

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

26 SEPTEMBER 2019

DAY 171

20

PROCEEDINGS RESUME ON 26 SEPTEMBER 2019

CHAIRPERSON: Good morning Mr Petersen, good morning everybody.

ADV ROB PETERSEN: Good morning Chair.

CHAIRPERSON: Are you ready?

ADV ROB PETERSEN: Yes Chair.

CHAIRPERSON: Okay I have had the opportunity of reading the replying affidavit. Do you want to just deal with the replying affidavit a bit Mr Petersen?

ADV ROB PETERSEN: Yes certainly Chair. I do not know what you
10 envisage for this hearing. I anticipated that it might be important to –
since this is being broadcast and it is a public session that those
listening to and observing this hearing should know a little bit more
about what it entails. So I am ready subject to your directions to go
through the essence of the submissions that I want to make to deal with
the opposing affidavit and to deal with the replying affidavit.

CHAIRPERSON: I do not mind if you want to take five minutes saying
what you want to say and in the process address whatever you might
wish to address on the replying affidavit. Let me say this immediately
so that also Mr Madonsela can know what is going on in my mind so
20 that when he is – rises he knows what to address. Subject to
something that I must just check in the replying affidavit and that is
why I want you to just deal with the replying affidavit. Subject to that
and me finding that there is no problem in terms of what I am thinking I
am inclined to grant some order. The Notice of Motion that is – has
been put up might not reflect what I have in mind but I am inclined to

grant some order to allow this witness to give evidence without any risk of his cover being blown as he puts it. Exactly what the terms would be we can look at that but in principle I am inclined to that. Obviously that is subject to argument that may be addressed to me. I remain open but when I was in practice I always found that it was very helpful if the judge indicates what he is thinking rather than you addressing all kinds of issues and you are addressing issues that the judge really has no interest in. So – so I give you five minutes to address me on whatever you want to address me on and – but in the process deal with

10 – tell me more about what you have to say about the replying affidavit. You will remember that last time I did say that the Minister's point in his opposing affidavit that this witness has given evidence in a disciplinary inquiry without doing so in camera was a point that needed a response. It looks like the replying affidavit does deal with that but I read it once and I just need to have to a look but as you address me I will listen but that is the inclination. Okay?

ADV ROB PETERSEN: Thank you Chair.

CHAIRPERSON: So in other words I – I do not want us to take too long on this matter. We have oral evidence – I have oral evidence to listen

20 to so – but I will be fair to both parties.

ADV ROB PETERSEN: Chair as you are aware I have prepared and put before you a draft order around which my submissions will be based and the terms of that differ in important particulars from the prayers set out in the Notice of Motion.

CHAIRPERSON: Well I do not know whether you are talking about a

separate draft order because I have not seen a separate draft order.

ADV ROB PETERSEN: It is in the bundle – it is in the bundle KK1.4 and it is the first item.

CHAIRPERSON: The Notice of Application?

ADV ROB PETERSEN: No this is the draft order ...

CHAIRPERSON: Where does it appear?

ADV ROB PETERSEN: It appears in Exhibit KK1.4 that is the bundle marked 1.4.

CHAIRPERSON: Yes.

10 **ADV ROB PETERSEN:** And it is item 1.

CHAIRPERSON: Yes.

ADV ROB PETERSEN: And that was drafted with the hope of saving time and allowing me to focus my submissions without as you say going off in all directions.

CHAIRPERSON: I am just looking at the terms of the draft order. I had not seen it before. I think on the face of it most of the – the order appears to present me with no problem subject to what Mr Madonsela might have to say and subject to hearing argument.

ADV ROB PETERSEN: That being so Chair.

20 **CHAIRPERSON:** Hm.

ADV ROB PETERSEN: I propose then to concentrate if I may.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: On the grounds of objection which have been raised.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: And the response to those.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: And that may leave little or nothing necessary to say in reply.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: At this stage however I do not know what the submissions will be that Mr Baloyi.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: May wish to make on behalf of General
10 Mphogo.

CHAIRPERSON: Yes I guess you...

ADV ROB PETERSEN: And I may need to deal with that.

CHAIRPERSON: All you can do is address those points that he makes from the opposing affidavit.

ADV ROB PETERSEN: Yes.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: I have – may I proceed? Four grounds of opposition to an in camera hearing have been advanced by General Cele.

20 1. The first in paragraphs 7 to 13 of his affidavit – shall I give you the bundle reference as I go?

CHAIRPERSON: I think you may give me the bundle references but if you – well if you give me the heading of the objection or the – in a very ...

ADV ROB PETERSEN: Yes.

CHAIRPERSON: Crisp point to say this is the one objection, this is the – another one, this is another one then you address them each.

ADV ROB PETERSEN: Yes certainly.

CHAIRPERSON: That will do even if you do not refer to the – to the bundles.

ADV ROB PETERSEN: And I have prepared submissions on the basis that they should be concise as possible.

CHAIRPERSON: Yes.

ADV ROB PETERSEN: And at the same time not leave any loose ends.

10 **CHAIRPERSON:** Yes.

ADV ROB PETERSEN: But...

CHAIRPERSON: That is fine.

ADV ROB PETERSEN: Again I will be guided.

CHAIRPERSON: Yes.

ADV ROB PETERSEN: By what you want to hear.

CHAIRPERSON: Yes.

ADV ROB PETERSEN: And the first objection is that Colonel Naidoo while under witness protection has previously testified and I quote “In the open” during a SAPS disciplinary hearing into the conduct of Major
20 General Lazarus held from 2012 to 2013.

In response Colonel Naidoo has stated that in fact quote “those proceedings were not open to the public and were only attended by the participants in the proceedings and legal teams together with a number of persons from witness protection”.

The risk of exposing his new identity and location under

witness protection was in that context I submit minimal. Quite different are the proceedings of this commission which is I would happily develop if there were more time. These proceedings are required to be held in public unless there is reason for the Chairperson in his discretion to order otherwise

The risk of exposing Colonel Naidoo in this context is qualitative quite different and I submit has to be taken very seriously indeed.

CHAIRPERSON: I will tell what my understanding of the – of Colonel
10 Naidoo's concern is and you must just tell me if that is your understanding too.

My understanding and having regard to the opposing affidavit and the replying affidavit. My understanding is that both Colonel Naidoo and the Minister – oh – let me put this way. I am inclined to think both Colonel Naidoo and the Minister know each other or at least have met. But they might not have met. Even if they might not have met it seems to me that the – the Ministers knows who Colonel Naidoo is. That is the one point.

But also it is quite clear from the opposing affidavit and the
20 replying affidavit that many if not all the persons implicated by Colonel Naidoo know who Colonel Naidoo is. And Naidoo knows that they know him.

Therefore from that point of view Colonel Naidoo cannot be asking for an order that would conceal his – who he is to the implicated persons. But his concern it seems to me is that the public and other

people other than those who are implicated who he knows know him the public and other people should not know who he is.

That is my understanding of his concern. So – so that is why he talks about – that is why he says he does not want his cover to be blown. And if he has given evidence in a disciplinary inquiry when those implicated persons were there they know – they know who he is.

But as I understand it his concern is I do not want the public to know – to connect the face to Colonel Naidoo. That is what I do not want. That is what I understand his case to be. Because if that
10 happens then – then the public or certain people who know where I live will then connect the face that they know by a different name to Colonel Naidoo. And say – oh this is Colonel Naidoo and he does not want because of what it will entail for him.

But he also says if that happens namely his cover is blown implicated person it will not be difficult for the implicated persons to find out where he lives now and that would put his life in danger.

So if I am correct in that analysis it seems to me that as far as implicated – the implicated persons are concerned he knows that they know him – they know who – they know the face of the Colonel Naidoo
20 that we are talking about but he does not want them to know where he lives because that might put him in danger.

But as far as the public is concerned he says they do not know that Colonel Naidoo particularly where he now lives they do not know that Colonel Naidoo is the person that they know by another name and he does not want that to happen because if his face is shown or if

newspaper is right and show his picture and so on then those people will then say oh this person referred to as Colonel Naidoo is actually the person we know by this other name and that would blow his cover.

So is my analysis – does my analysis accord with your analysis?

ADV ROB PETERSEN: Chair what you have said captures the essential object.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: Of this application as I have evaluated it.

10 **CHAIRPERSON:** Hm.

ADV ROB PETERSEN: And on the basis of which my submissions were prepared and the draft order was prepared in substance.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: I would not want to go so far as to say that all the and there are no fewer than 45 people to whom Rule 3.3 Notices were issued. I would not want to go so far as to say ...

CHAIRPERSON: All of them...

ADV ROB PETERSEN: That all of them have seen him.

CHAIRPERSON: Yes. Ja.

20 **ADV ROB PETERSEN:** And therefore I cannot quantify in my submissions to you what the risk may be.

CHAIRPERSON: Yes.

ADV ROB PETERSEN: Of additional persons.

CHAIRPERSON: Yes.

ADV ROB PETERSEN: Coming to see him.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: And as far as the Minister of Police is concerned first I want to just emphasise that this application is not about the Minister of Police. It is about the protection of the witness. And one has to take into account the number of implicated people. By implicated people if I may just clarify? It means people who are or may be implicated by the evidence of the witness.

I do not draw the conclusion from the papers that the Minister who was Commissioner of Police has ever set eyes on Colonel Naidoo.

10 **CHAIRPERSON:** On Mr...Yes.

ADV ROB PETERSEN: Or visa versa.

CHAIRPERSON: No that is possible. Ja.

ADV ROB PETERSEN: And he himself emphasises in his reply that nowhere does he say in his evidence that he saw the General.

CHAIRPERSON: Yes so he might not have met him.

ADV ROB PETERSEN: No.

CHAIRPERSON: Yes. No that is – that is possible. Ja.

ADV ROB PETERSEN: But to the extent that the – one is dealing here with an assessment of risk.

20 **CHAIRPERSON:** Hm.

ADV ROB PETERSEN: Of exposure.

CHAIRPERSON: Hm

ADV ROB PETERSEN: In connection with the witness protection program. There would be very little additional risk if the Minister of Police were to see whether it is his face or a photograph so he is going

– oh no I do not know him or yes I do.

CHAIRPERSON: Yes.

ADV ROB PETERSEN: But that is not essential to the evidence.

CHAIRPERSON: Yes.

ADV ROB PETERSEN: And I must emphasise that the – if one goes through there is not time but I would happily take you through the Rule 3.3 Notice.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: In relation to the Minister.

10 **CHAIRPERSON:** Hm.

ADV ROB PETERSEN: That there is no direct evidence.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: Where Colonel Naidoo says I saw or ...

CHAIRPERSON: Okay.

ADV ROB PETERSEN: I directly overheard.

CHAIRPERSON: Okay. Okay.

ADV ROB PETERSEN: And that – that rather changes the situation.

CHAIRPERSON: Hm.

20 **ADV ROB PETERSEN:** So – but to confirm that the – the essence of the problem is the one that you Chair have articulated.

CHAIRPERSON: Yes.

ADV ROB PETERSEN: But there is a dual purpose.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: In the – this application.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: And in the formulation of the proposed draft order.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: Which is to maintain and protect the public's right to information.

CHAIRPERSON: Hm.;

ADV ROB PETERSEN: And the media's role.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: In facilitating the constitutional guarantee.

10 **CHAIRPERSON:** Hm.

ADV ROB PETERSEN: Of freedom of expression.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: Which includes freedom of information.

CHAIRPERSON: Hm

ADV ROB PETERSEN: And freedom of the media.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: So one is – one has to address the practical difficulties of conducting a hearing where the public have the access which they ought rightly to have.

20 **CHAIRPERSON:** Hm.

ADV ROB PETERSEN: And where the implicated persons none of whom have as yet – they still may – none of whom have as yet taken steps in terms of Rule 3.4.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: To make a statement challenging the content of

the evidence.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: And applying to cross-examine. That may happen.

ADV GRIFFITHS MADONSELA: Hm. Hm.

ADV ROB PETERSEN: But it is to the extent that one is thinking hypothetically of what may happen.

CHAIRPERSON: Hm. Hm.

ADV ROB PETERSEN: It is difficult to see how one would manage.

10 **CHAIRPERSON:** Hm.

ADV ROB PETERSEN: The combination of allowing the public to – to observe the proceedings and have the potentially the 45 implicated people in another room with Colonel Naidoo. So I would therefore persist in order to achieve the appropriate balance between witness protection and the protection which not only does the policy of the constitution but I have no doubt the policy of the commission is determined to ensure that implicated persons have a fair opportunity to challenge evidence which is adverse to them

CHAIRPERSON: Yes. No, no that is – that is fine. You did say
20 something that goes to a question now I was going to raise namely to the extent that an implicated person might wish to see the face of Colonel Naidoo wherever he will be testifying from is there difficulty with that? Well there – the – there should not be a difficulty with regard to those implicated persons that Colonel Naidoo also knows they know him I would imagine. But I do not know with regard to those that

might not know him. But are you able to say anything about that?

ADV ROB PETERSEN: Yes. Yes I would suggest that there are two aspects to this which it would be helpful to distinguish. One is seeing his face for the purpose of recognising that this is the person. The other would be observing him during his evidence where the argument is put forward that demeanour is fundamentally important to fairness. I do want to make a short submission on that – that aspect or on both aspects.

CHAIRPERSON: Yes, Ja.

- 10 **ADV ROB PETERSEN:** On the first one I would imagine and one has to use imagination here. I would imagine that it could depend upon the implicated person concerned answering the question to you – has he or she set eyes on Colonel Naidoo before? If the answer to that is yes then it seems to me there could be no serious security problem in allowing that image to be refreshed. If the answer is not then the next question would be – why do you need it now? And it occurs to me that you may if you are ...

- CHAIRPERSON:** Well the – the one who – is the position that the one who does not know him might be the one who might have a stronger
20 reason to want to see him. Because he may say I see this person that I do not know makes all kinds of allegations against me but I actually have no idea who this person is and I do not know who this Colonel Naidoo is. But if I were to see to his face I might recognise him. - Oh this is – this the person I did not know his name is Colonel Naidoo and then I am in a better position to answer the allegations because now I

can – I know the person – I can connect the person.

ADV ROB PETERSEN: My submission in response to that would be that that – that conceivably is a practical necessity that could arise and that is why I suggest and I have got another suggestion to attach to that. Why I suggest that the question should be answered what is it that makes it necessary for you to see him now? Because in preparing even if the response under Rule 3.4 has not yet been finalised and delivered in the course of preparing such a response that implicated person could surely be expected to articulate what it is in the content
10 of the implicating evidence. All of which has been provided in the Rule 3.3 Notices. What is it about the content which I have difficulty responding to because I have not seen Colonel Naidoo? And so it may be that you would be disposed if you are inclined to follow the draft order in most respects. If you look at – at paragraph 2 of the draft order which allows for a variation but the circumstances that are mentioned there are perhaps too narrow. They deal with if in your opinion Chair circumstances warrant a variation to ensure the protection of Naidoo or any other person in connection with Naidoo's evidence. But the circumstances which have just been hypothesized
20 could provide another ground for a particular and ad-hoc variation which could be catered for by rewording of two.

CHAIRPERSON: Maybe the variation part should be formulated in such a way that it says I may vary the order - vary or amend the order in such way as I may consider necessary. In such was as I may deem necessary and I am saying necessary in the context ...

ADV ROB PETERSEN: Yes.

CHAIRPERSON: Of necessary in balancing the various interests. The interests for the protection of the witness and the interest of trying to limit any infringement of or interference with an implicated person's right in one way or another to the absolute minimum. So that - that kind of balance that is what I am having in mind ...

ADV ROB PETERSEN: But ...

CHAIRPERSON: But maybe that (intervenes).

ADV ROB PETERSEN: May I suggest - may I suggest ...

10 **CHAIRPERSON:** Formulation might be - might be okay as well.

ADV ROB PETERSEN: I would - I would propose that ...

CHAIRPERSON: Hm.

ADV ROB PETERSEN: As much as possible of the detail of the wording ...

CHAIRPERSON: Hm.

ADV ROB PETERSEN: Of two - paragraph two should be retained because there is the protection of Naidoo or any other person in connection with his evidence. I - I am not sure what is going to come out.

20 **CHAIRPERSON:** Yes.

ADV ROB PETERSEN: It may need some special order ...

CHAIRPERSON: Ja. That is wide.

ADV ROB PETERSEN: Or to ensure fairness ...

CHAIRPERSON: Ja.

ADV ROB PETERSEN: To implicated - to any implicated persons.

CHAIRPERSON: Yes. *Ja*. That - that is the kind of thing. So - so what it would mean is that if I grant this order then at any stage - at any stage in the future while Colonel Naidoo is giving evidence or if he - if I grant leave to - for somebody to cross-examine him in the future I can *mero motu* or on application by an implicated person amend it where I consider that it is necessary to do so for purposes of fairness to all concerned.

