclosed to the Defence from the date of the first appearance.

ADV BALOYI SC: Yes. Well, I was saying to the Chairperson gratification seems to be your favourite –
20 IDAC's favourite fallback or default position. If you do not like someone, you charge them with gratification.

ADV SERUNYE: Not like that, Commissioner, but corruption is a very serious offence that this country is faced with. So I guess we all try to root it out, but we follow the evidence as prosecutors and investigators

...[intervenes].

ADV BALOYI SC: Except in these two cases. We have had the debate about gratification, whether the charge has been – the charge is properly formulated on your facts, and you have expressed your difficulties with it. The same discussion was had with the ID, the same discussion was had with Mr Padayachee and Ms Ramsamy. So at least on these two cases, it seems to have been a default, maybe because nothing else works.

10 **ADV SERUNYE:** It looks like it, Commissioner Baloyi. It looks like it. That is why sitting here today, after listening to all the evidence, it appears – and I can see it now – that some of us went in, we were just doing our work, but it is painful that it appears there were things happening behind our back which we were not preview of. And it appears to me that some of us were used – if you are giving instruction, go and oppose a 63. You go in, you think you are doing your work to the best of your abilities, go and oppose a 65.

20 I mean, I did two cases. Out of these cases, I went twice to the High Court with the recusal application and with the 65 bail application. Doing what I love, what I have been doing, next month it will be exactly 31 years, without knowing that there is other things happening behind the scenes. It is painful, but I did not know at the time.

ADV BALOYI SC: Thank you.

ADV SERUNYE: I did not know.

ADV POOE: Can we then deal with the response that is at paragraph 68 of your statement?

ADV SERUNYE: Yes:

“In response to my concerns raised in PS11 to date, Chief Perumal indicated in an email that he has had a discussion with Major General Khan...”

10 And that is after I have raised the queries. Now, Chief Perumal had a meeting with General Khan:

“...and obtained a provisional statement aimed at clarifying some of the queries I was raising regarding the Lushaba incident. The unsigned statement of Major General Khan was attached to Chief Perumal's email. Chief Perumal's response is attached as per PS14.”

ADV POOE: And that is at page 136.

20 **ADV SERUNYE:** Indeed, Commissioners, at page 136 is an email from Chief Perumal on Sunday, the 31st 2025 at 11:40, to the other investigators, including the prosecutors:

“Good morning, colleagues. I had a discussion with Major General Khan this morning. He alerted me to his interaction

with Lushaba following the so-called housebreaking incident. Please check the affidavit. If necessary, please provide input. If it is fine, Charles...”

that is Mr Charles Eales, one of the investigators:

10 “...Charles can meet General Khan tomorrow to sign it off. The essence of the affidavit is that Lushaba did not want General Khan, who was neutral and in charge of Counterintelligence at the time, to be involved or bear knowledge of the incident.”

The attachment to that email was the affidavit, the unsigned affidavit prepared for the signature of General Khan from page 137 to 139. I read that email, rather that affidavit, and in my response, which I did not attach, I said it is not going to help obtaining this affidavit now. Why was it not obtained three years ago? Why is it done after the fact? And eventually this affidavit was never signed off. It is not part
20 of the docket.

ADV POOE: Do you know how Chief Perumal came to speak to General Khan regarding this matter?

ADV SERUNYE: Regarding this matter?

ADV POOE: Yes.

ADV SERUNYE: I do not know. I would want to believe

because I am trying to remember if General Khan made a statement in the Lushaba document. I cannot recall now. I cannot recall clearly. I do not know. I do not know why.

ADV POOE: Okay.

ADV SERUNYE: I know he provided a statement in the Mokwele/Khumalo letter, but on this one I am not sure. I cannot remember.

ADV BALOYI SC: This is a 2022 incident. In August, I think, General Khan says that during August 2022. So this
10 was in 2022.

ADV SERUNYE: Yes.

ADV BALOYI SC: And the statement, obtaining a statement from him is being discussed in August 2025, end of August.