ADV ROB PETERSEN: That - that is my submission.

CHAIRPERSON: *Ja, ja*. Okay, alright.

10 **ADV ROB PETERSEN:** Now the - the other aspect was demeanour.

CHAIRPERSON: Yes. Well I must just say - tell you that I am on my 23rd year as a Judge and I cannot recall one time when I decided any case on the basis of demeanour. That is - that is what I can tell you. I cannot remember - maybe there is one or two but I have no recollection in all these 23 years - 22 and a half years - of having decided a case with any - with - on the basis of placing a high - higher regard on demeanour.

ADV ROB PETERSEN: Chairperson may I just add one point to that.

20 With all due respect and with no similar experience so whatever I am less confident that demeanour is never a factor.

CHAIRPERSON: *Ja, ja*.

ADV ROB PETERSEN: Hm.

CHAIRPERSON: Well - well I have - I have no doubt that in - I have no doubt that there are - there are maybe some Presiding Officers maybe - I do not know whether I should say maybe more in the lower courts than

the High Courts but maybe everywhere but I know also of a number of Judges who - who would speak in the same way.

Is to say demeanour you know is such a - a difficult thing particularly in our multicultural - multiracial society you know. It is - it is not a ...

ADV ROB PETERSEN: Yes.

CHAIRPERSON: A lot of us or some of us do not find it easy to rely on that - on that. Usually there is more than enough in terms of probabilities to decide a case.

10 **ADV ROB PETERSEN**: To be fair to the Minister ...

CHAIRPERSON: Hm.

ADV ROB PETERSEN: He was dealing with a notice of application...

CHAIRPERSON: Hm.

ADV ROB PETERSEN: Which asked for the witness' voice to be distorted as well ...

CHAIRPERSON: Hm.

ADV ROB PETERSEN: As his face to be concealed.

CHAIRPERSON: Hm.

ADV ROB PETERSEN: In the draft order ...

20 **CHAIRPERSON**: Hm.

ADV ROB PETERSEN: You would have seen that ...

CHAIRPERSON: Hm.

ADV ROB PETERSEN: I am not persisting with that ...

CHAIRPERSON: Ja.

ADV ROB PETERSEN: Indeed.

CHAIRPERSON: *Ja.*

ADV ROB PETERSEN: I - I think that that is unnecessary ...

CHAIRPERSON: Hm, hm.

ADV ROB PETERSEN: To the extent that it would be wrong ...

CHAIRPERSON: Hm.

ADV ROB PETERSEN: And - and secondly ...

CHAIRPERSON: Hm.

ADV ROB PETERSEN: That Colonel Naidoo himself said in his supporting affidavit ...

10 **CHAIRPERSON:** Hm.

ADV ROB PETERSEN: That he does not mind ...

CHAIRPERSON: Hm.

ADV ROB PETERSEN: If his voice is heard ...

CHAIRPERSON: Yes, yes.

ADV ROB PETERSEN: And protection ...

CHAIRPERSON: *Ja.*

ADV ROB PETERSEN: His protectors are satisfied ...

CHAIRPERSON: Yes.

ADV ROB PETERSEN: With the arrangements that are ...

20 **CHAIRPERSON:** *Ja.* They have been met.

ADV ROB PETERSEN: Envisaged in the draft order.

CHAIRPERSON: Yes.

ADV ROB PETERSEN: Something that has not been easy to achieve.

CHAIRPERSON: *Ja.*

ADV ROB PETERSEN: The practicalities ...

CHAIRPERSON: *Ja.*

ADV ROB PETERSEN: But - but my ...

CHAIRPERSON: Hm.

ADV ROB PETERSEN: It seems to me it is quite important if I just add this on (intervenes).

CHAIRPERSON: Yes, yes.

ADV ROB PETERSEN: That - that the Minister has invoked findings in the disciplinary proceedings that took place some years ago which were presided over by Mr Pretorius SC and - and that he made certain
10 adverse or cautionary findings in relation to the evidence of Colonel Naidoo.

CHAIRPERSON: Has the matter - for interest did Mr Pretorius rely on demeanour?

ADV ROB PETERSEN: There - there - I can find - I can - that is exactly my point. I can find nothing ...

CHAIRPERSON: *Ja.*

ADV ROB PETERSEN: In his findings.

CHAIRPERSON: *Ja.*

ADV ROB PETERSEN: That suggest that they relied in anyway ...

20 **CHAIRPERSON:** *Ja.*

ADV ROB PETERSEN: On demeanour.

CHAIRPERSON: *Ja, okay.*

ADV ROB PETERSEN: Chair is there any other aspect ...?

CHAIRPERSON: Yes. Unless you have - unless you ...

ADV ROB PETERSEN: Is there any other aspect which you would like

me to address now?

CHAIRPERSON: No, no. I think I am - I am keen to hear Mr Madonsela now. Thank you.

ADV GRIFFITHS MADONSELA: Thank you Chairperson.

CHAIRPERSON: Mr Madonsela you - you have the benefit of knowing what is going on in my mind.

ADV GRIFFITHS MADONSELA: Indeed Chairperson.

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: A substantial part of the interaction
10 which Chairperson has had with my learned friend has taken out of my argument set in steel.

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: That I was coming to this Chairperson - to this Commission with.

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: In principle we have no objection to the augmented or amended draft order save in relation to two aspects which have been raised during the interaction with my learned friend ...

CHAIRPERSON: Yes.

20 **ADV GRIFFITHS MADONSELA:** And - and those conditions are mainly in relation to whatever the order should be - whatever the order should be in relation to the *in camera* proceedings. We submit for the reasons which I will advance in a moment that it should accommodate or permit the implicated persons as well as the legal representatives to see him because they have already done so in the past and secondly that

whatever the - the embargo or the - the *in camera* order should contain it should sanction as well that any response given by the implicated persons to the allegations made against them should similarly be embargoed to the extent that it may blow cover to those individuals who are referred to in the statements of Colonel Naidoo. Those are the two ...

CHAIRPERSON: I think that - that is similar - that is very important I think.

ADV GRIFFITHS MADONSELA: Those are the two - those the two
10 connections which we would like to place to any amended order.

CHAIRPERSON: Yes. Just go back to the first one. Let me just hear the first one.

ADV GRIFFITHS MADONSELA: The first one is that an amended order should permit the implicated persons and the legal representatives representing them to be able to see ...

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: Colonel Naidoo ...

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: When he testifies. At some point when
20 he ...

CHAIRPERSON: At some point.

ADV GRIFFITHS MADONSELA: At some point.

CHAIRPERSON: Not necessarily to be there throughout ...

ADV GRIFFITHS MADONSELA: Yes.

CHAIRPERSON: The testimony but at least to see his face and then -

so that they - they know the - the face.

ADV GRIFFITHS MADONSELA: That this is the person who is testifying.

CHAIRPERSON: Yes. *Ja*.

ADV GRIFFITHS MADONSELA: As you said for the position of the Minister ...

CHAIRPERSON: Hm.

ADV GRIFFITHS MADONSELA: He meets so many Naidoo's in Durban.

CHAIRPERSON: Hm.

10 **ADV GRIFFITHS MADONSELA:** Chairperson you know that

CHAIRPERSON: Hm.

ADV GRIFFITHS MADONSELA: There are so many Naidoo's in Durban ...

CHAIRPERSON: Hm. Well ...

ADV GRIFFITHS MADONSELA: And he was a National Commissioner.

CHAIRPERSON: There are also a lot of Zondo's and Madonsela's.

ADV GRIFFITHS MADONSELA: And Madonsela's; and he was the Head of the National ...

CHAIRPERSON: Hm.

20 **ADV GRIFFITHS MADONSELA:** Police Services. There could be so many Naidoo's (intervenes).

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: He wants ...

CHAIRPERSON: *Ja*.

ADV GRIFFITHS MADONSELA: He wants to just be certain in his

response ...

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: But I am actually talking about the very man ...

CHAIRPERSON: Hm.

ADV GRIFFITHS MADONSELA: That is testifying.

CHAIRPERSON: *Ja*.

ADV GRIFFITHS MADONSELA: At the very least.

CHAIRPERSON: I must say that when I have read his affidavit that -
10 the Minister's affidavit or opposing affidavit it gave me the impression
that - that he was talking about somebody that he knew but somewhere
else in the affidavit he seemed to suggest - to give the impression that
he did not know him.

So - so - but it may be that it is - it is the way he was talking
about Colonel Naidoo's testimony at the disciplinary hearing. It was as
if it was somebody that he knows but I - I accept that he does not know
him you know but I am - I am just linking that to what I said earlier on
you know. It had given me that impression but I - I accept that he says
he does not know him.

20 **ADV GRIFFITHS MADONSELA:** Well no the position of the Minister is
that he may know him. He may not know him.

CHAIRPERSON: Oh, okay. Yes.

ADV GRIFFITHS MADONSELA: He just wants to ascertain this very
fact.

CHAIRPERSON: *Ja*. Which - which - and he just wants to see the face

and be able to say oh it is somebody I know or it is not somebody that I do not know?

ADV GRIFFITHS MADONSELA: Yes.

CHAIRPERSON: Okay. Okay. So that is - that is the first point and the second one you - just articulate the second - second one.

ADV GRIFFITHS MADONSELA: The - the second one is that if any embargo or *in camera* order is to be granted it should also or similarly apply to the responses given by the implicated persons. Certainly the Minister insofar as it may blow the cover ...

10 **CHAIRPERSON:** Yes.

ADV GRIFFITHS MADONSELA: Of those ...

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: Who are connected with the responses ...

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: That he is giving.

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: Because it would be unfair
Chairperson ...

20 **CHAIRPERSON:** Hm.

ADV GRIFFITHS MADONSELA: To allow Naidoo to publically indulge in the slander of implicated persons under the curtain of secrecy. They want it to be built around him.

CHAIRPERSON: Hm, hm.

ADV GRIFFITHS MADONSELA: The fairness must dictate that if he

wants to do that if he wants secrecy to be given to some - to him as a cooperative as a member of the Intelligence at the time. Similar protection should be given to those who are involved in the entire activities of the Intelligence Services.

CHAIRPERSON: I - I am not sure if I follow the second point and I want to make sure I do. I thought what you were saying earlier on was that an amended order should also say something to the effect that in whatever the Minister or his legal representative may say maybe by - if - if he is granted leave to cross-examine - maybe I am not sure.

10 They must be careful not to say anything that might blow the witness' cover. I - I thought that - that is what you were saying. Was I right?

ADV GRIFFITHS MADONSELA: You are right. That and also ...

CHAIRPERSON: *Ja.*

ADV GRIFFITHS MADONSELA: The cover of those people who were connected with the activities in relation to which Naidoo testifies about in his Rule 3.3 Notices.

CHAIRPERSON: Oh, okay. It may be that what you are talking about is what we did last week in regard to Colonel Roelofse. When
20 Colonel Roelofse was testifying and a lot of people he was testifying about were in the Crime Intelligence Department or unit of the SAPS. He was implicated a number of people.

Some of whom could be agents and I think at that stage there was no certainty who was an agent, who is not an agent. Rule 3.3 Notices had been sent to them and it was decided that in his evidence

and in his statement he would not refer to them by their names. He would - he would give each one of them a number.

I think there was for example F1, F8, F6, F whatever. So - but the names were provided to me in a sealed envelope where at some stage I could have a look and see who is F1, who is F8, who and so on but that was on the basis that an approach has been made to the relevant authorities by the Commission's legal team to say of these names tell us who should really be protected you know but until we know who is - should not be protected we will protect everybody but -

10 so I - is that the kind of thing you have in mind?

ADV GRIFFITHS MADONSELA: That is the kind of thing we have in mind Chairperson.

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: We - we base that on - on the contention which I - I wanted to make later that there is an inevitability in the evidence of Naidoo ...

CHAIRPERSON: Hm.

ADV GRIFFITHS MADONSELA: That in response ...

CHAIRPERSON: Hm.

20 **ADV GRIFFITHS MADONSELA:** A cover of certain Intelligence Services operatives will have to be blown.

CHAIRPERSON: Hm. Hm. Yes, but ...

ADV GRIFFITHS MADONSELA: Is that protection that we want to say (intervenes).

CHAIRPERSON: Yes. Are - are you now - is what you are saying going

as far as saying when those implicated persons come to give evidence they should also be afforded the same kind of arrangements in terms of *in camera* here?

ADV GRIFFITHS MADONSELA: Yes.

CHAIRPERSON: That is what you are saying?

ADV GRIFFITHS MADONSELA: Yes.

CHAIRPERSON: I think ...

ADV GRIFFITHS MADONSELA: Of course ...

CHAIRPERSON: I think what we should do - let us not decide that now
10 because that is not before me ...

ADV GRIFFITHS MADONSELA: Hm.

CHAIRPERSON: But if and when a person who is implicated wants to give evidence and they want the same arrangement then they can bring a similar application and then it can be considered. *Ja*, but I think we note what you have said and I think it is important but I think it is - they would have to bring an application the right time and - and then it must be considered.

Other people must get a chance to oppose if they want to oppose and then a decision can be taken.

20 **ADV GRIFFITHS MADONSELA:** Yes. I wil - I will say very little about demeanour because - because much of what has been said is ...

CHAIRPERSON: Applies to you as well?

ADV GRIFFITHS MADONSELA: Well Chairperson I thin - I suspect the reason why demeanour has not featured very prominently in your judicial life is probably because of the nature of the proceedings in

which you presided.

CHAIRPERSON: *Ja.*

ADV GRIFFITHS MADONSELA: There - there may be adversarial proceedings. These are inquisitorial.

CHAIRPERSON: *Ja.*

ADV GRIFFITHS MADONSELA: They somehow depend on the truth or the truthfulness of the witnesses.

CHAIRPERSON: *Ja.*

ADV GRIFFITHS MADONSELA: Demeanour might chip in. This is
10 precisely the position here because of the cagey responses that Naidoo has given in the affidavits which are currently before you ...

CHAIRPERSON: Hm.

ADV GRIFFITHS MADONSELA: In relation to - you remember in the founding affidavit he said Cele arrived and I was there ...

CHAIRPERSON: Hm.

ADV GRIFFITHS MADONSELA: And ...

CHAIRPERSON: Huh-uh.

ADV GRIFFITHS MADONSELA: What was - that was meant to allow
20 you the Chairperson to draw an inference that they may have seen each other.

CHAIRPERSON: Hm.

ADV GRIFFITHS MADONSELA: Now in - in reply he says no well I am actually not - I must clarify myself.

CHAIRPERSON: *Ja.*

ADV GRIFFITHS MADONSELA: I did not see Cele.

CHAIRPERSON: *Ja.*

ADV GRIFFITHS MADONSELA: So all that he is talking about is pure hearsay from people who saw Cele on some other occasion.

CHAIRPERSON: Yes, but ...

ADV GRIFFITHS MADONSELA: To the extent that this Chairperson could have drawn - could have drawn on the evidence that he has given ...

CHAIRPERSON: Hm.

ADV GRIFFITHS MADONSELA: In the 3.3 Notice.

10 **CHAIRPERSON:** Hm.

ADV GRIFFITHS MADONSELA: It could easily have been ...

CHAIRPERSON: Hm.

ADV GRIFFITHS MADONSELA: That an inference could be drawn against Cele ...

CHAIRPERSON: Hm.

ADV GRIFFITHS MADONSELA: On the allegations he has made because of the impression that was created in those - in those affidavits.

20 **CHAIRPERSON:** No, no. I - I understand that but I understand you to be saying you do not want also to rely much on demeanour. Am I right?

ADV GRIFFITHS MADONSELA: I am not sure.

CHAIRPERSON: Because - well you do not have to - you do not have to waive any - any right to rely on it but I am - I am just saying I mean demeanour is about how - it is about saying when this witness was asked this question I saw how he was shaken or he looked down or that

kind of thing.

ADV GRIFFITHS MADONSELA: Well demeanour is (intervenes).

CHAIRPERSON: Yes. You know so ...

ADV GRIFFITHS MADONSELA: Hm.

CHAIRPERSON: So - but I - I think - I think in order to save time because I think what you have done is you have made clear that you are not opposed to the granting of the amended order. You have raised two points which you - you - I think the - the second one relates to other people really and I have said when they want similar
10 arrangements they will apply and then we will consider it.

So it seems to me that it goes back to saying you - it is - it is one point you - you really are concerned about. Otherwise you do not have any quarrel with the amended order and the point is about an opportunity for the Minister and it may be that - it maybe that one would not make it blanket to everybody

ADV GRIFFITHS MADONSELA: Hm.

CHAIRPERSON: As such because maybe for some people it might be appropriate to grant it. Maybe for others I am not sure but your - your concern is that at some stage or another the Minister - you would ask
20 that the order should be such as to allow the Minister to see his face?

ADV GRIFFITHS MADONSELA: Yes.

CHAIRPERSON: Ja. So I think let me hear what Mr Petersen has to say about that. If there is nothing further that you want - you would like to say.

ADV GRIFFITHS MADONSELA: I just wanted to - to qualify the issue

about demeanour to say that we are not really pitching our - our case on demeanour *per se*.

CHAIRPERSON: Yes, yes.

ADV GRIFFITHS MADONSELA: We pitching our case on credibility.

CHAIRPERSON: Yes, yes.

ADV GRIFFITHS MADONSELA: Precisely because this very witness - this very Colonel ...

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: Has been found to be an incredible
10 witness in proceedings before ...

CHAIRPERSON: Yes, yes.

ADV GRIFFITHS MADONSELA: And more importantly by the ...

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: Evidence leader of this very Commission.

CHAIRPERSON: Did you say incredible?

ADV GRIFFITHS MADONSELA: Credibility yes. Credibility.

CHAIRPERSON: *Ja*. Yes.

ADV GRIFFITHS MADONSELA: He was found ...

20 **CHAIRPERSON:** He was disbelieved. He was (intervenes).

ADV GRIFFITHS MADONSELA: He was found dishonest.

CHAIRPERSON: Yes, *ja*.

ADV GRIFFITHS MADONSELA: No not incredible. Excitingly incredible.

CHAIRPERSON: *Ja*. No that is fine.

ADV GRIFFITHS MADONSELA: That is dishonest. That is - that is the ...

CHAIRPERSON: *Ja.*

ADV GRIFFITHS MADONSELA: To the extent that in the future we intend ...

CHAIRPERSON: Hm.

ADV GRIFFITHS MADONSELA: And we will cross that river when we come to it. To cross-examine witnesses.

CHAIRPERSON: Yes.

10 **ADV GRIFFITHS MADONSELA:** To - to cross-examine Naidoo depending on whether we are given an opportunity to do that ...

CHAIRPERSON: *Ja, ja.*

ADV GRIFFITHS MADONSELA: But his evidence might very well turn on his credibility.

CHAIRPERSON: Hm.

ADV GRIFFITHS MADONSELA: Which we would like to attack.

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: Given what has happened before.

CHAIRPERSON: Yes. May - maybe what we would - maybe what we
20 will do is - I will hear what Mr Petersen has to say about the issue of the order being amended in such a way that either implicated persons can see him just to see his face as opposed to observing him throughout his giving of evidence as I understand it.

ADV GRIFFITHS MADONSELA: Hm.

CHAIRPERSON: See his face or whether we should simply work on the

basis that to the extent that any implicated person might wish to be allowed to see his face at any particular time. Let that request be made at the right time and it be considered then and we - we take it from there.

In other words we do not exclude the possibility of granting that but we say let it be dealt with on - each one let - let each one be dealt with on its merits.

ADV GRIFFITHS MADONSELA: Yes.

CHAIRPERSON: Ja. Okay. Thank you. Mr Petersen.

10 **ADV ROB PETERSEN:** Chair I do not know if you wish to hear Mr Baloyi first.

CHAIRPERSON: Oh has he got some submissions. I am sorry. I forgot about him. Mr Baloyi.

ADV KGAUGELO BALOYI: Thank - thank you very much Chair. Chair, I - my submissions are going to be very brief.

CHAIRPERSON: Yes.

ADV KGAUGELO BALOYI: Chair, I - I represent General Mphego.

CHAIRPERSON: Hm.

ADV KGAUGELO BALOYI: He is one of the implicated persons.

20 **CHAIRPERSON:** Hm.

ADV KGAUGELO BALOYI: Chair our submissions and my client's main worries are that it is essential for him to be able to put a face of General Naidoo to his evidence.

CHAIRPERSON: Hm.

ADV KGAUGELO BALOYI: It is quite crucial ...

CHAIRPERSON: Hm.

ADV KGAUGELO BALOYI: And - and as you are aware Chair it - it might help to unravel whatever that can be unravelled ...

CHAIRPERSON: Hm.

ADV KGAUGELO BALOYI: For - for him to be able to apply for cross-examination.

CHAIRPERSON: Hm.

ADV KGAUGELO BALOYI: So Judge we do not have a problem with the proposed draft order.

10 **CHAIRPERSON:** Hm.

ADV KGAUGELO BALOYI: For as long as our client will be permitted to ...

CHAIRPERSON: Hm.

ADV KGAUGELO BALOYI: To put a face to this evidence.

CHAIRPERSON: *Ja* and ...

ADV KGAUGELO BALOYI: Judge that is the main - that is main crux.

20 **CHAIRPERSON:** And in that event you do not mind whether it is a question of your client being allowed to see him in person or being given his picture or do you mind - in other words if you are given a picture to say this is him. Would that be okay?

ADV KGAUGELO BALOYI: Judge I - I think it will be important for your client to see Mr Naidoo in person.

CHAIRPERSON: Hm.

ADV KGAUGELO BALOYI: It - it will be very crucial ...

CHAIRPERSON: *Ja*.

ADV KGAUGELO BALOYI: For us.

CHAIRPERSON: Okay. I think I am - I am inclined to - to say let - let the order be such that you are able - any person - any implicated person is able to make an application at the right time to see him and I would then decide it - decide each application or request on its merits. I am inclined that we do it that way because there may be some who make out a good case and there may be others who might not make out a good case.

So - so I think that should accommodate you because it gives
10 you time - an opportunity later on to then bring such an application.

ADV KGAUGELO BALOYI: Judge I - I agree. It may well be so. As long as that ...

CHAIRPERSON: Ja.

ADV KGAUGELO BALOYI: That our client's rights are reserved.

CHAIRPERSON: Ja.

ADV KGAUGELO BALOYI: To be able to - to see the face of ...

CHAIRPERSON: Yes.

ADV KGAUGELO BALOYI: Of Mr Naidoo.

CHAIRPERSON: Yes, okay.

20 **ADV KGAUGELO BALOYI:** That - that will be in order Judge.

CHAIRPERSON: Okay. No that is fine.

ADV KGAUGELO BALOYI: Pleases the court.

CHAIRPERSON: Thank you. Mr Petersen. Oh Mr Madonsela you want to ...

ADV GRIFFITHS MADONSELA: Before the - before the

Mr Rob Petersen ...

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: Replies. There is a matter which has been raised by my junior Mr Mlaba here ...

CHAIRPERSON: Hm, hm.

ADV GRIFFITHS MADONSELA: Which may be of some importance if - if it is - it carries some weight.

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: Attention has been drawn to the
10 provisions of Section 15(1) ...

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: Of the Witness Protection Act.

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: Which I would like to read into the record. It says:

“In any civil proceedings in which a protected person is a party or a witness may subject to sub section two be proceeded with in terms of the law regulating such proceedings.”

20 Aand sub section two says:

CHAIRPERSON: Hm.

ADV GRIFFITHS MADONSELA: “If it appears to a Judge ...”

CHAIRPERSON: Hm.

ADV GRIFFITHS MADONSELA: “...of a High Court in an ex parte application made to him or her in chambers by

a Director. That safety ...”

CHAIRPERSON: I am sorry. By ...?

ADV GRIFFITHS MADONSELA: By a Director.

CHAIRPERSON: *Ja.*

ADV GRIFFITHS MADONSELA: “That safety of any protected person might be endangered by the institution or prosecution of any civil proceedings in which the protected person is a party as a witness and proceedings ...”

10 **CHAIRPERSON:** Hm.

ADV GRIFFITHS MADONSELA: “...is defined in the Act to include also ...”

CHAIRPERSON: Hm.

ADV GRIFFITHS MADONSELA: “...Commissions of Inquiry ...”

CHAIRPERSON: Hm.

ADV GRIFFITHS MADONSELA: “...appointed in terms of an act of Parliament.”

CHAIRPERSON: Hm, hm.

20 **ADV GRIFFITHS MADONSELA:** What - what my learned junior ...

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: Has drawn to my attention is that in these proceedings ...

CHAIRPERSON: Hm.

ADV GRIFFITHS MADONSELA: The application for a protected person

...

CHAIRPERSON: Hm.

ADV GRIFFITHS MADONSELA: To be placed in camera ...

CHAIRPERSON: Hm.

ADV GRIFFITHS MADONSELA: Has not been brought at the instance of a Director.

CHAIRPERSON: Huh-uh.

ADV GRIFFITHS MADONSELA: In fact the Director does make mention of the fact ...

10 **CHAIRPERSON:** Hm.

ADV GRIFFITHS MADONSELA: That he has no problems with the - safeguarding the safety of the witness ...

CHAIRPERSON: Huh-uh, huh-uh.

ADV GRIFFITHS MADONSELA: And it might very well be that that consideration is ...

CHAIRPERSON: Hm.

ADV GRIFFITHS MADONSELA: Fundamental ...

CHAIRPERSON: Hm.

20 **ADV GRIFFITHS MADONSELA:** To the - to the outcome of the application because at paragraph 34 ...

CHAIRPERSON: Hm.

ADV GRIFFITHS MADONSELA: Of the founding affidavit Naidoo does in fact make it clear that he - his safety been assured by those who are taking care of him in ...

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: In this protection.

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: So it may very well be that this application ought to have properly being brought ...

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: At the instance of a Director who is defined ...

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: In the Act itself ...

10 **CHAIRPERSON:** Yes.

ADV GRIFFITHS MADONSELA: And to the extent that it has been brought at the instance of Naidoo himself.

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: Whose credibility is at stake ...

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: In these proceedings. It might very well undermine the very instance of the truth of what - of which underpins this application. I thought we should bring that to the attention of the Chairperson.

20 **CHAIRPERSON:** Yes.

ADV GRIFFITHS MADONSELA: So that it might feature (intervenes).

CHAIRPERSON: No, no I think - I think that is important. It may well be - I have no doubt that the - that the Director is - is aware or I think he should - he would be aware of the application and I have no doubt that he would support it because it maybe that if there is nothing

indicating that he - what his position is - it maybe that a document may be obtained from him that says something like I am in full support ...

ADV GRIFFITHS MADONSELA: Of the ...

CHAIRPERSON: Of the application, *ja*.

ADV GRIFFITHS MADONSELA: It may be critical to

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: To ...

CHAIRPERSON: *Ja*.

ADV GRIFFITHS MADONSELA: To legal purity.

10 **CHAIRPERSON:** Yes. No, no. I agree. I agree. Thank you very much.

ADV GRIFFITHS MADONSELA: Thanks.

CHAIRPERSON: Thank you. Mr Petersen.

ADV ROB PETERSEN: I would like to begin with the last point.

CHAIRPERSON: Yes. I am trying to look where my look ...

ADV ROB PETERSEN: Hm.

CHAIRPERSON: To find where the Act is.

ADV ROB PETERSEN: KK1.4 item 3 is the Witness Protection Act.

20 **CHAIRPERSON:** There are too many of these files. I think there should be - all of these things should be put in one big lever arch file with dividers if possible. Yes. I have - I have got the Act. So we go to paragraph - Section 15?

ADV ROB PETERSEN: Yes, but just before I go there Chair, the definition of proceedings, that's on paginated page 15 in the red numbering means, any criminal proceedings, proceedings before a

Commission etcetera, so clearly it is correct as my learned friend said that these are proceedings but if we go to Section 18 before we come to Section 15

CHAIRPERSON: Section 18?

ADV ROB PETERSEN: Yes that's on paginated page 29.

CHAIRPERSON: Yes.

ADV ROB PETERSEN: Notwithstanding any other law the presiding officer at any proceedings or at civil proceedings.

CHAIRPERSON: Yes.

10 **ADV ROB PETERSEN:** So it appears that civil proceedings could be specially referred to. Civil proceedings don't embrace all proceedings.

CHAIRPERSON: Yes.

ADV ROB PETERSEN: So then if we go to Section 15 that's paginated page 26, Section 15 is especially dedicated to civil proceedings.

CHAIRPERSON: Oh yes, yes.

ADV ROB PETERSEN: And my submission is that it doesn't apply.

CHAIRPERSON: So it looks like your submission is that the circumstances where an application for – in criminal proceedings should be brought by the Director are circumstances where we are
20 talking about civil proceedings.

ADV ROB PETERSEN: Exactly formal civil proceedings.

CHAIRPERSON: Ja I see the heading is, Civil Proceedings in which [indistinct] person is a party or witness.

ADV ROB PETERSEN: Yes and then in sub one in his civil proceedings. So my submission is that, that's not a – it's not relevant.

CHAIRPERSON: It's not the only proceedings and the definition of proceedings includes proceeding...[intervenes].

ADV ROB PETERSEN: Proceedings in general includes the Commission.

CHAIRPERSON: And then 18 refers to any proceedings – at any proceedings as well as [indistinct] civil proceedings.

ADV ROB PETERSEN: Yes so the legislature appears to have had a distinction in mind.

CHAIRPERSON: So that 18 suggests that in some places the statute
10 talks about what applies to civil proceedings only and in others it talks about what applies to both civil proceedings and other proceedings.

ADV ROB PETERSEN: Doing my best that's the interpretation I would also give to it.

CHAIRPERSON: Yes that seems to be the case ja. Okay so what do you say about Mr Madonsela's only point, because the other one, we agreed.

ADV ROB PETERSEN: My submission is that it is – it would be adequately catered for by the variation of paragraph two of the draft order and to which it has been suggested that some words be added
20 but even before the adding of those words, if I could just read to you a paragraph which I prepared on this question.

“It may occur at a future date that the Commission receives and he Chairperson grants an application to cross-examine Colonel Naidoo but one could add that or give evidence by an implicated person whose own identity needs to be protected

from public disclosure. For example, by virtue of the secret work that the implicated person is engaged in on behalf of Crime Intelligence or another Law Enforcement Agency. In such a case...[intervenes].

CHAIRPERSON: No I think that has been – I think that is the one that we agreed should be dealt with if and when an implicated person applies for similar arrangements.

ADV ROB PETERSEN: If that's agreed then we can stop.

CHAIRPERSON: Ja we don't have to put that in this order, the point
10 that – the only point that Mr Madonsela raises is that he would like his client to have the opportunity – the order should allow his client to at least at some point see the face of Colonel Naidoo and I've indicated, and I don't think he has a problem, I indicated to Mr Baloyi but that would apply to him as well, that maybe the best was to deal with that is to ensure that there is nothing in the order that prevents any implicated person in due course to apply for an order that they be allowed to see his face and I would consider each application on its merits and decide it, I don't think Mr Madonsela has a problem with that, he doesn't have a problem with that.

20 **ADV ROB PETERSEN:** May we do that by way of a further refinement of paragraph two?

CHAIRPERSON: We – maybe it might be appropriate to simply include an order in the order a paragraph that says something along the lines that, nothing in this order precludes and implicated person to – is it to bring or from bringing – nothing in this order prevents an implicated

person from bringing an application for an order that would allow him or her to have sight of Colonel Naidoo so that they can bring that application.

ADV ROB PETERSEN: That would make it clear Chairperson but it is covered by two but it might be advisable just, for the avoidance of any doubt to elaborate it accordingly.

CHAIRPERSON: Yes.

ADV ROB PETERSEN: And in regard to the bringing of an application, fine but I wonder Chair if it wouldn't be wise to provide that you may
10 also do that *mero motu*?

CHAIRPERSON: Yes maybe we should be able to do that because I might decide to do that *mero motu*, ja so I think...[intervenes].

ADV ROB PETERSEN: There's one remaining thing, if I may?

CHAIRPERSON: Yes.

ADV ROB PETERSEN: I am concerned about the suggestion that it should necessarily involve, if you allow it, that it should necessarily involve meeting Colonel Naidoo face-to-face rather than seeing a photograph because he is at a location which we don't know, under witness protection. The logistical and security difficulties of bringing
20 him to a place away from that location, each time an implicated person wants to persuade Chair that it's necessary to see him, could create an untenable problem. So that if it's possible to achieve the object when you are so minded to order it, by the showing of a photograph that should be the preference and if I've understood correctly what has been said that, that too would have to be motivated.

CHAIRPERSON: Yes I think what the addition to the order should make reference to both having sight of Colonel Naidoo or being shown a picture of him. So that when an application is made, one of the issues that a person – an implicated person would have to address is, why should I see him in person why is it not enough if I'm shown a picture and depending on what Colonel Naidoo, himself or the Commission or the Director may put up in terms of logistical challenges of bringing him out to – each time and implicated person wants to see his face, that can be gauged against showing a picture to say what's the problem with
10 that?