ADV SERUNYE: That is correct, Commissioner Baloyi.

ADV BALOYI SC: And that is why you are concerned about time that has passed.

ADV SERUNYE: Yes. And again, in my queries, there is nowhere where I am saying, investigators, go to General
20 Khan, obtain an affidavit clarifying the following. I am querying a number of issues, but nothing about referring them to General Khan. And in his response to me, he came to the affidavit to say some of your queries can be answered by this. But I read it at the time. It was not helping, and I responded to him to say even if it is signed

off, it is not really helping much. That is why it was never signed off and or it does not form part of the docket.

ADV POOE: And then at paragraph 70, you say that you then had no further engagement or involvement in the CI matters going forward.

ADV SERUNYE: Yes, I had no, I see there is a mistake there. I had no, it should read, I had no further involvement in the CI matters moving forward. And in conclusion ...[intervenes].

10 **ADV POOE:** Before you do the conclusion ...[intervenes].

ADV BALOYI SC: Sorry, before you do the conclusion, this General Lushaba matter, why is it an IDAC matter when one considers the mandate of IDAC?

ADV SERUNYE: According to me, Commissioner Baloyi, it does not fall in that category of cases that must be, and I stated it in one of the emails.

ADV KHUMALO SC: It is on 102.

ADV SERUNYE: That is correct, Commissioner, where I said to the colleagues, colleagues, does this case fall under
20 the mandate of the IDAC? I was of the view that this does not. And it is one of those cases, even if, like I am saying, even if you refer it to the other courts, to the Lower Courts, you are really burdening them with a matter where there is no *prima facie* case.

You rather deal with it there, close it off, write your

report, giving your reasons why, so that it is filed and there is a report. Not to pass the buck to other people, but at the time, I really was not meeting our criteria.

ADV BALOYI SC: Do you ever get a response to that question?

ADV SERUNYE: No, this one, I did not get a response to that question, Commissioner.

ADV BALOYI SC: Thank you.

ADV POOE: Advocate Serunye, since your involvement, in
10 fact, pre your official involvement in the two matters, you have noted consistently in your statements that there were a number of irregularities and things that did not make sense.

ADV SERUNYE: Yes.

ADV POOE: And in fact, when you get the dockets, you note that in both instances the investigations were wanting. They were not at a stage where suspects ought to have been arrested. Over and above that, you have seen procedural irregularities where your own manuals and
20 operations were not followed.

I know you have explained that having heard the evidence before this Commission now, you now see that there may have been other issues at play. My question is you have said to this Commission you have 30 years of experience. IDAC is a specialist organisation. It has

experienced prosecutors, skilled prosecutors, skilled investigators.

Now you look at look at these two matters and you can see by all accounts there is nothing there, it should not be before IDAC, there is no investigations, nobody should have been arrested, nobody should have been charged, both charge sheets you say are defective.

At the time that you now see all of this, now you have a full scope of the picture, having studied both
10 dockets and in fact engaged both the other prosecutors and investigators on your issues that you had, what conclusions did you draw of what was transpiring within IDAC, particularly in relation to these two investigations?

ADV SERUNYE: Look, Counsel, what I could figure out at the time, and I am saying this based on the fact that on the side I was also getting complaints from the prosecutors, Advocate Hlatshwayo and Advocate Ramsamy, saying about how the investigators are not listening to them and how they have been – some of the issues that I have been raising in
20 my emails and in my memos, the two prosecutors also did the same.

They showed me a document which they directed to the office of the ID with a lot of queries, and I think it was around the same time of August 2025. So they were also of the view that this matter is not ready, but they were not

getting, you know, the relationship between the prosecutors and investigators was not good.

I sort of got a sense that this, and I do not want to, because there is some officials there, you know, Mr Charles Eales was still new in the office, Mr Pat Mlambo, he is a very nice, good guy. I was starting to work with Brian, Mr Brian Padayachee for the first time. I did not know him. He appeared to me to be a very committed investigating officer.