ADV ROB PETERSEN: Indeed Chair.

CHAIRPERSON: So if you include that in the order it will remind all of us as I deal with that application to say, there is the option of seeing a picture, what's wrong with that, okay? Alright so I think therefore...[intervenes].

ADV ROB PETERSEN: Chair, sorry one more thing, I just wouldn't like to be misunderstood by silence as agreeing that an implicated person, it happens to be today, Mr Baloyi's client can satisfy you by simply saying it is essential that my client must be able to meet him face-to-
20 face.

CHAIRPERSON: No that's true, because we – I'm not deciding that and I've said an application would have to be brought to one he doesn't have to deal with that he would have – his client would have to bring an application, a proper application which would be considered properly.

ADV ROB PETERSEN: It would usually involve addressing, to some

extent, the context, the content of the Naidoo evidence but why seeing him in that context is necessary.

CHAIRPERSON: Ja, no that's find.

ADV ROB PETERSEN: Those are my submissions.

CHAIRPERSON: I think what I want to do is – because I'm taking that there's nothing further that anybody wants to say, I think Mr Madonsela has one more thing.

ADV GRIFFITHS MADONSELA: There's a [indistinct] that I want to make.

10 **CHAIRPERSON**: Yes.

ADV GRIFFITHS MADONSELA: In relation to the photograph of submission. The premise of our concessions was that the witness be brought here and placed in a separate room and be seen by yourself, that is the draft order that is before you. It is no – it is not a quantum lib to ask in those circumstances that a witness or implicated person should go into that room and seen in company rather than a photograph. I'm just less confident about photographs because of their ability to be easily manipulated. I've seen my photos being manipulated on social media and many other important people in this
20 country have manipulated photographs, I don't like – I feel very uncomfortable with a photograph, provided maybe, as a [indistinct] that photograph will be shown to you to deflect the same person that you have seen because if that person, as it is proposed in the draft order, that he will be here kept in a separate room and testifying from that room, then it should be easy to identify who he is.

CHAIRPERSON: Well I understand what you are saying but exactly where he will be whether it's in the same building or in an adjacent building or many blocks away is something that I'm not certain of now but when I was reading the draft order there was a place where – when I came to it I don't know whether this suggests that it would be in the same building, but my understanding is that it need not be in the same building as long as measures would be taken to make sure that his voice – his evidence would be heard here but I think that with regard to the question of whether an implicated person should be allowed to see
10 his face or see a picture we must leave that for later because I'm not going to decide any application today for that. If and when an application is brought then the implicated person can address the question of why it's more important that he should see the face rather than the picture more pertinently and to the extent that Colonel Naidoo might oppose, he can deal with that as well or the Commission at that stage and if there will be logistical challenges in getting him seen by people, those will be put up and the implicated person can deal with them.

ADV GRIFFITHS MADONSELA: I wanted just to say one – or the
20 photograph I wanted to say about it, it is to be sanctioned by you Chairperson.

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: It should be sanctioned on the basis that, that photograph should be a photograph that must be approved by yourself because you would have seen him.

CHAIRPERSON: Yes.

ADV GRIFFITHS MADONSELA: So that you avoid any...[intervenes].

CHAIRPERSON: Challenges ja, no that's fine thank you. Okay Mr Petersen I change...[intervenes].

ADV ROB PETERSEN: Chairperson sorry, I've just been asked to make it clear so that there is no public misunderstanding that in fact, the draft order doesn't specify the location of the separate room.

CHAIRPERSON: Okay that's fine. I think maybe it might have been the reference to a separate room that might have given the impression
10 that it's a separate room separate from this room which might have given me the impression it's a room somewhere here as opposed to anywhere but it's wide enough but let's finish now so that I can start with the oral evidence. So I don't propose to make the order now because I would like you to amend it as we have discussed but in substance I am prepared to grant it subject to being satisfied about that, so I would like you to amend it in accordance with the discussion and bring it later during the day and then I can read it out. So – but to the extent that counsel, Mr Madonsela or Mr Baloyi may need to be excused so that they don't have to wait for that time, I'm quite happy to
20 excuse them but they can make arrangements to obtain the order if they wish to.

ADV GRIFFITHS MADONSELA: I assume Chairperson that the witness who's testifying is not the one who was Naidoo himself who was scheduled to testify today?

CHAIRPERSON: No, no he is not testifying today. Ja he is not

testifying today it's a witness that we started with yesterday or maybe let me say this, he was originally, I think, meant to start testifying today, that's one but two we must still finish another witness. Now with us only finishing this application at this time, I doubt that this other witness will finish while there is time to start with Colonel Naidoo. I will hear what Mr Petersen or whoever from the legal team might have to say but it doesn't look like, to me that he could start today but let me hear what they have to say so that you have clarity.

ADV GRIFFITHS MADONSELA: Yes we just want to know at what
10 stage should we make ourselves available for his testimony so that we can...[intervenes].

CHAIRPERSON: Yes, no I understand, oh because you want to be here when the evidence is given by him. No that's fine who's going to deal with...[intervenes].

ADV GRIFFITHS MADONSELA: As I sit down, might I just say that if the Chairperson does have time to look at Section 18, you'll see that at the end of Section 18 there's again reference to the Director, unless the Director says something. So it's not really that the Director is irrelevant but he's always relevant in all proceedings.

20 **CHAIRPERSON:** Okay alright, Miss Wentzel?

ADV SUSAN WENTZEL: Chair I am involved in leading the evidence of Mr Naidoo and Mr Khuba and I agree with your assessment because of the time that the application has taken it's very unlikely that there will be time to start Colonel Naidoo's evidence today and I think that it's safe to say that evidence will be heard tomorrow.

CHAIRPERSON: Okay no that's fine, that brings you certainty. Now in terms of – sometimes we decide as we finish at 4 o'clock or 5 o'clock what time we'll start the following day, normally we start at ten but sometimes we start at nine or half past nine. I think we must work on the basis that we will start at ten but should I decide later on that it will be earlier then the legal team, Miss Wentzel will make sure that they let you know okay.

ADV GRIFFITHS MADONSELA: It means we sleep over.

CHAIRPERSON: No you sleep over, okay alright.

- 10 **ADV ROB PETERSEN:** Chair just for my own protection I do wish to make it clear that I was asked to come in just to deal with this application, I have no other involvement in relation to the Law Enforcement witnesses.

CHAIRPERSON: Yes, no that's fine.

- ADV GRIFFITHS MADONSELA:** Might I also mention Chairperson it might not be me who is present here it might be my junior [indistinct] to that extent if I am not here it's not because I'm disrespectful to Chairperson it's because of some other reasons but let's [indistinct] to be made because of today and Chairperson as I sit down, might I also
20 thank you for extending the courtesy to us yesterday to make sure that the matter is starting at eleven, that information was conveyed to us in time, it really did help us arrange our affairs, thank you.

CHAIRPERSON: Thank you, okay so I will make the order later in the day, maybe we should aim for 2 o'clock Mr Petersen by then when we come back from lunch if it's ready at that time then I could make it at

that time.

ADV ROB PETERSEN: Skipping lunch that's quite possible, I have no difficulty with that.

CHAIRPERSON: So I'm going to take a short break now to allow Miss Wentzel to organise before we start with the – we continue with Mr Khuba's evidence, we'll adjourn and we'll resume at twenty past twelve it is five past twelve now. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

10 **CHAIRPERSON:** Are you ready Ms Wentzel?

ADV SUSAN WENTZEL: Yes I am ready thank you.

CHAIRPERSON: Yes. Mr Khuba you continue to testify on the basis of the oath you took yesterday. Is that right?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes. Thank you.

ADV SUSAN WENTZEL: Thank you Chair.

CHAIRPERSON: You may continue.

ADV SUSAN WENTZEL: Mr Khuba we were dealing with page 10 of your statement paragraph 33 yesterday regarding who you told the
20 Chair was a – who you believed to be a key witness Colonel Madilonga, is that correct?

MR HUMBULANI INNOCENT KHUBA: Ja that is correct.

ADV SUSAN WENTZEL: Could you tell the Chair about the circumstances under which the statements that he gave you was leaked to the media?

MR HUMBULANI INNOCENT KHUBA: It was on Sunday when I saw the front page of the Sunday newspaper talking about the content of the statements. So that worried me so much because I felt that it is a witness he was vulnerable number 1. And also that it was going to compromise the investigation. So what I did I then phoned Advocate Mosing I was very concerned and when I told him it seems as he had already read the newspaper – he was also concerned about the safety of the witness.

ADV SUSAN WENTZEL: And then what did – what did you do?

10 **CHAIRPERSON:** Ms Wentzel.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: I just do not want to forget this so please do not forget your question – your next question to the witness. I was looking at the Werksmans Report just now. When Mr McBride gave evidence in April or whatever month it was and when Mr Sesoko gave evidence yesterday and the day before they were not asked to deal with the reasons given by Werksmans in their report for the findings that they made against them.

ADV SUSAN WENTZEL: Yes.

20 **CHAIRPERSON:** That should have been done. And it should be done with Mr Khuba as well.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Please make arrangements to ask both Mr McBride and Mr Sesoko to provide affidavits in which they engage with that report head on in terms of the findings that were made against them

and the reasons and analysis on which those findings seemed to be based and deal with them. And indicated what they admit is true. What they do not admit is true and say what they have to say about the reasoning and the analysis in regard to each finding.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Obviously it may be necessary that a member of the legal team interviewed them and prepares that affidavit for them. But if they – if they offer to prepare the first draft and give it to the legal team to have a look at and then settle it or finalise it then that is fine
10 but we should in regard to these three witnesses have a full and proper engagement by each one of them with the findings and the reasons given by Werksmans for the findings against them.

ADV SUSAN WENTZEL: Yes I will ensure that that is done.

CHAIRPERSON: Okay and then – and then once those affidavits are there we – we can see whether it is necessary to call them or not but that will be helpful for when Mr July or somebody from Werksmans comes here to give evidence about that report and their investigation.

ADV SUSAN WENTZEL: Yes I will ensure that that is done.

CHAIRPERSON: Okay.

20 **ADV SUSAN WENTZEL:** Chair now that we have digressed I – I just want to inform you of something. You asked me yesterday if there had been a response by Mr – Ms Mbeki and I said no there had not. And there had not but last night at ten o'clock the commission did get a response and in that response she says she would like to put her side of the story and she would like to come to the commission and make a

statement?

CHAIRPERSON: Yes No that is...

ADV SUSAN WENTZEL: I will make sure that arrangements are made for that to happen as well.

CHAIRPERSON: No that is – that is fine – that is important. I was asking because I thought it would be important to – for her to give evidence to hear from her. I think that you people must be in touch with her to see whether she would prepare that she be interviewed by a member of the legal team or the investigators to prepare her statement or affidavit or whether she has her own lawyers that she would use to
10 prepare because the – the best way to do that is for her to look at the statements and if necessary the evidence given by these three witnesses but they all seem to say the same thing about her role and maybe seeing what they say in the statement is enough because I do not think that in their oral evidence they add anything that is not in the statement. She can look at those statements and then prepare an affidavit that responds to those allegations and explains her side of the story. Once we have got that that affidavit then arrangements can be made for her to – to come and give evidence.

20 **ADV SUSAN WENTZEL:** Yes. Thank you Chair.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Okay Mr Khuba you say that the statement was leaked and you said the content of the statement was leaked. Could you just explain what you meant by that?

MR HUMBULANI INNOCENT KHUBA: What was clear on the article

was the part which Colonel Madilonga indicated that he saw the vehicles which seemed to be the vehicle of diplomats and then he approached them and they indicated that they were going to arrest some people in the country and they would want to see General Dramat. That part came out very, very clear and the statement of Colonel Madilonga was not only about that. He kind of really lay a broader explanation in terms of assisting Captain Maluleke in getting those people across to where the Zimbabwean police were. But that part was not really covered. It was mainly on the issue of the role of

10 General Dramat.

ADV SUSAN WENTZEL: Thank you. And after you had expressed your concerns to Advocate Mosing what did you do?

MR HUMBULANI INNOCENT KHUBA: I then approached the Acting Executive Director Ms Koekie Mbeki. Firstly I had to explain to her the challenges I had and then I wrote a letter requesting that each and every team member of the task team be polygraphed so that we could see who compromised the investigation of the case. She was at the first when I was talking to her supportive that is why she requested me to put it in writing of which I did. But after that nothing came out of it.

20 I also discussed with Advocate Mosing who was guiding the investigation and he shared the same sentiment and said to me he will also voluntarily submit for the polygraph test. And because it was not arranged from our side or the plan could not materialise it was finally not done.

ADV SUSAN WENTZEL: And the – the letter that you addressed to Ms

Mbeki is that the letter that appears at page 49 of the bundle dated the 31st October 2013?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: One second again Ms Wentzel. I realise that it seems that I have got two sets now of the pages that I did not have at some stage yesterday. It looks like those pages may have been located in a wrong place in the statement. So I now have two sets. May I return?

ADV SUSAN WENTZEL: Yes please.

CHAIRPERSON: The ones that were lent to me?

10 **ADV SUSAN WENTZEL:** Thank you.

CHAIRPERSON: Okay. So if you can hand them over to them. They probably need them. Unless they have already made other copies.

ADV SUSAN WENTZEL: Thank you very much.

CHAIRPERSON: Ja okay.

ADV SUSAN WENTZEL: Did you also discuss your concerns about the safety of the witness to Colonel Moukangwe after the statement had been released or published in the media?

20 **MR HUMBULANI INNOCENT KHUBA:** Yes I did and I still remember very well that when he saw that I was really worried about the safety and the leaking of the information in the docket he said to me that why are you worried because your superiors are not worried. The Minister will not ask you about that and your – your superior will not ask you about that. Which I understood him to refer to Ms Mbeki. Of course it happened that way because I never received any – I was never called and that part it was me who was more concerned about it rather than

Ms Mbeki.

ADV SUSAN WENTZEL: And what impression did you form from this lack of concern?

MR HUMBULANI INNOCENT KHUBA: I – for me I understood they were okay with it. That is how I took it if then – because for me it constituted a compromise of investigation. I just thought probably they were okay with it. They never had a problem with it.

ADV SUSAN WENTZEL: Mr Khuba in paragraph 37 of your statement onwards you deal with your dealings with General Ntlemenza with regard
10 to this matter. Could you please explain that to the Chair?

MR HUMBULANI INNOCENT KHUBA: At the time General Ntlemenza was the Deputy Provincial Commissioner for Limpopo. I was the Provincial Head. So from the operational point of view we had a lot of contacts where I requested assistance even before I dealt with the Rendition case. Now one time around 2013 it was after I obtained the statement of Colonel Madilonga that he requested to see me at Wimpy. It was not really far away from where he was staying. Then I obliged to the request and when I arrived there I found him with few gentlemen and one of them was introduced as an officer from Eastern Cape.

20 **ADV SUSAN WENTZEL:** Thank you just – if you can just address the Chair so that he can just see you.

MR HUMBULANI INNOCENT KHUBA: Okay that is correct.

ADV SUSAN WENTZEL: Nicely when you testify.

MR HUMBULANI INNOCENT KHUBA: Okay.

ADV SUSAN WENTZEL: Thank you. So he said he was with an officer

from the Eastern Cape. Do you know the name of that officer?

MR HUMBULANI INNOCENT KHUBA: I cannot remember because the name I took it – I was writing on a note – note sticker on the phone. I will use my finger to write but unfortunately the phone that I used long time ago but I could not really take all the details. But what he said to me – he said he was attending a course or training in Cape Town with Captain Maluleke. When Captain Malluleke confined to him about what happened in the arrest of Moyo. Moyo was a wanted person for various cases and according to the information they told me they said he had
10 slipped out of the country, went back to Zimbabwe. Now this officer said Captain Maluleke told him that he went to Zimbabwe and he posed as a doctor after they took the – after the Zimbabwean police arrested Moyo, shot him in the leg – on the leg and then went to the authorities there and introduced Captain Maluleke as a doctor who would want to treat Moyo in South Africa. Now these stories...

CHAIRPERSON: That was very strange. Somebody is shot in Zimbabwe you say you are a doctor you are in Zimbabwe but you are the one who says no I want to treat this patient in South Africa.

MR HUMBULANI INNOCENT KHUBA: That is how I got...

20 **CHAIRPERSON:** Are there not doctors in Zimbabwe?

MR HUMBULANI INNOCENT KHUBA: The story.

CHAIRPERSON: Mm that is the story. Ja.

MR HUMBULANI INNOCENT KHUBA: So what I did – for me I did not take it lightly. I shared the information with the prosecutor and how I perceived it I thought apart from the allegation of him being shot or the

Captain Maluleke posing as the doctor I thought probably it might have been an issue that when he assisted the Zimbabwean National he was really returning the favour. That is why I took a bit of interest on the story. I then ...