I do not know, but I mean, they made a lot of
10 mistakes here. It appeared they were rushing this case. I did not understand then, but if you look at it now, it appears there is some conflicts between these investigators and investigators in Crime Intelligence. It looks like, I do not know what that could be, but I used to work for Crime Intelligence. I do not know if we are arresting because we want, you know, but you can only see these things after the fact.

Every time you do not notice, you realise things are not being done properly. Investigations are not going well.
20 This case has loopholes. The two cases were not supposed to be in court, and you are coming in after the fact. If I was right at the beginning of these investigations, maybe with the help of the prosecutors and I, we could have driven investigations better, and if nothing came out of them, closed the files.

But now you come after the fact. You are supposed to, you know, correct things that have been done. You do not realise some of the things at a time. But ja, there is something that was going on then that I did not see at the time. I can see it now. There is nothing that I could do at the time.

ADV POOE: I guess ...[intervenes].

ADV SERUNYE: But my emails are telling the story. I am questioning and raising these issues, not only with the
10 investigators, but with the ID, with Mr Sesoko, that these cases were rushed to court, and I am raising a lot of issues here.

ADV POOE: Do you not think it is worse than rushed to court? In fact, based on all of your memos and emails, it is not only an issue of rushing. That is the least of the concern. The issue is you do not have a case, and then the other, you should not even be investigating. So it is far worse than that.

ADV SERUNYE: I agree with you, Counsel. I agree with
20 you.

ADV POOE: And the second thing is, from what you are describing of the investigations and what this Commission has heard about the investigations, either they are bad, and maybe this is the norm, and this is what you see, and so you did not quibble too much, or this must have been so

bad and such an anomaly that you have to ask yourself, what exactly is at play?

ADV SERUNYE: Yes, which is what I ...[intervenes].

ADV POOE: Because you are also looking at it, my apologies, from an experienced mindset, and you are not involved throughout. You have the benefit of looking at it and seeing it.

ADV SERUNYE: Yes.

ADV POOE: And the last thing I will say is that one of the
10 witnesses we consulted said they chose not to see some of these things, and so I wonder, did you see and not say anything in the sense of saying, in harsher terms, or is it that the environment was such that there was not scope to do that, so what you were all doing was just trying to manage within that difficult space?

ADV SERUNYE: No. Commissioners, I expressed myself. My emails are saying it. When I do not agree with something, I say it. When I agree or some person does something that is good, I comment and I express how I feel
20 about things. I would not have kept quiet. I would not have kept quiet, and that is why I said earlier to the Commission, it is a pity I went out quick.

Around 16th of September, I asked to be recused and only concentrated on the – I would not have prosecuted these cases, taken them to court for trial, if I remained in

the cases and all these queries were not answered. At some point, my reports would have been in this case, my view drawn, I would have engaged the ID, but I went out before doing that, but at least there is a trail of my emails where I am expressing my views about this. These cases were not properly investigated, and in some of them, like in the Lushaba case, I do not even understand what the charges are there.

ADV POOE: And then just on internal protocols, what
10 exists for something like this not to transpire? From what you have said and one witness has said, it seems that the only mechanism that exists is you sort of raise these concerns, and a lot of people raise them with Mr Sesoko as well, but it does not seem like there are any internal checks and balances and protocols to ensure that this does not happen, or when concerns are raised, they are dealt with effectively.

ADV SERUNYE: Yes. Thanks, Commissioner. These two
20 cases are exposing us, and in a way, and as I was talking to some of the colleagues back at the office, I said things that this is happening so that we should reflect, we should go back. At some point, you might go on and on, thinking that you are doing things the right way, and you need a moment like this.

It had to take IDAC officials to do wrong things,

arrest people prematurely for IDAC to, you know, for the President to gazette and order the Commission be set up, so that we should find our way. You know, it is that storm that comes and cleans, and after that, I can only hope that everything will run smooth.

We are trying our level best as managers. Like I said, the organisation does not have a head at the moment. We are trying to talk to employees. One of the guys was saying, I only joined from Durban in May, and I was
10 intending to relocate my family. Must I go back? And I said, please, please, please, we need all of you hands-on-deck. This is the moment where the NPA and IDAC needs each and every one of you.

This happened for a particular reason. Out of this, we must come out. IDAC must come out, you know, a better organisation. We must go back, have our strategic planning as management with the help of experts. If we have to look at our manual again, redraft it, have processes, protocols, like you are saying, Counsel, know when a person is not
20 doing things in accordance with the rules, what steps should be taken at that moment?

We should avoid situations where people are seen to be favoured. These ones are untouchable, and so on. We must have a way of operating an organisation, and thanks that this Commission came up. And we are also

looking forward to the recommendations, which will also help as we go forward rebuilding this very important law enforcement component.

ADV BALOYI SC: Can I follow up on the first question that Ms Poee asked, which is, if you recall, about whether people were looking away, choosing not to look, not to see, or looking away because they do not want to get into trouble, or it is simply a matter of incompetence. I do not subscribe to incompetence on these facts here, especially
10 for an organisation like IDAC.

I think one would have to give up on IDAC if one thought you are that incompetent, your office. An issue, and my follow-up is on an issue that I was going to raise with you, and I raise it now because you are going to the conclusion, and I think it is an appropriate time now. And this relates, it is still a similar theme to the first question that Ms Poee asked, but this relates to the bail issue.

ADV SERUNYE: Yes.

ADV BALOYI SC: Now, Ms Johnson testified to what
20 happened, what that was all about. And the question asked of her was, who makes the decisions about we are going to oppose bail or we are not opposing? Who makes a decision about we are going to oppose the appeal or we are not opposing? So we had that engagement with her. But of particular interest to me is your role.

You were in court when the bail condition, the contentious bail condition was imposed, which is these accused, they must not go to a Crime Intelligence office anywhere in the country. You were in court. You know that that condition was not asked for by the State, but we also know from the appeal record that there was an engagement between the Magistrate and Ms Hlatshwayo about the need to protect witnesses.

And Ms Hlatshwayo's position was, we are not
10 concerned about that because we have not given out names, and so we are not concerned about them going to the office. And yet the Magistrate issued that bail condition that they must not go anywhere into their offices and if they needed anything, they must speak to Mr Padayachee, to Colonel Padayachee.

Now, Ms Johnson testified, and I paraphrase very much what she said, that had she been – she was not aware, she was not made aware that that bail condition was not requested by the State. Had she been made aware
20 after the fact that the bail condition has been, this bail condition was given and it was not at the request of the State, but also the parties were never given an opportunity to address it, she would have, as any prosecutor should, as a responsibility to the court and your ethical responsibility, is you go back to the Magistrate and you say you have to

undo this.

I do not remember the exact terminology, but you go and seek for it to be set aside because you did not ask for it. And had she been aware on appeal, when this matter went to appeal, of that fact that it was never asked for, she would not have supported you opposing the appeal. She depended on briefings from her officials, and she never got a briefing that this bail condition was given in the circumstances in which it was given, and every prosecutor
10 has an ethical duty when something like that has happened, to go back to court in fairness to the accused, your responsibility to the court, you go back to the court and say you have to undo this.

Now, you were in court, you knew that this bail condition was not asked for. You did not do what she says, what Ms Johnson says any prosecutor would do, because you have an ethical duty for that. But not only do you not go back to court or tell Ms Hlatshwayo to go back to court, you in fact prepare and argue the appeal.

20 You oppose, you actually oppose the appeal on this condition, and you prepare the papers. In court you do end up conceding, because the Appeal Court is looking at the record and says, but this and that did not happen. You end up having to concede that because that is only fair to do. And the question is, as Ms Pooe says, but how do you

reconcile your position as a prosecutor who must prosecute matters without fear or favour or prejudice, who must be fair to accused as well?