ADV SUSAN WENTZEL: Mr Khuba before you proceed I just want to clarify something.

MR HUMBULANI INNOCENT KHUBA: Okay.

ADV SUSAN WENTZEL: You said that it was told to you by this man that Captain Maluleke had been party or was present when the – Mr
10 Moyo was shot.

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: And then he posed as a doctor saying he wants to bring him to South Africa for treatment. But what happened after that to him? What happened to Mr Moyo once he – once they got him into South Africa?

MR HUMBULANI INNOCENT KHUBA: They said when he came into the country then he was arrested. And then he was made to face those other charges. I did an investigation around that because when I shared with Advocate Mosing he also took some interest and he told me
20 that he knows that a prosecutor who dealt with Moyo's case. And he did his own investigation and he managed to get some of the statements relating to the cases involving Moyo and then he gave me the copies of those statements and then he requested me to go to Musina and check whether he was ever admitted there or treated there and also requested that I need to meet with Moyo and take his

statement. Just to find out whether there is corroboration. Now I sent my investigators to Musina. We could not find any record. Now I requested somebody from the department to interview Moyo which was done and a statement was obtained. There were somehow similarities in the story that he was shot by Zimbabwean police but he never made any indication that Captain Maluleke was there or he posed as a doctor and said it is his doctor. No he did not make mention of that. Now what really happened was that I had to do the cell phone records to check – given the statements which I was handed by Advocate to check whether

10 Captain Maluleke ever crossed at around the time when this Moyo was arrested. And what I found was that he was around the border but there is no indication that his cell phone ever lost network when he was on the other side. So somewhere somehow he was at the border. But I could not prove that he crossed the border and went to Zim. And the statement of Moyo never gave any indication that he was seen that side.

ADV SUSAN WENTZEL: So just to clarify and then we will deal with the – your various reports in some detail in time. Did you include this reference to Moyo in the first report that you submitted to the National

20 Prosecuting Authority?

MR HUMBULANI INNOCENT KHUBA: I did. I did include it.

ADV SUSAN WENTZEL: And after – was this before or after you received the cell phone records?

MR HUMBULANI INNOCENT KHUBA: I cannot really remember whether it was after or before but I remember in the first or January

report it was included.

ADV SUSAN WENTZEL: And in the later report was it included?

MR HUMBULANI INNOCENT KHUBA: It was not part of that report.

ADV SUSAN WENTZEL: And why was it not a part of the second report?

MR HUMBULANI INNOCENT KHUBA: Now when we did the evaluation...

ADV SUSAN WENTZEL: Or an amended report?

MR HUMBULANI INNOCENT KHUBA: Of that docket we realised that
10 we could not really find the Nexus the link between the arrest of Moyo
and the deportation of those Zimbabwean Nationals. So we felt that it
cannot really be part of that. And I looked at it and says I think I agree
because there was no evidential value of that information because the
link could not be – be made.

ADV SUSAN WENTZEL: And you also said in your statement here at
paragraph 42 that after hearing this version from the gentleman from
the Eastern Cape you also analysed Colonel Maluleke's laptop. What
was the result of that analysis?

MR HUMBULANI INNOCENT KHUBA: The analysis was done for the
20 entire laptop which means we recovered both personal and evidential
material. Now some of the things that we recovered or managed to
mirror image was the story of Moyo. And I was in constant discussion
with the person who was doing that. And I said print out everything
regarding Moyo. And then she was able to do that. But it never gave
an indication that information it just talk about Moyo with – wanted. It

did not give a lead to say that he was required to go there and take him or he spoke with the Zimbabwean National – I could not find something of such a – they were – it was mentioned in those documents that Moyo was wanted.

CHAIRPERSON: For the sake of completeness what was Mr Moyo's name?

MR HUMBULANI INNOCENT KHUBA: I need to – to have the statement to get the full names.

CHAIRPERSON: Oh.

10 **MR HUMBULANI INNOCENT KHUBA:** I only know him as Moyo and I refer him as Moyo.

CHAIRPERSON: Oh because I may – I did not pick up the name on the – on your affidavit.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: And just – it is better to mention his name as well.

ADV SUSAN WENTZEL: Yes.

MR HUMBULANI INNOCENT KHUBA: Ja.

CHAIRPERSON: So that one knows – there are many Moyo's just as there are many Zondo's.

20 **ADV SUSAN WENTZEL:** Yes we will ...

MR HUMBULANI INNOCENT KHUBA: No I think we can be able to get ...

CHAIRPERSON: To get the name.

MR HUMBULANI INNOCENT KHUBA: The name. I think the reason why I used the name Moyo it is how we referred to him in our

discussions and how he was referred to by Werksmans.

CHAIRPERSON: Yes, no, no it is just that it is important to know whether it was Albert Moyo, John Moyo, Jabulani Moyo, Sipho Moyo or whoever – whatever the name was.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Mr Khuba at paragraph 45 on page 13 of your statement you refer to a further meeting you had with General Ntlemeza could you please tell the Chair about that meeting?

10 **MR HUMBULANI INNOCENT KHUBA:** I had a meeting with him where we discussed about Madilonga and I think he is the one who started that discussion. And I then had to confine to him that I was really, really uneasy about his safety. Because that was after the....

CHAIRPERSON: Mr Madilonga's safety?

MR HUMBULANI INNOCENT KHUBA: Yes, yes.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Because that was after the – the article on Sunday Times. And then he told me that he had transferred Colonel Madilonga to Burgersfort. And he even indicated that Colonel
20 Madilonga was his man I must not worry about that. And I still remember I could not take his word for it because after that I – I think it was some few weeks then I drove straight to Burgersfort myself and I met with him just to find out how he was doing.

CHAIRPERSON: Mr Madilonga?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And I even spoke with him because I had a discussion with Mosing about Advocate Mosing about the issue of witness protection. But when I spoke with him he said no it is fine, it is a big cop he knows what he is doing. Then I left and I came back and that is what I discussed when I spoke to – to – to General Ntlemeza. But at that particular time there was an issue that because the position in the department in IPID was vacant. The position of an Executive Director. And he had made mention earlier
10 that ...

CHAIRPERSON: Was it vacant because somebody had been – was suspension, is that what you mean or was it vacant because somebody had resigned or had been dismissed and it had not – the position had not been filled?

MR HUMBULANI INNOCENT KHUBA: No it was – I think the person who was appointed for the position had resigned and it was – it is Francois Beukman.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And that is why Ms Koekie Mbeki
20 was acting. But what happened is that there was a time when she was not coming to the office and I heard that she had taken an office somewhere but she continued performing the work of IPID. Now he too...

CHAIRPERSON: I am sorry let me just interrupt you. Just something that I wanted to ask about Ms Mbeki. Prior to her acting as Executive

Director where was she? Was she part of IPID?

MR HUMBULANI INNOCENT KHUBA: She was part of IPID and she was Head of Legal Services which is one program.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: She was a Program Manager.

CHAIRPERSON: Oh just...

MR HUMBULANI INNOCENT KHUBA: But responsible ...

CHAIRPERSON: For legal matters.

MR HUMBULANI INNOCENT KHUBA: Ja for legal matters.

10 **CHAIRPERSON:** Oh okay.

MR HUMBULANI INNOCENT KHUBA: Ja.

CHAIRPERSON: Oh okay no that is fine. And after she had stopped acting as Executive Director did she continue as Head of Legal Services or did she leave the – did she leave IPID?

MR HUMBULANI INNOCENT KHUBA: Now when she - she stopped Acting she was no longer in the department.

CHAIRPERSON: Okay.

20 **MR HUMBULANI INNOCENT KHUBA:** There was a time when she was not in the office. I think if it was not one month. It might be two months.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Where we were told that she does not deal with anything because she is working somewhere ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: But she only signed financial

documents.

CHAIRPERSON: Okay, okay. Okay. I am sorry. I interrupted while you were continuing. You may or may not have forgotten what you were dealing with in which case Ms Wentzel ...

MR HUMBULANI INNOCENT KHUBA: Okay.

CHAIRPERSON: Remind you.

MR HUMBULANI INNOCENT KHUBA: No I did not forget. I was talking about my discussions I had with General Ntlemeza. At that time he had told me that he was going to be appointed as an Executive Director of
10 IPID and I was very happy because I thought I will be able to work with somebody whom I know because I was working with him at a provincial level.

Then on that particular day he said he wanted to tell me that the political principal have changed their mind. He is no longer to join IPID. He will be joining the Hawks.

CHAIRPERSON: Now let us try and get the timeframes or rather the time. A sense of when this was. It appears from what you are saying that the time when he told you that he was going to be appointed as Executive Director of IPID was separate from the time when he told you
20 that he was going to be appointed as the Head of the Hawks or something like that. Those are two different occasions. Is that right?

MR HUMBULANI INNOCENT KHUBA: Those were two different occasions because the first one ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Was about IPID.

CHAIRPERSON: Yes. Around when was that in terms of the year?

MR HUMBULANI INNOCENT KHUBA: Everything took ...

CHAIRPERSON: Maybe a month.

MR HUMBULANI INNOCENT KHUBA: Everything took place in 2013.

CHAIRPERSON: 2013?

MR HUMBULANI INNOCENT KHUBA: Yes.

CHAIRPERSON: Okay. You cannot remember more or less where about in the year?

MR HUMBULANI INNOCENT KHUBA: I - I cannot remember in terms of

10 - I have month.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: In - in terms of my meetings with ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: With him.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Somewhere it was September.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Sometimes it was October

20 around (intervenes).

CHAIRPERSON: 2013?

MR HUMBULANI INNOCENT KHUBA: Ja.

CHAIRPERSON: Oh, okay. That was when he told you that he was going to be appointed as Executive Director of IPID?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: And then when he told you that he was going to be appointed as the Head of the Hawks around when was that or is it around the same time - same month?

MR HUMBULANI INNOCENT KHUBA: There was - there was not really ...

CHAIRPERSON: A long time?

MR HUMBULANI INNOCENT KHUBA: A big lapse of time.

CHAIRPERSON: Okay.

MR HUMBULANI INNOCENT KHUBA: There was no big lapse of time.

10 **CHAIRPERSON:** So it may have been a matter of different weeks?

MR HUMBULANI INNOCENT KHUBA: It may be different weeks or *ja* different ...

CHAIRPERSON: Different months?

MR HUMBULANI INNOCENT KHUBA: Weeks probably.

CHAIRPERSON: Yes, okay.

MR HUMBULANI INNOCENT KHUBA: *Ja*, probably *ja*.

CHAIRPERSON: Okay. Okay. Now with regard to the first one you - you have put it very clearly that he said he was going to be appointed as the Executive Director of IPID. Now I just want you to be sure that
20 that is how he put it and that he did not say he was going to be applying for that position. Did he put it like ...

MR HUMBULANI INNOCENT KHUBA: He ...

CHAIRPERSON: I am going to be appointed?

MR HUMBULANI INNOCENT KHUBA: He never put the word application.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: He talked about political principals.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: That they wanted him to head IPID.

CHAIRPERSON: Oh, okay.

MR HUMBULANI INNOCENT KHUBA: He did not talk about ...

CHAIRPERSON: Yes.

10 **MR HUMBULANI INNOCENT KHUBA:** The issue of ...

CHAIRPERSON: Of making an application?

MR HUMBULANI INNOCENT KHUBA: We did not even talk about the advert.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: The closing, the opening what does it say.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: We never spoke about that.

CHAIRPERSON: Yes. That was in regard to the IPID position?

20 **MR HUMBULANI INNOCENT KHUBA:** That was regard to IPID position.

CHAIRPERSON: And then when he talked to you on the other occasion about him coming to the Hawks or being appointed to the Hawks how did he put it?

MR HUMBULANI INNOCENT KHUBA: He - he said he wanted - it - it

was when we were discussing the issue of the report ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Because he indicated how far are you with the investigation?

CHAIRPERSON: The rendition investigation?

MR HUMBULANI INNOCENT KHUBA: The rendition investigation ...

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And then I would - I would tell him that I am left with a few statements but I would not really go into
10 detail in terms of individual statements were not police officers.

CHAIRPERSON: Yes, yes.

MR HUMBULANI INNOCENT KHUBA: Mainly when the person whom I wanted to obtain a statement was a police officer. I would confine to him because I knew that he was going to assist me.

CHAIRPERSON: Hm, hm.

MR HUMBULANI INNOCENT KHUBA: So that is when he indicated to me that your report is - the one that is holding me from being appointed there.

CHAIRPERSON: Huh-uh.

20 **MR HUMBULANI INNOCENT KHUBA:** That is what he told me.

CHAIRPERSON: Hm and what did you say when you heard this? Was there a further discussion around this issue of your investigation holding him back from being appointed to the Hawks?

MR HUMBULANI INNOCENT KHUBA: Not - not really because I found it very, very strange but for me it never shook me out of him to say I do

not want to talk to him.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I just felt - it is like a good friend who spoke something weird.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: You are still attached to the person. I just said - I just kind or really said ignore but it stayed in my mind.

CHAIRPERSON: Hm.

10 **MR HUMBULANI INNOCENT KHUBA:** Aye.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: When he said that I told him that I am left with what - I need to get hold of these people.

CHAIRPERSON: And you did not focus on what he was saying?

MR HUMBULANI INNOCENT KHUBA: No. I did not focus on what ...

CHAIRPERSON: Yes, but you noted it?

MR HUMBULANI INNOCENT KHUBA: I noted it, *ja*.

CHAIRPERSON: Yes, yes. So - so yes continue.

20 **ADV SUSAN WENTZEL:** Mr Khuba from your statement it appears that there were at least three different conversations and now from your evidence it is sounding like things were happening in two separate conversations. So can - if we can just go back to your statement and if you can just clarify as to which is the correct - I do not (intervenes).

CHAIRPERSON: Well may - maybe the way to put it Ms Wentzel is not to put it like you, you giving him leading questions like that.

ADV SUSAN WENTZEL: Hm.

CHAIRPERSON: Were there any other occasions when you had interactions with General Ntlemeza in regard to your investigation?

MR HUMBULANI INNOCENT KHUBA: Yes.

CHAIRPERSON: Yes. Tell me about them.

MR HUMBULANI INNOCENT KHUBA: In October 2013 I was in my house watching television. That was after I had already given General Ntlemeza my wife's number upon his request because he indicated that he does not want to call me directly because he thought
10 probably there were - people were listening to my telephone conversation. I ...

CHAIRPERSON: This is still in 2013 towards the end of 2013?

MR HUMBULANI INNOCENT KHUBA: Ja. It was 2013.

CHAIRPERSON: Yes. So on a certain occasion he asked you to give - on a certain occasion you gave him your wife's number?

MR HUMBULANI INNOCENT KHUBA: Yes.

CHAIRPERSON: At his request?

MR HUMBULANI INNOCENT KHUBA: At his request.

CHAIRPERSON: Because he wanted to call you on your wife's
20 number?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay, alright. Well maybe finalise that. Did he - you said he thought he did not want to phone you on your cell - cell - on your phone because ...?

MR HUMBULANI INNOCENT KHUBA: Because he said to me there

might be people who are listening to us. He does not want to compromise our discussions.

CHAIRPERSON: Okay.

MR HUMBULANI INNOCENT KHUBA: Then I still remember he showed me a - a small cellphone. You know the old type ones that do not have the internet and you can just receive or make call and he says he advised me to - to get one and he even told me that if I go to a particular store it is only 150.

Now the reason why I could not take the advice. I am not
10 good in - in juggling. I do not want to carry two phones.

CHAIRPERSON: Okay.

MR HUMBULANI INNOCENT KHUBA: So that is why I - I said it - it would be very difficult for me. That is when he said to me if he could use my wife's number. I gave him my wife's number. I also informed my wife. So on that particular day in October 2013 that is when he - my wife called - told me that (African language) is at the gate.

CHAIRPERSON: Now when you say on that particular day you are not meaning the day on which you gave him your wife's number. You mean another day now?

20 **MR HUMBULANI INNOCENT KHUBA:** That is correct.

CHAIRPERSON: Okay. Continue.

MR HUMBULANI INNOCENT KHUBA: She ...

CHAIRPERSON: On another day your - your wife said to you (African language) is at the gate?

MR HUMBULANI INNOCENT KHUBA: Ja.

CHAIRPERSON: *Ja*, take it from there.

MR HUMBULANI INNOCENT KHUBA: And she gave me the phone to speak with him ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And he said to me I must instruct the security to open for him because he had something to tell me.

CHAIRPERSON: So - so the reason why your wife was saying (African language) is at the gate was because well one who was (African language)?

10 **MR HUMBULANI INNOCENT KHUBA:** I referred him as (African language) ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And my wife knew him as (African language) on the basis that even we are doing shopping and we will meet him we would - I would not say general.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I would say (African language) and then we will give each other hugs ...

CHAIRPERSON: Hm.

20 **MR HUMBULANI INNOCENT KHUBA:** And after that ...

CHAIRPERSON: Okay.

MR HUMBULANI INNOCENT KHUBA: And my wife knew him as (African language) *ja*.

CHAIRPERSON: And (African language) is a term for showing respect for - for respect (African language). It is like gentleman or ...?

MR HUMBULANI INNOCENT KHUBA: It is - it is like gentleman but it is a Xhosa word.

CHAIRPERSON: It is like sir?

MR HUMBULANI INNOCENT KHUBA: It is like sir. For me I took it as sir.

CHAIRPERSON: As sir?

MR HUMBULANI INNOCENT KHUBA: *Ja.*

CHAIRPERSON: *Ja.*

MR HUMBULANI INNOCENT KHUBA: *Ja.*

10 **CHAIRPERSON:** *Ja.* It - it shows respect.

MR HUMBULANI INNOCENT KHUBA: Respect, *ja.*

CHAIRPERSON: Yes. So that is how you called him ...

MR HUMBULANI INNOCENT KHUBA: And that is how he called me.

CHAIRPERSON: And your wife also then called him that?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes. Okay. So on this occasion he had phoned that is (African language) had phoned on your wife's phone and said I am at the gate and you wife conveyed that message to you and gave you her phone to talk to him?

20 **MR HUMBULANI INNOCENT KHUBA:** That is correct.

CHAIRPERSON: Okay, alright and what did he say to you?

MR HUMBULANI INNOCENT KHUBA: He said he had something to tell me. I should instruct the security guards to allow him in because it is an estate. I then told the security guards. Then he came in. When he was in then he told me about the meeting he had. That he was at the

airport and he met General Mdluli ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And he told me that he was sent by General Mdluli to me.

CHAIRPERSON: The General Mdluli that he was referring to was it General Richard Mdluli or did you now know who he was referring to?

MR HUMBULANI INNOCENT KHUBA: I knew.

CHAIRPERSON: Who was he referring to? Which Mdluli was he referring to?

10 **MR HUMBULANI INNOCENT KHUBA:** Richard Mdluli.

CHAIRPERSON: Okay, alright. What did he say about him?

MR HUMBULANI INNOCENT KHUBA: He said he met him at the airport ...

CHAIRPERSON: Huh-uh.

MR HUMBULANI INNOCENT KHUBA: And I still remember something that I even omitted to put in my statement ...

CHAIRPERSON: Huh-uh.

MR HUMBULANI INNOCENT KHUBA: Because he said that man is going to be your next President. That is what he said.

20 **CHAIRPERSON:** Talking about General Mdluli?

MR HUMBULANI INNOCENT KHUBA: General Mdluli.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: So I - I just smiled and laughed.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Just - just laugh about it.

CHAIRPERSON: And General Mdluli was somebody that you knew?

MR HUMBULANI INNOCENT KHUBA: Yes, yes.

CHAIRPERSON: Okay. Hm.

MR HUMBULANI INNOCENT KHUBA: Not personally.

CHAIRPERSON: Not personally. You just knew his name?

MR HUMBULANI INNOCENT KHUBA: Never met physically.

CHAIRPERSON: Hm. You knew the name and the face or just the name/

MR HUMBULANI INNOCENT KHUBA: The name and the face.

10 **CHAIRPERSON:** Okay, alright. Yes. So he said that man will be ...

MR HUMBULANI INNOCENT KHUBA: The next President.

CHAIRPERSON: The next President?

MR HUMBULANI INNOCENT KHUBA: Yes.

CHAIRPERSON: Ja. Hm.

MR HUMBULANI INNOCENT KHUBA: Then after that he told me that he is the one who sent him to me and he - it is appreciating the work that I am doing and he said if I am anyhow seeing a suspicious vehicle following me while driving to Pretoria or in Pretoria or coming back to Limpopo or anywhere I must active General Ntlemenza. He has been put

20 there to - to assist me ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And when he indicated that I - I just said okay and ...

CHAIRPERSON: You were not too excited about this - all this?

MR HUMBULANI INNOCENT KHUBA: I - I was not excited. In fact I

was troubled.

CHAIRPERSON: You were troubled *ja*.

MR HUMBULANI INNOCENT KHUBA: I was - I was troubled ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And I just felt because I never considered my own safety to be in trouble. I worked in KZN. That is when I felt that my life was in - in - really under threat ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: But when I was investigating
10 rendition I never and - and more so because I knew the people I was investigating. I knew General Sibiya. I knew General Dramat. I knew Captain Maluleke. I never thought they were anyhow capable ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: So now I ...

CHAIRPERSON: You thought they were not capable of putting your life in danger or anything?

MR HUMBULANI INNOCENT KHUBA: *Ja*. I never thought they were capable.

CHAIRPERSON: Yes. *Ja*.

20 **MR HUMBULANI INNOCENT KHUBA:** That is why I just felt that it seems as they were implying that my life was in danger or I need and/or without them.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Then I will really suffer harm ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: But the truth of the matter is that I never really ...

CHAIRPERSON: You did not feel threatened in anyway?

MR HUMBULANI INNOCENT KHUBA: I never felt threatened, *ja*.

CHAIRPERSON: *Ja*. Huh-uh.

MR HUMBULANI INNOCENT KHUBA: Never felt threatened.

CHAIRPERSON: So - so in response to what he had to say your response was like what? Okay.

MR HUMBULANI INNOCENT KHUBA: I just - I just said okay.

10 **CHAIRPERSON:** *Ja*.

MR HUMBULANI INNOCENT KHUBA: Most - most of the time and I think that is my tendency. When we are having a very relaxed discussion I use okay as a dismissive rather than ...

CHAIRPERSON: Oh. As agreeing?

MR HUMBULANI INNOCENT KHUBA: Rather than as agree ...

CHAIRPERSON: Hm, okay.

MR HUMBULANI INNOCENT KHUBA: And then after that he - he asked me about the case again to say what is it that ...

20 **CHAIRPERSON:** So - I am sorry. When he said that General Mdluli had said to - had asked him to tell you that should you notice a suspicious car following you should activate General Ntlemenza. What did he mean? Did he mean you must phone General Ntlemenza? What did he mean?

MR HUMBULANI INNOCENT KHUBA: I took as if he meant that General Ntlemenza will be the one who is taking care of my safety.

CHAIRPERSON: Oh. Who would protect you?

MR HUMBULANI INNOCENT KHUBA: Ja.

CHAIRPERSON: Okay, okay. Yes. So the - just continue with the conversation then between yourself and General Ntlemeza?

MR HUMBULANI INNOCENT KHUBA: Ja. Then he started to ask about a ...

CHAIRPERSON: The case?

MR HUMBULANI INNOCENT KHUBA: The case.

CHAIRPERSON: Hm. The investigation?

10 **MR HUMBULANI INNOCENT KHUBA:** The investigation and that is when I indicated that I - I still have to ...

CHAIRPERSON: He was asking how far you - you were?

MR HUMBULANI INNOCENT KHUBA: Ja. What - what is that is delaying the finalisation?

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Then I said I still have - I am battling to get hold of General Lebeya because he had signed one of the success report. There was his - his signature and some comments there and I also informed him that I had requested a warning statement
20 from General Dramat. Now at that time I did not have General Lebeya's number. He is the one who got it for me.

CHAIRPERSON: He gave it to you there and then?

MR HUMBULANI INNOCENT KHUBA: There and there.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And - no I do not think he ...

CHAIRPERSON: He had ...

MR HUMBULANI INNOCENT KHUBA: Just produced the number.

CHAIRPERSON: Yes. *Ja*.

MR HUMBULANI INNOCENT KHUBA: He might have made some calls.

CHAIRPERSON: Some - okay.

MR HUMBULANI INNOCENT KHUBA: But what I remember vividly ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Is that he looked for the number
and he gave it to me.

10 **CHAIRPERSON:** Okay.

MR HUMBULANI INNOCENT KHUBA: Yes.

CHAIRPERSON: Hm, hm.

MR HUMBULANI INNOCENT KHUBA: And then I had to call
General Lebeya ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And I ...

CHAIRPERSON: While - while General Ntlemenza was there?

MR HUMBULANI INNOCENT KHUBA: *Ja* ...

CHAIRPERSON: Hm.

20 **MR HUMBULANI INNOCENT KHUBA:** And I put him on an open
speaker ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And that is when I indicated to
him that aye General I have been looking for you ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And then he said to me I can come to Pretoria.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I will be able to have a meeting with him ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And then it - it was fine. It was concluded that way.

CHAIRPERSON: Hm, hm.

10 **MR HUMBULANI INNOCENT KHUBA:** After that I served General Ntlemenza with refreshment and he left.

CHAIRPERSON: Okay. I think that is the right time to take the lunch adjournment. We are at nine minutes past one. We are going to adjourn and resume at 10 past two. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: We are going to dispose of the the earlier motion matter before we continue with the evidence of Mr Khuba. Mr Petersen
20 do you want to direct my attention to where the relevant amendment is.

ADV ROB PETERSEN: Yes Chair, in paragraph two the words have been added,

“Ought to ensure fairness to any implicated person”.

That’s the first change. That was addressed during the proceedings this morning and then at paragraph three has been

inserted making the old paragraph three now paragraph four.

CHAIRPERSON: Okay two is – is it a completely new order or is it an amended version of an old order?

ADV ROB PETERSEN: Paragraph two has been amended by adding the words at the end, after Naidoo's evidence the words,

“Ought to ensure fairness to any implicated persons”.

That is the only change up to that point.

CHAIRPERSON: Right and then you...[intervenes].

ADV ROB PETERSEN: Then we've inserted a paragraph three.

10 **CHAIRPERSON**: And that's a completely new three?

ADV ROB PETERSEN: That follows the guidance given this morning.

CHAIRPERSON: Ja but is it a completely new three?

ADV ROB PETERSEN: Yes it's a completely new paragraph.

CHAIRPERSON: Okay.

ADV ROB PETERSEN: And then paragraph four is the old paragraph three without any change.

CHAIRPERSON: Just repeat that please about four, just repeat what you have just said about four?

20 **ADV ROB PETERSEN**: It's exactly the same as the previous three, it's just now numbered four.

CHAIRPERSON: Okay, the introductory part of paragraph one is it accurate to say when he gives evidence at any hearing of the Commission in the circumstances in which he will be giving evidence?

ADV ROB PETERSEN: Before I respond I need to be quite sure that I'm understanding you.

CHAIRPERSON: Yes, the part that I'm concerned about is at any hearing of the Commission, namely could it be said that he will be giving evidence at hearing of the Commission when he's giving evidence away from this venue?

ADV ROB PETERSEN: Would it be satisfactory to say when he attends to give evidence to the Commission or when he gives evidence to the Commission?

CHAIRPERSON: Oh I was thinking more about when he gives evidence to the Commission.

10 **ADV ROB PETERSEN:** But when he gives to the Commission.

CHAIRPERSON: Ja and I'm crossing out the first words in the first line, namely, "the following measures shall be taken", I just start with to ensure that and then delete the comma after the bracket where it says the Act and then delete, "attends to" so it should read,

"To ensure that when blah blah gives evidence to the Commission",

So we take out hearing to the Commission.

ADV ROB PETERSEN: Would it be okay to keep the comma after the bracketed, the Act because that's a separate phrase, who is a protected
20 person.

CHAIRPERSON: Oh I overlooked the comma before who, earlier to ensure when...[intervenes].

ADV ROB PETERSEN: So if you contend to have two commas.

CHAIRPERSON: No I think you're right we keep the comma that I said we must take out, yes we keep that comma.

ADV ROB PETERSEN: So I think that is clear if I can just read it back to you to make sure that I have your changes,

“To ensure that when Lieutenant Colonel Naidoo, Naidoo who is a protected person as defined in the witness protection Act 112 of 1998 the Act, gives evidence to the Commission”,

And then it's not changed after that.

CHAIRPERSON: Yes then it's not changed after that. Then when I read, earlier on the paragraphs I think everything was fine. Where is the part that talks about the room, remember when I said I gained the
10 impression as if the order necessarily contemplated that the room from which you'd give evidence would be in the same building.

ADV ROB PETERSEN: I think it's 1.2 that you may have had in mind.

CHAIRPERSON: Should we say, a separate location, how does that sound?

ADV ROB PETERSEN: And then keep – could we keep (protected witness room) because that runs then right through the order?

CHAIRPERSON: Well shouldn't we say, protected witness location, if we say location then what I'm having in mind is I would read it but you can still have it reprinted on the typed version, how does that sound.
20 In other words, we would say, protected location throughout?

ADV ROB PETERSEN: I'm just checking Chair, I think that will be alright.

CHAIRPERSON: Yes.

ADV ROB PETERSEN: Just checking.

CHAIRPERSON: Because I take it location would include room.

ADV ROB PETERSEN: Yes.

CHAIRPERSON: Ja.

ADV ROB PETERSEN: Yes.

CHAIRPERSON: Would that be fine?

ADV ROB PETERSEN: That would be fine.

CHAIRPERSON: Okay so then – and I want to look at two, I think where we say, may be varied do we say varied or amended or added to even though varied covers everything...[intervenes].

ADV ROB PETERSEN: Mr varies was very...[intervenes].

10 **CHAIRPERSON:** You know some of these things you want to...[intervenes].

ADV ROB PETERSEN: Well it's your order Chair, obviously...

CHAIRPERSON: Yes I think just...[intervenes].

ADV ROB PETERSEN: It seems to me that varied covers everything.

CHAIRPERSON: No it does but I think I would prefer to have added to – amended can maybe go out but...[intervenes].

ADV ROB PETERSEN: How about varied or added to or supplemented?

CHAIRPERSON: Maybe amended or supplemented.

ADV ROB PETERSEN: Maybe amended or supplemented?

20 **CHAIRPERSON:** I think that's – I like that maybe amended or supplemented ja and then I must just look at three. I think let us say if common his opinion that is necessary to ensure and in three we say nothing in this order precludes the granting by the Chairperson of an order *mero motu* or on application by a person who is or may be implicated by the evidence of Naidoo allowing that person to have sight

of having to have been shown a photograph of him which has been approved by the Chairperson for the purpose provided that in the case of an application by another person [Inaudible- Chairperson reading to himself]. I'm inclined to stop at purpose and delete the provided part.

ADV ROB PETERSEN: You want to leave that out?

CHAIRPERSON: Ja on the basis that when they apply, obviously they know that they need to motivate and if they have to choose between picture and have sight of, they would know why that particular one. What do you think?

- 10 **ADV ROB PETERSEN:** I'm concerned it does seem to me that there may be a response to this order of many applications which are not soundly motivated that you would then have to deal with and the proviso is intended to just make it clear that it's really those that have difficulty in preparing their answer who are being accommodated here and that they need to explain what their difficulty is in connection with the content of the evidence. So that's the purpose of the draft proviso I would be concerned that there may be temptation to apply without motivation.

- CHAIRPERSON:** You see the idea about that person being a person
20 who has applied for is in the process of applying for, in terms of Rule 34 of making a statement is a good idea but I'm not sure whether one should include it in the order. I'll tell you what we should do – I'll tell you what let's stop at purpose we will deal with them as they come, if necessary I can issue a direction in regard to one or all of them to say, if you apply for this, this is what you must comply with but for now I

think let's just stop at purpose.

ADV ROB PETERSEN: Chair the very idea of an application is it implies that it must be properly motivated.

CHAIRPERSON: Yes and if it's not properly motivated we'll – once we are aware of it I could issue a directive to say, deal with A, B, C, D.

ADV ROB PETERSEN: Yes and if you get an unsatisfactory application then you could make those obligations when you deal with it. I say when you receive an unsatisfactory application then you could make those observations when deciding how to handle it.

10 **CHAIRPERSON:** Ja and then wherever the – in the second line paragraph one where it says it defines Colonel Naidoo as Naidoo I'd like to stay with maybe just Colonel Naidoo.

ADV ROB PETERSEN: Colonel Naidoo.

CHAIRPERSON: Ja Colonel Naidoo and throughout the order.

ADV ROB PETERSEN: Yes.

CHAIRPERSON: Ja so it doesn't just say Naidoo.

ADV ROB PETERSEN: Yes.

20 **CHAIRPERSON:** Alright I'll now read it out as amended and then and where it says Naidoo I will say Colonel Naidoo and then it can be printed and then it can be signed and made available. The order that I make in regard to the application that I heard this morning brought by Colonel Naidoo reads as follows,

“It is hereby ordered that,

1) To ensure that when Lieutenant Colonel Dhanajaya

Dhanaloo[?] Naidoo (Colonel Naidoo) who is a protected

person as defined in the witness protection Act 112 of 1998 (the Act) gives evidence to the Commission, the location to which he has been relocated in terms of the Act and the new identity which he has been given or which he has assumed for his protection pursuant to the Act are not disclosed.