And therefore, and as part of your obligations as a prosecutor, is if there is material that is favourable to the accused, you have an ethical obligation – and I know your Code of Conduct says that because I have seen that there – you have an ethical obligation to disclose even matter that is favourable to the accused, even if it is going to help
10 them.

Your job as a prosecutor is not to get a conviction or to get an incarceration at all costs. That is not your job. Ms Johnson having described what would have happened had she known, that is what she says, had she been briefed about this, this is what she would have done. Assume for purposes of my question that she was not briefed because she is not my focus now. My focus is your actions in this, that how do you reconcile your role as prosecutor who knows the truth about this bail matter?

20 You do not go back to court and on appeal you actively oppose the appeal. And before you comment, let me add something else that she said had she known. She did not understand how you would have gotten a condition that they do not go to any office in the country, when in fact they are only based in Pretoria. And she did not

understand, and that was wrong for it to be in the bail condition.

So that is one of the things that she said. She would have said, go and fix this. Explain how we reconcile your role and your position with what you did with this bail matter.

ADV SERUNYE: Thanks, Commissioner Baloyi. Firstly, like I said in the beginning, I was not part of this case. My first involvement is going to court to try and help a junior. I
10 did not know how they had planned. I did not know the effects of the case. I did not know what, whether they were opposing bail or not, but what I realised was they were not even ready for the bail application, because when I asked for a bail statement from the investigating officer, I realised they do not even have one.

So they addressed the Court from the bar. So, but what I am picking up from the evidence of Mr Padayachee is that the prosecutor had been instructed to ask for that condition. I think Padayachee said that. That he spoke to
20 the prosecutor on the day to say, ask for the condition and that the prosecutor did not ask for the condition.

Therefore, going to court, their plan, which I think they would have discussed then with the ID head, was we are not going to oppose bail, but these are going to be our conditions. Therefore, I find it difficult when Advocate

Johnson says she did not know about the condition, because based on what I hear from Mr Padayachee, they were supposed to ask for that bail condition, but it was not asked for.

But then the second point is, and I indicated that earlier to the court, I said when I was brought in, it is for two reasons, to oversee the two cases, but most importantly, to prepare for the bail amendment, which is coming on the 13th of August. So Advocate Johnson knows
10 that there is going to be a bail amendment application. So I am brought in to oppose that.

It was not my choice to oppose it. I did not come in and say give me the part of opposing this. I am brought in to oppose that because she says that the Defence has a lawyer who is senior in her own ...[indistinct], and therefore, I need you at that level. Now, what happened after the bail application and the first appearance, whether the Prosecutor Hlatshwayo did not brief her, that I would not know.

20 **ADV BALOYI SC:** Even allowing for that, sorry to interrupt you, even, even allowing for that, that Ms Hlatshwayo did not brief her, you are now in the matter. You know what happened in the Lower Court at the time of the appeal, as you prepare the appeal. Why do you not at that point say, by the way, ID, you are saying I must deal with the appeal.

ADV SERUNYE: Ja.

ADV BALOYI SC: But in fact, we did not ask. I was in court. That condition was not asked for. I am assuming that you do not see anything wrong, for purposes of my discussion with you, with this wide condition that applies across the country. Well, forget that. Do not deal with that, but you know it is a condition that was not sought by the State.

She says to you prepare for bail, right, for opposing
10 the bail appeal. At that point, why do you not say, because now you are in charge, why do you not say to her, by the way, it is a condition that we did not ask for? The Magistrate gave it of his own initiative. We did not get to address him. The accused did not. And as an ethical prosecutor or prosecuting body that we are, IDAC, we cannot or we should not oppose this appeal. Why do you not do that?

ADV SERUNYE: Ja. Commissioner Baloyi, there was, and this is my personal view, and there was nothing wrong with
20 what the Magistrate did. And I said the Criminal Procedure Act allows him to do what he did. Section 60(12) says the Magistrate can impose any conditions which in the interest of justice would make him to come to it.