1.1 He will not be present at the hearing room at any time.

1.2 A separate location (the protected witness location) will be provided.

10 1.3 He will give his evidence from the protected witness location.

1.4 No camera will be permitted in the protected witness location.

1.5 An audio link from the protected witness location will be provided so that his evidence can be heard in the hearing room when he gives it.

1.6 Except as stated in paragraph 1.7 below, the Chairperson, the relevant evidence leaders and all other participants in the proceedings will be located in the hearing room when Colonel Naidoo gives evidence”.

20 I’m stopping there Mr Petersen it looks like we don’t really need 1.6 because somewhere you have an order about who – about nobody allowed to go to the protected witness location, isn’t it?

ADV ROB PETERSEN: Are you saying Chair, that if 16 is deleted it will be applied in any event?

CHAIRPERSON: Ja because where else can they be if they can’t be

where the witness will be.

ADV ROB PETERSEN: That seems to me to be correct Chair.

CHAIRPERSON: Yes.

ADV ROB PETERSEN: So then there's a renumbering of the...[intervenes].

CHAIRPERSON: Yes so we delete 1.6 and then 1.7 becomes 1.6 and then – so...[intervenes].

ADV ROB PETERSEN: With consequential renumbering?

CHAIRPERSON: Consequential renumbering so they new 1.6 then
10 reads,

“1.6 No persons other than the Chairperson (if and when he considers it appropriate) the relevant evidence leaders and those necessary to protect Colonel Naidoo when he attends to give evidence...[intervenes].

ADV ROB PETERSEN: Excuse me for interrupting, we then again remove attends to give evidence, when he gives evidence.

CHAIRPERSON: Just repeat that.

ADV ROB PETERSEN: Well I'm not sure now when he attends to give evidence we just need to be sure that, that is maintaining the
20 uncertainty of location.

CHAIRPERSON: Oh okay when he gives evidence, we just say when he gives evidence.

ADV ROB PETERSEN: When he gives evidence.

CHAIRPERSON: Ja I read paragraph 1.6 again,

“1.6 No persons other than the Chairperson (if and when he

considers it appropriate), the relevant evidence leaders and those necessary to assist or protect Colonel Naidoo when he gives evidence will be permitted to enter the protected witness location.

10 1.7 The Commission's safety and Security Advisor who is the head of the security for the Commission or in his absence another person specifically designated by the Chairperson will have the responsibility of controlling access to the protected witness location in terms of this order and of ensuring that only Colonel Naidoo and other persons permitted in terms of paragraph 1.6 above enter it. So it says 1.7 but now it will be 1.6 and then,

1.8 Subject to usual rules applicable to the conduct of the Commission's proceedings a) members of the public, including the media may be present in the hearing room. b) sound reaching the hearing room via the audio link from the protected witness location may be broadcast and the proceedings in the hearing room may be filed and broadcast.

20 1.9 No video or other image of Colonel Naidoo whatsoever may be taken or may be broadcast.

1.10 No person may photograph or publish any photograph or any image of any other person engaged in or responsible for the protection of Colonel Naidoo when he gives evidence.

1.11 No document or other evidence revealing the location to which Colonel Naidoo has been relocated in terms of the Act or his new identity shall be tendered or otherwise placed on record”.

Is it clear from this order that, should anyone become aware of where the protected witness location is, they may not publish that – they may not publish that information or should we add something?

ADV ROB PETERSEN: I think something could be added
10 but...[intervenes].

CHAIRPERSON: Do you think it's adequately...[intervenes].

ADV ROB PETERSEN: Four which reminds people of the order that you gave on the 17th of September would have the same effect.

CHAIRPERSON: Would have the same effect ja.

ADV ROB PETERSEN: And if sufficient care is taken over the protected witness location as is intended then it would seem to be unnecessary.

CHAIRPERSON: Ja okay:

- 20 “2. This order may be amended or supplemented by the Chairperson at any time if, in his opinion, that is necessary to ensure the protection of Colonel Naidoo or any other person in connection with Colonel Naidoo's evidence or to ensure fairness to any implicated person.
3. Nothing in this order precludes the granting by the Chairperson of an order, *mero motu* or on application by a

person who is or may be implicated by the evidence of Colonel Naidoo, allowing that person to have sight of Colonel Naidoo or being shown a photograph of him which has been approved by the Chairperson for the purpose.

4. This order does not derogate from the order made on 17 September 2019 as required by Section 18 of the Act prohibiting publication of any information including any drawing, picture, illustration, painting, photograph whether produced through or by means of computer software on a screen or a computer printout as contemplated in the Films and Publications Act 1996 at 65 of 1996 or no pamphlet, poster or other printed matter which may may disclose:

4.1 The place of safety or location where Colonel Naidoo is or has been under protection or where he has been relocated in terms of the Act.

4.2 The circumstances relating to his protection.

4.3 The identity of any other protected person and the place of safety or location where such person is being protected.

4.4 Colonel Naidoo's relocation or change of identity.

That is the order that I make in this – in that matter and once the order has been printed it should be disseminated to all media houses and made available to the public.

ADV ROB PETERSEN: Yes thank you Chair.

CHAIRPERSON: Thank you. Okay thank you.

ADV ROB PETERSEN: May I be excused?

CHAIRPERSON: You are excused. Thank you. We can then resume the evidence relating to the evidence of Mr Khuba. Ms Wentzel are you ready?

ADV SUSAN WENTZEL: Yes I am thank you Chair.

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: Mr Khuba before the lunch adjournment we were dealing with the meeting that you had with General Ntlemeza at
10 your home during October 2013 which is dealt with from pages 14 and 15 of your statement.

CHAIRPERSON: Yes he said he gave him some drinks and after that General Ntlemeza left his house, is that right? Is that right? Left your house – he left your house after a – after you had given drinks and so on?

MR HUMBULANI INNOCENT KHUBA: That is correct. I think there is a part that I did not clearly cover there.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Because when he mentioned
20 about General Mdluli for me was a surprise because when I worked with Colonel Moukangwe he never made mention of General Mdluli. I worked him for – I worked with him for a very long time but he never made – even an indication of anything relating to Mdluli. Now that gave me a consent but I wanted to indicate is that he said to me that my report was the one which was holding back his move to the Hawks.

And as I indicated I could not really take him serious because I just listened to him but I did not really take him serious. But I put it in my mind. Thank you.

CHAIRPERSON: Did you think he was kind of exaggerating the situation namely – you – did you think that well if there was to be a vacancy in the Hawks it would be – the position would be advertised and different people would apply. This thing of him saying your report – the delay in your report was holding him back was just some exaggeration on his part of the position.

- 10 **MR HUMBULANI INNOCENT KHUBA:** No I did not really take it as an exaggeration but I think from the background that he told me that he was going to move to IPID and later came and say the political principles are no longer wanting him to go to IPID – IPID by the Hawks. So it made me not to – I just felt that I should not really entertain what he was saying.

CHAIRPERSON: Hm. But was that because you had a feeling that if things were to happen the way he was saying it would not be – they would not be happening the right way or...

MR HUMBULANI INNOCENT KHUBA: No.

- 20 **CHAIRPERSON:** Is it because you did not believe that – you did not believe him?

MR HUMBULANI INNOCENT KHUBA: No I just felt also that the process that it will take to get rid of Dramat would not really be an easy one.

CHAIRPERSON: Yes. Would not be an easy one?

MR HUMBULANI INNOCENT KHUBA: Easy one yes.

CHAIRPERSON: Oh okay. Okay. When he said that his principle – political principles no longer wanted him to go to the Hawk – to IPID but wanted him to go to the Hawks who did you understand him to refer to?

MR HUMBULANI INNOCENT KHUBA: To tell you the honest fact I had a challenge I could not really put an individual there because he never said a political principle he said principles.

CHAIRPERSON: Oh I thought you said he said political principle.

10 **MR HUMBULANI INNOCENT KHUBA:** No.

CHAIRPERSON: Oh he did not put it that way?

MR HUMBULANI INNOCENT KHUBA: No.

CHAIRPERSON: Oh what did he say?

MR HUMBULANI INNOCENT KHUBA: He talked about political principles that they would...

CHAIRPERSON: Oh I thought that was what I said. Ms Wentzel did you hear the same thing?

ADV SUSAN WENTZEL: Yes I think that what he is saying is that the one is singular and the other is plural.

20 **MR HUMBULANI INNOCENT KHUBA:** Yes.

CHAIRPERSON: Oh is that the distinction you are making?

MR HUMBULANI INNOCENT KHUBA: Yes that is the distinction.

CHAIRPERSON: Oh no, no, no I am sorry. Okay.

MR HUMBULANI INNOCENT KHUBA: Yes.

CHAIRPERSON: So he said political – his political principle.

MR HUMBULANI INNOCENT KHUBA: Ja.

CHAIRPERSON: One – singular?

MR HUMBULANI INNOCENT KHUBA: No, no

CHAIRPERSON: Plural?

MR HUMBULANI INNOCENT KHUBA: Ja he was referring...

CHAIRPERSON: Oh I thought I was using plural. Okay ja.

MR HUMBULANI INNOCENT KHUBA: Ja.

CHAIRPERSON: Ja but who – what was your understanding of who he was referring to?

10 **MR HUMBULANI INNOCENT KHUBA:** My – I could not place – I could not place the face Chairperson but I just thought probably if we talk about policing it will be the Minister.

CHAIRPERSON: Hm. Okay alright. Continue.

MR HUMBULANI INNOCENT KHUBA: Yes.

ADV SUSAN WENTZEL: In paragraph 51 of your statement you said that you were battling to get hold of General Lebeya and that General Ntlemenza assisted you in doing that. You said you wanted to get hold of him because he was one of the people who had signed the success reports. What is a success report? What were you referring to there?

20 **MR HUMBULANI INNOCENT KHUBA:** A success report in this situation it was just – it is a one pager report where the writer indicated that he arrested specific individual on this particular day and what happened to the people

ADV SUSAN WENTZEL: And what was that concerning?

MR HUMBULANI INNOCENT KHUBA: It was concerning the

Zimbabwean Nationals.

ADV SUSAN WENTZEL: And the – so the arrest of the Zimbabwean Nationals?

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: And was there any success report by Dramat?

MR HUMBULANI INNOCENT KHUBA: No.

ADV SUSAN WENTZEL: Now after you had given General Ntlemeza some refreshments and he left your house how did you feel?

MR HUMBULANI INNOCENT KHUBA: I was – I was – I was afraid.

10 That is why I went to my wife and indicated that I do not know what I got myself into. Because at the time I knew General Mdluli to be on suspension and it worried me that he took interest on matters when he – it is outside. So – and also his involvement in a lot of cases like the politically charged issues. For example there were – there was an issue about the recordings. By that time it was on the media that there was recording of the President or something but it related to him that he gave the President something. So I had a little bit of information of what was happening with Richard Mdluli.

ADV SUSAN WENTZEL: And so...

20 **CHAIRPERSON:** I am sorry I – I am sorry Ms Wentzel.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Earlier on I had wanted to ask you something and I forgot. When you said that – you said that somebody – you mentioned somebody's name and you said when you worked with him he never mentioned General Mdluli. You remember I – when you said that?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Ja what was the name again of the person you talking about?

MR HUMBULANI INNOCENT KHUBA: It is Colonel Moukangwe.

CHAIRPERSON: Ja who was he in the context of what General Ntlemeza has said because I think you were saying that because General Ntlemeza said General Mdluli said if you see a suspicious car following you you should activate General Ntlemeza.

MR HUMBULANI INNOCENT KHUBA: Colonel Moukangwe I knew him
10 to be member of CI Crime Intelligence.

CHAIRPERSON: That is Crime Intelligence ja.

MR HUMBULANI INNOCENT KHUBA: Crime Intelligence.

CHAIRPERSON: Which was under General Mdluli at the time?

MR HUMBULANI INNOCENT KHUBA: Where it was under General Mdluli. By that time he was on suspension I think.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Now also given the fact that I worked on the Rendition case with Colonel Moukangwe I would have expected that he would talk about General Mdluli but he never
20 mentioned him.

CHAIRPERSON: I am trying to understand why your thought of him is relevant.

MR HUMBULANI INNOCENT KHUBA: The thought of him it is relevant in this way.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Because I would have expected that General Mdluli will be more closer to CI individuals.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Rather than General Ntlemenza.

CHAIRPERSON: Oh okay.

MR HUMBULANI INNOCENT KHUBA: And that CI person...

CHAIRPERSON: Okay.

MR HUMBULANI INNOCENT KHUBA: Was doing investigation with me.

CHAIRPERSON: Oh. So – so in other words you would have expected
10 that – you said it is Moukangwe?

MR HUMBULANI INNOCENT KHUBA: Ja Colonel Moukangwe.

CHAIRPERSON: Colonel Moukangwe.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: May be would have been told by General Mdluli to tell you that if you see a suspicious car following you you must activate him or at least you would have expected that at some stage or another he would have mentioned General Mdluli but he never?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: And you were wondering why General Mdluli was
20 giving a message to General Ntlemenza about your protection in circumstances where General Ntlemenza was not even at Crime Intelligence.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: That is what is in your mind.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay. Alright.

ADV SUSAN WENTZEL: So when you said you started to feel afraid what did you do?

MR HUMBULANI INNOCENT KHUBA: I then approached the then Acting Executive Director Ms Koekie Mbeki and I requested that I be removed from the team. But when I had discussion with her I never spoke about the meeting that I had with ...

CHAIRPERSON: General Ntlemeza.

MR HUMBULANI INNOCENT KHUBA: General Ntlemeza. I only
10 highlighted the issue of leaks.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: That I was not happy and – but the real core was the meeting that I had.

CHAIRPERSON: With General Ntlemeza.

MR HUMBULANI INNOCENT KHUBA: That is correct. The issue of the – the leaks was also part of that but the main issue there was when I heard about General Mdluli.

CHAIRPERSON: Why did you not consider it appropriate to tell Ms Mbeki about the main issue?

20 **MR HUMBULANI INNOCENT KHUBA:** The problem was – it was very, very difficult to read Ms Mbeki. It was very, very difficult. To such an extent that I could not really understand whether she support the investigation whether she is against the investigation. Because if then she was really, really, really in support of me going after these people like General Dramat and others why did she query my presence in head

office when and she said I will cancel your accommodation what are you doing here? So for – for Ms Mbeki even today I cannot really tell where she stood.

CHAIRPERSON: Where she stood on this issue of the Rendition?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes. So you – you chose to be circumspect about what you told her.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes. Okay.

10 **ADV SUSAN WENTZEL:** Now after this meeting in October 2013 did you have any further meetings with General Ntlemeza?

CHAIRPERSON: Well I am not sure that he has finished telling us about the discussion between himself and Ms Mbeki.

ADV SUSAN WENTZEL: Oh yes Chair.

CHAIRPERSON: I think he has not.

ADV SUSAN WENTZEL: No he has not – you are correct. Thank you Chair.

CHAIRPERSON: Ja. Just con – just finalise your – complete your conversation with Ms Mbeki?

20 **MR HUMBULANI INNOCENT KHUBA:** Ja when I told her that I want to be removed from the team she refused and said there is no-one who can be able to do this and the Minister will not be happy about this decision for you to leave this investigation.

CHAIRPERSON: Had you met the Minister personally? Did you know each other quite well? Why would he particularly not be happy if you

were moved away from the – this investigation?

MR HUMBULANI INNOCENT KHUBA: I interpreted that from the fact that the Minister referred this case.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Not necessarily that I knew the Minister. I never had any interaction with the Minister.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Personally.

CHAIRPERSON: Hm. So your interpretation – interpretation of what
10 Ms Mbeki was saying was not that the Minister would not want you as a person to be moved out of the investigation but that he might not like the idea that now somebody else must take over.

MR HUMBULANI INNOCENT KHUBA: For me...

CHAIRPERSON: In other words did you think the concern – do you think that as far as Ms Mbeki was concerned she thought that the Minister would not be happy with the changing of investigator – of lead investigators not necessarily that he wanted you to be the person doing the investigation as such?

MR HUMBULANI INNOCENT KHUBA: That one Chairperson it is very
20 difficult to say on the basis that by that time I had already probably sent numerous reports – progress reports. What I thought was probably because of the good work I was doing. Probably he was happy with what I was doing. But also the second point that you indicated which means the change of investigator because any change in the investigation team destabilises the case itself.

CHAIRPERSON: Okay thank you.