So even though the State did not ask for that condition, even though we did not address him at the time,

the prosecutor did not address him, he imposed the condition after listening to the exchanges. There is this thing that comes up about witnesses. We do not want to list them, but we do not want them to be interfered with. There is other investigations that are outstanding that I remember the prosecutor put on record.

And having listened to that, the Magistrate then gave this condition. Only the Magistrate can explain why he gave that, but the law allows him to do that. And when I get
 10 instruction, go and defend it, it is on the basis that I know that there is nothing wrong that the Magistrate did and it is on the understanding that the unit was that condition to stay. And that is why I am going to defend.

I could not say, ja, but why must we defend this condition because we did not ask for it. Yes, we did not ask for it, but we wanted it if one follows the evidence of Padayachee and what he says he told Advocate Hlatshwayo. He said he told Hlatshwayo to ask for this condition. He is amazed also that it was not asked for.

20 So that means the briefing was, ask for the condition. It was given without being asked for. There is nothing wrong, nothing on our side that we did wrong as the prosecution. And therefore to defend it was proper at the time because it is a condition that the team wanted all along. The only problem is that they did not ask for it.

But on the side of the Magistrate, the Magistrate is entitled by law to issue those conditions. And even if we do not address him on, the Magistrate can even deny and accuse bail where we say that we are not opposing bail. We do not view him as a flight risk. Our investigations are completed. The Magistrate listening and looking at everything that has been presented to him, can do that on reasons, good reasons, lawful reasons.

ADV BALOYI SC: Yes, but in this case there were no
10 reasons. That is the way I – I have a problem with what you are saying that it is a point you had to concede in the Appeal Court, right? That in the absence of reasons. And the part of the judgment that we are looking at of the appeal judgment that deals with that bail interaction, there are no reasons even in the engagement.

In fact, your prosecutor keeps saying, and I struggle to understand that you think that was okay, that the prosecutor says these people do not know the names of witnesses. They do not know who we are going to call. So
20 there is no problem with protecting, which seems reasonable to me in the circumstances that, of course, if I do not know witnesses, how could I ever interfere with them?

So the prosecutor, Ms Hlatshwayo, takes that position. The Magistrate nonetheless gives her the bail

condition. You know, as you sit in court, that the accused have not had a chance to deal with this. That is why you conceded in the court, in the Appeal Court. And I do have a problem that you defend this on the basis that, well, the Magistrate can impose any condition. I do not think that is a correct position of the law, that that wide the Magistrate could have said to them you cannot visit your mother because it is a bail condition.

You would not struggle if I said to you, but that is a
 10 – what condition is that? That is an unreasonable condition. You would say to me, yes, of course it is unreasonable. So it is not as wide as he can choose, pick and choose what he wants to do, but we are not even debating that. I am raising with you what your then-boss said about this, which suggests you misled, she was misled by the people that went to court, because that is really the essence of a testimony, and that includes you.

She was misled by people who went to court in that they did not tell her that the Magistrate gave us this
 20 condition when we did not ask for it. And she says they have an ethical, as prosecutors, we have an ethical duty when something like that happens, to go back to court and say the parties were not heard, we did not ask for this, you have to undo it. And if we have to argue it again, we will argue it again.

I was misled. My people failed me, who went to court. So, colloquially, she is throwing you under the bus. Saying, and are you saying you disagree with her that that which she said should have happened that you should have gone back to the Magistrate, on appeal you should have been the one that volunteers to the court that this is what happened in the Lower Court. Are you saying she is wrong when she says all of that?

ADV SERUNYE: Commissioner, what I am saying is,
 10 indeed, she is throwing me under the bus in that she got me into the case to oppose the 63 bail amendment. But when she comes before the Commission, she says something else that, as if I was doing things on my own. If she did not instruct me to be part of the case, I would not be sitting here today.

She involves me in the case. I do not know what the brief to her was by Hlatshwayo, but she says specifically, because there is a senior lawyer involved there, I want a senior person to oppose this. And if she was
 20 of the view that no, no, no, no, you were not supposed to benefit from that wrong judgment, then her instructions to me were supposed to go back to the court, lodge an application in terms of section 63, the State, be an applicant yourself where you ask the Court to amend the bail application.

63 allows either the accused or the State can bring that application, but she did not say to me, or to us at least, go and amend the bail condition because we did not ask for it. She said oppose the application. We do that, but in the back of my mind, I am not following, I cannot follow, I am not going to follow a wrong or an irregular or an unlawful instruction.

I have never done that, I will never do that. But in the back of my mind is the Magistrate was not wrong, the
10 Magistrate has powers to do that, but we are going to oppose. That is why even when it went on appeal, again, with her blessing, we went and opposed it still. I engaged. The High Court judge took me to cases. I tried arguing for my case. I did not get their first thing conceded.

I tried and I said, this is what the law says, this is what the Magistrate said, and these are case laws where I even referred the High Court to a case in Bloemfontein where an official of the NPA committed fraud against the NPA or the DPP's office, and one of the conditions there by
20 the Magistrate's Court was that he is barred from entering the NPA offices in the Free State. I raised that in our heads of arguments in the High Court, and that was confirmed in the High Court, where the High Court said those conditions must remain and the Magistrate must just add other conditions.

So, it happens. The powers are with the Magistrate. It appears the IDAC wanted that condition. The head says to me, go and defend this. I cannot say to them, no, why? So, I did that, and the amendment was abandoned, application was abandoned. The section 55 is brought in. Again, I am giving instructions to oppose the section 55 bail appeal.

So, I am very sorry for the head to come before this Commission and say, portray me as having acted on my own
10 without consulting. It is just not true, and I did not take kindly to that because she brought me to the case for a specific purpose, to oppose the application and to oppose the bail appeal.

That is why when I wrote a memo to her to say I am recusing myself from the case for the reason I gave, she said, yes, it is fine, but please proceed and finalise this bail amendment and bail appeal. Take this one through. Did she know what she was setting me up for? I do not know. I thought at the time I am just doing my job. I cannot sit here
20 and say I was acting unethically. I did not. I did my job to the best of my abilities.

ADV BALOYI SC: Can I just say lastly from me on this, and I have heard your answer. My recollection of Colonel Padayachee's evidence is that he says he does not know where this bail condition comes from. He left court while

Ms Hlatshwayo was still on her feet. And at that time he left, they said not to come up. So maybe it happened after he left.

That is what he has told us, but you have said earlier that he stayed for the whole time and left only when judgment, he missed just the judgment. So I am mindful of your answer. But I must say that at best, it is a coincidence at best that a condition on your version, a condition that was not asked for by the State, in fact, and is not raised in
10 open court, gets given by a Magistrate, and a condition of this type, which is these accused are prohibited going to any Crime Intelligence office across the country. But two, the consequence of that condition is effectively they get suspended from their offices, from employment. It is quite a coincidence.

ADV SERUNYE: It is a very strange coincidence, I agree ...[intervenes].

ADV BALOYI SC: You accept that?

ADV SERUNYE: And if one looks at the evidence that is
20 now before Court, really one cannot rule out anything. But unfortunately enough, the prosecutor on that day, unfortunately therefore did not ask for the condition, but then it is given. But for me, who was an outsider, I am thinking, well, the Magistrate has powers too. That is why we are innocent prosecutors who are just doing their job.

And if there was anything sinister going behind the scenes, it is something that we did not know.

ADV BALOYI SC: Thank you, thank you.

ADV KHUMALO SC: Is it possible that this condition could have been discussed with the Magistrate before the hearing started? Is it possible that the prosecutors went to the Magistrate's chambers and said, look, this is what we are going to ask for? The reason I am asking you this is you have just confirmed that it is a condition that Mr
10 Padayachee and the prosecutor had discussed before. So on their way there, that is what they wanted.

It was just not discussed in open court, and then it becomes a coincidence that the very condition that they wanted, but they did not ask for in open court, is a condition that is attached to the granting of bail. So where else could the Magistrate have got it from? And a condition that is so specific, if they had not discussed it with the Magistrate, either during the hearing or prior to.

ADV SERUNYE: Ja. Yes, Commissioner Khumalo, one
20 thing for sure, it was not discussed, at least in court. No, not in my presence in court. If it happened in some passages, in some corners there in court, I would not know because, like I say, I was back at the office when they were rushing me and my two other colleagues to go and help. And yes, it is strange.

It is strange. But, and again, because no reasons are given, and that is why I understand what Commissioner Baloyi said, and which is what ultimately said by the High Court. The two parties are not engaged. It is like already the Magistrate has made, you know, his own decision that I am going to grant this, but I did not suspect anything. I am sitting here even today. I do not know.

If things happened in those offices in court, again, it speaks to what we are hearing now, these things that we
 10 did not know of. And it will be, really it will be a sad, sad, sad thing for justice in this country if cases were discussed in offices, especially conditions of this nature, which will have a very critical impact on people's livelihood and their freedom of movement and freedom to go to work and fend for their families. If that was discussed before coming to court, it would really be a sad, sad, sad thing ...[intervenes].

ADV KHUMALO SC: And just to be clear, I am not suggesting that that is how it happened, because it would
 20 be unfair to the Magistrate. No witness has said there was a discussion with the Magistrate before the hearing. I am simply asking because, you know, we are on a fact-finding mission. We are exploring all possibilities.

ADV SERUNYE: Ja.

ADV KHUMALO SC: And if you know anything, we want

you to get the opportunity to comment on it because it may be that when other witnesses come here, we will ask them the same thing. So it is only in that context that I am raising it. I am not suggesting that there was a discussion with the Magistrate. I am not even suspecting that there was one. I am simply asking because it is possible.

ADV SERUNYE: Yes, I hear that, Commissioners. In my presence in court, that condition was not discussed or asked for by the prosecutors or by anyone. What happened
10 outside court, I do not know.

ADV POOE: Commissioner Baloyi, during your engagement with the witness, the issue of the instruction to appeal from Advocate Johnson came up. I have been advised that Advocate Ramsamy will testify that Advocate Johnson gave instructions approving the appeal based on Mr Padayachee's affidavit and she then sent a WhatsApp to Advocate Ramsamy, instructing her to then inform Advocate Serunye and Advocate Hlatshwayo. That will come out in evidence tomorrow, including that this was something that
20 was discussed, but Advocate Hlatshwayo did not ask for that condition in court.

ADV BALOYI SC: Thank you, Ms Pooe.

ADV POOE: Advocate Serunye, you can then deal with your concluding remarks at paragraph 71.

ADV SERUNYE: Ja, no, thanks, Commissioner. I think the

only thing there by paragraph 71 is what I have been saying throughout the day, and it reads:

10 “I would like to state that my involvement
in this matter, which was after the
accused's appearance in court, as
aforesaid, was for good intentions and
part of my daily duties. I deposed this
affidavit in order to place my account for
this matter on record before the
Commission.”

I then signed the affidavit, and I stand by the contents of this affidavit.

ADV BALOYI SC: I see yours is signed in Pretoria.

ADV SERUNYE: Mine is signed in Pretoria, Commissioner Baloyi.

20 **ADV POOE:** Commissioner Baloyi, I can say when the
Commissioner of Oaths was here, he called me to the office
and said, you doublecheck, I do not want to be called by
your Commission. Chair, I do not have any further
questions for this witness.

CHAIRPERSON: Advocate Serunye, thank you very much.
You are excused.

NO FURTHER QUESTIONS

CHAIRPERSON: We adjourn and resume at 09:30
tomorrow. We would like to see counsel outside now,

please. Let us adjourn.

INQUIRY POSTPONED TO 5 AUGUST 2026

INQUIRY ADJOURNS

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