ADV SUSAN WENTZEL: After this did you have cause to meet General Ntlemeza again?

CHAIRPERSON: Or maybe to finish. Did you then accept that you just had to continue with the investigation when you were told that there is nobody else who can take over and the Minister would not be happy?

MR HUMBULANI INNOCENT KHUBA: Ja I accepted that.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: More especially if the name of a
10 political principle is mentioned you feel more obligation to help the
country and I felt that I need to continue.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Thank you Chair. After this meeting in
December or October 2013 did you have a further meeting with General
Ntlemeza?

MR HUMBULANI INNOCENT KHUBA: I had a last meeting with him but
that was December 2014 it was on the 6th.

ADV SUSAN WENTZEL: Yes and why did you have that meeting and
where did you have it?

20 **MR HUMBULANI INNOCENT KHUBA:** He had called me and he said I
should meet with him at Wimpy. He had something to talk to me about.
I went to the restaurant and when I arrived he was already seated
inside. When I sat down he said he wanted to tell me the good news.
And he said there was going to be a hit on Dramat I must watch
television in the coming weeks. I took the information as I always did

just to listen to him and then after some – I do not know how many weeks had already passed but what he told me came to pass. When I saw on television that General Dramat had been suspended and then he was appointed to act in his position.

CHAIRPERSON: Now when he met – when you met with him at Wimpy – at the Wimpy is it what Cycad Centre?

MR HUMBULANI INNOCENT KHUBA: Ja.

CHAIRPERSON: When you met him there how long after you had sent your first report was it? How much time had lapsed since you – since
10 your sending the first report?

MR HUMBULANI INNOCENT KHUBA: It will be almost ten to eleven months.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And probably I need to add and say after I sent the first report.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: The contact just died down. He never contacted me as regularly as he used to be.

CHAIRPERSON: So are you saying that when you met him at the
20 Wimpy Centre you had sent your first report to the NPA about ten or eleven months before?

MR HUMBULANI INNOCENT KHUBA: The first report it was ten to eleven but the second report because was – sent in March.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: This meeting was after even the

second report.

CHAIRPERSON: Oh this meeting was after even the second report?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Oh okay. How soon after or how long after this – the second report if you are able to remember more or less?

MR HUMBULANI INNOCENT KHUBA: I am not be able to calculate out of my head but...

CHAIRPERSON: Yes. Yes.

MR HUMBULANI INNOCENT KHUBA: It took place – the second report
10 was in March.

CHAIRPERSON: Yes okay.

MR HUMBULANI INNOCENT KHUBA: And the meeting was in
December.

CHAIRPERSON: Oh 2014?

MR HUMBULANI INNOCENT KHUBA: 2014.

CHAIRPERSON: Oh so the first report you would have sent in 2013, is that right?

MR HUMBULANI INNOCENT KHUBA: The first report was in January
2014.

20 **CHAIRPERSON:** Oh and then the second report in March?

MR HUMBULANI INNOCENT KHUBA: Ja.

CHAIRPERSON: Oh so it took quite some months before he – he had good news to tell you?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay alright yes.

ADV SUSAN WENTZEL: Thank you. Chair the first report...

CHAIRPERSON: So – So I am sorry. So when he said – so the good news that he was telling you about was it that there was a hit – there was going to be a hit on Dramat or – or he said he has moved to the Hawks had arrived – or is that what he said? Or how did he put it?

MR HUMBULANI INNOCENT KHUBA: That part of him moving to the Hawks I already knew and he never labour on that in discussion.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I knew exactly when he said
10 there was going to be a hit and he said it is good news because he told me that my report is the one that is withholding his move to the Hawks.

CHAIRPERSON: Hm. Hm. But how did you know that – before that meeting how did you know that his move to the Hawks had arrived? I am taking this from your statement in paragraph 54 where you say:

“I found General Ntlemenza seated inside. He said
that his time to move – or he said his time – his time
to move to the Hawks had arrived.”

But you say that even before that you – you knew about his move to the Hawks. Are you referring simply to the statement he had made to you
20 earlier to the effect that your report was what was delaying his move to the Hawks? Is that what you are basing that on or did you hear something else about his move to the Hawks?

MR HUMBULANI INNOCENT KHUBA: That is correct. The earlier meeting we had that is when he said he needed to move to the Hawks.

CHAIRPERSON: hm.

MR HUMBULANI INNOCENT KHUBA: That is the meeting that was held I think around October that is 2013.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Now in 2014 that is when he told me about the hit as the good news.

CHAIRPERSON: Hm. Hm.

MR HUMBULANI INNOCENT KHUBA: Even though he talked about the – the issue of his move he was not really ...

CHAIRPERSON: Excited about that.

10 **MR HUMBULANI INNOCENT KHUBA:** Ja the main issue was the hit on Dramat.

CHAIRPERSON: Oh what he was excited about was the hit.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay, okay. But you understood that the hit would open the door...

MR HUMBULANI INNOCENT KHUBA: The door.

CHAIRPERSON: The door to him to go to the Hawks.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay.

20 **ADV SUSAN WENTZEL:** Thank you Chair.

CHAIRPERSON: So he said you must watch the news on TV in the coming weeks?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes continue.

ADV SUSAN WENTZEL: And just so that we continue with the

statement you said you did watch the news and you say...

CHAIRPERSON: Did you see the hit? You watched the news and did you see the hit?

MR HUMBULANI INNOCENT KHUBA: Um – ja. I do not know whether I can use his term whether it was a hit?

CHAIRPERSON: Well but at least did you see something that you interpreted to be the hit that he was referring to?

MR HUMBULANI INNOCENT KHUBA: Yes.

CHAIRPERSON: Or you saw something you did not know if it was the
10 hit that he was referring to but later on you heard from him that it was the hit or ...

MR HUMBULANI INNOCENT KHUBA: I saw something happen.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And I thought it is the hit that he spoke about.

CHAIRPERSON: Yes. Tell me about what you saw?

MR HUMBULANI INNOCENT KHUBA: There was an issue about the suspension of General Dramat and that he was appointed to act in that position. So it happened exactly as he said.

20 **CHAIRPERSON:** Oh okay – yes okay, okay. So – so it – the TV – the news show – now revealed that the – General Dramat was suspended and that General Ntlemenza was going to act in his position?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay. Was the announcement on like simultaneous of the two or you do not really know – cannot remember?

MR HUMBULANI INNOCENT KHUBA: I cannot remember.

CHAIRPERSON: Ja.

MR HUMBULANI INNOCENT KHUBA: But ...

CHAIRPERSON: It would have been close to each other?

MR HUMBULANI INNOCENT KHUBA: It had been close.

CHAIRPERSON: Ja.

MR HUMBULANI INNOCENT KHUBA: Ja.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: What did you think after this?

10 **MR HUMBULANI INNOCENT KHUBA:** After that ...

CHAIRPERSON: Did he phone you – I am sorry – I am sorry. Do not forget what you want to say. Did he maybe phone you after the hit happened on the news to say did you see the hit?

MR HUMBULANI INNOCENT KHUBA: No he gave me a call once while he was working that we need to meet.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: But the meeting never materialised.

CHAIRPERSON: That is now – was that when he was already acting in
20 General Dramat's position?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay alright. I am sorry I interrupted you while you were responding to a question that Ms Wentzel put to you.

ADV SUSAN WENTZEL: After this and you then see the television and it has happened exactly as he had said what did you think?

MR HUMBULANI INNOCENT KHUBA: I started – you know it started to confirm the challenges that I had with the statement of Madilonga and the entire issue of Rendition. It really, really troubled me but it was something that I could not do anything about it. The statement of Madilonga I had a number of issues with that statement. The first I had already indicated yesterday that he had a statement that he has signed which was not commissioned and that is where he indicated that nothing went wrong. Those people were just deported correctly. Now that was the first challenge and the second statement where he change
10 his version and also indicated that he forced to make that statement, the first one. Now the other issue was the issue that – I also had the documents relating to Zimbabwean authority thanking Crime Intelligence for the good work done when they assisted them in getting hold of their Nationals. That document made no mention of Dramat. In fact it is directed to Crime Intelligence. And I felt if then Dramat was the pioneer of this thing they were supposed to have written to him directly. So his name was not mentioned. That letter it was an official letter on the basis that it ended up in the hands of the Provincial Commissioner of Gauteng, Commissioner Petrus and he wrote an
20 attachment back to Crime Intelligence thanking them for the good work done. So there were also issues of the analysis of statement that I did which indicated that he was not truthful with the information and the issue is that...

CHAIRPERSON: That is Madilonga?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes okay.

MR HUMBULANI INNOCENT KHUBA: There was also an issue of the call which was made at Beit Bridge because in his statement it was put in such a way that as if it indicated that he – he – Dramat is the one who opened way for the deportation. But the truth of the matter is that that call was made on the 4th and the actual Rendition of these Zimbabwean Nationals took place on the 8th. And the other issue was the level of interference that I had in the investigation itself. It really strengthened my doubt whether this thing was done in good faith. I am
10 not saying that that Rendition never took place I am just saying was it done then – I mean the whole investigation, the setup and when it started was it done in good faith?

CHAIRPERSON: Are you raising that question because of the fact that the Zimbabwean authorities directed their letter of appreciation to Crime Intelligence and yet people who were being investigated in relation to the Rendition issue were people who were in the Hawks and you – are you asking the question why would the letter be directed to Crime Intelligence if the people were really the masterminds were in the Hawks why was it not directed to the Hawks?

20 **MR HUMBULANI INNOCENT KHUBA:** That is correct.

CHAIRPERSON: Hm Okay.

ADV SUSAN WENTZEL: Mr Khuba could you please turn to page 52 it is Annexure 5 in the bundle in front of you. Is that the letter that you are referring to?

MR HUMBULANI INNOCENT KHUBA: I beg your pardon page?

ADV SUSAN WENTZEL: Page 52.

MR HUMBULANI INNOCENT KHUBA: Page 52 on?

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Page 52 it is a letter with the heading or letterhead Zimbabwe Republic Police.

ADV SUSAN WENTZEL: Just look at the page numbers on the top right hand side.

MR HUMBULANI INNOCENT KHUBA: Okay.

CHAIRPERSON: Remember 50...

10 **MR HUMBULANI INNOCENT KHUBA:** Yes. Let me check?

CHAIRPERSON: Remember when I said when she mentions the page she will not mention 0 before 52.

MR HUMBULANI INNOCENT KHUBA: That is correct Chairperson.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Yes that is the one.

CHAIRPERSON: Okay. Well Ms Wentzel you might wish to read into the record some relevant parts of it or the whole of it?

ADV SUSAN WENTZEL: Yes I intend to do so. If you have a look at the letter it is dated the 14th March 2001 to the Commander...

20 **CHAIRPERSON:** 2011.

ADV SUSAN WENTZEL: 11 I beg your pardon. And addressed to Commander Criminal Investigations Unit South Africa Police Service Pretoria and it is marked for the attention of Colonel Ntteni, is that right?

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: The heading of the letter is “Letter of appreciation of good work performed by your intelligence officers.” And then the officers are named. It says:

“I wish to express my profound gratitude in the exemplary professionalism, brevity and dedication to duty that was exhibited by your abovementioned operatives. Our criminal investigation department Bulawayo was investigating a case of murder involving a senior police officer of the Zimbabwean Republic Police the late Chief Superintendent Chatikobo who was killed in Bulawayo on the 18th September 2010 by the accused Gordon Dube, Johannes Nyone and three others. Soon after committing the offence the two mentioned accused persons fled Zimbabwe and sought refuge in Diepsloot Squatter Camp Johannesburg in the Republic of South Africa. We passed on information to the abovementioned officers regarding the two accused persons who reacted swiftly, managed to arrest the two fugitives and recovered a CZ pistol that was taken from the deceased police officer in Zimbabwe. During the period 21st February to 1st March 2011 the same team assisted me and my team when I was conducting some investigations in the Republic of South Africa. I really enjoyed the manner and

fashion the abovementioned officers aligned themselves to police work despite being junior officers. May your respective...”

CHAIRPERSON: Hang on Ms Wentzel. Okay we adjourn for five minutes for the technicians to attend to their problem.

ADV SUSAN WENTZEL: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

10 **INQUIRY RESUMES**

CHAIRPERSON: Yes. Let us proceed. I think - I do not know if you took note of where you were when the problem started.

ADV SUSAN WENTZEL: Yes (indistinct).

CHAIRPERSON: Okay. Your microphone.

ADV SUSAN WENTZEL: Sorry.

CHAIRPERSON: Huh-uh.

ADV SUSAN WENTZEL: We got up to page 53 of the bundle towards the end of the letter. It says:

20 “May your respected office convey my appreciation to all of them? I also wish to thank you and Captain Busang for the support rendered to me and my team during the visit. Best regards, E Makodza Assistant Commissioner CID Co-ordinator Bulawayo Matabeleland North and South Provinces.”

Is that the letter you were referring to?

MR HUMBULANI INNOCENT KHUBA: (No audible reply).

ADV SUSAN WENTZEL: Mr Khuba. Is that the letter that you were referring to?

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: And if you have a look at what is called Annexures B, C, D onwards from pages 54 through to 58 with the first letter addressed to the Provincial Commissioner SA Police Service Gauteng on 24 March 2011. Recommendation for good work performed by Members of Crime Intelligence. Then it says:

10 “Attached herewith a minute dated 14 March 2011 from CID Provincial Head Quarters Bulawayo Zimbabwe. For your information. The members involved are stationed at Pretoria Central Crime Intelligence Station. It would be appreciated if the members can be called to your office to congratulate them for the good work that was done.”

 And following that you will see that letters of appreciation were then sent to these members under a heading Letter of
20 Appreciation employees of Pretoria Central CIG and it says:

 “Apprehending wanted criminals who fled from Zimbabwe after murdering Zimbabwean Police Chief.”

Is that correct?

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: Now if we can go back to the misgivings you said you started to have about Colonel Madilonga's statement which you deal with on pages 16 and 17 of your statement. You said earlier that - you referred again to the two statements that he had given. Could you just clarify one thing?

In the first statement which you testified to yesterday was not commissioned did that refer in any way to General Dramat?

MR HUMBULANI INNOCENT KHUBA: No.

ADV SUSAN WENTZEL: And the second statement that was
10 commissioned did that one refer to General Dramat?

MR HUMBULANI INNOCENT KHUBA: Yes.

ADV SUSAN WENTZEL: And what were you told by Colonel Madilonga was the reason for the discrepancy? Did you interrogate him on this?

MR HUMBULANI INNOCENT KHUBA: I asked him about the statement and he said he was forced to make the first one which means he implied that the first one was in correct. The correct one was the second one.

ADV SUSAN WENTZEL: And what did you think about that?

MR HUMBULANI INNOCENT KHUBA: For me it did not make sense
20 because if he was really forced to implicate - not to implicate Dramat in the first one. They would have had it commissioned so that he could not have an opportunity to deviate from that version. However when I drew that statement and when I also showed him the copy of that statement it was not commissioned.

CHAIRPERSON: Did he say who forced him to do the first one?

MR HUMBULANI INNOCENT KHUBA: He did not indicate the name but he said he received a call and was told what to say.

ADV SUSAN WENTZEL: In the first statement?

CHAIRPERSON: In regard to the whole statement?

MR HUMBULANI INNOCENT KHUBA: In terms of the statement. *Ja*, in terms of the whole statement ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Which according to him is not what happened.

10 **CHAIRPERSON:** So in other words he was saying the whole first statement was wrong?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Hm, okay.

ADV SUSAN WENTZEL: You also said that your investigation of the telephone records indicated that the telephone call to Dramat was on the 4th. Whereas the - the rendition took place on the 8th. Could you just - do you remember which month that was?

MR HUMBULANI INNOCENT KHUBA: It was November 2010. The call was made on 4 November 2010. Whereas the actual rendition took
20 place on 8 November 2010.

ADV SUSAN WENTZEL: And what conclusions did you draw from that?

MR HUMBULANI INNOCENT KHUBA: My challenge with that was that these are two different dates. It took almost four days before those people could be taken across. It would have made sense if that call was made at a time when these people were being renditioned. It

would ...

ADV SUSAN WENTZEL: What do you mean by renditioned?

MR HUMBULANI INNOCENT KHUBA: To be deported illegally to be handed over to the Zimbabwean National. If he had said on the 8th when Maluleke came - Captain Maluleke whom I am referring as Captain but in my statement mostly it is - it is Colonel.

ADV SUSAN WENTZEL: Why is that?

MR HUMBULANI INNOCENT KHUBA: It is simply because when the act was committed he was Captain and when I obtained statements -
10 obtained statement which reflect that it is Captain but during the time of investigation he was promoted. He became - before investigation he was - he became a Colonel.

ADV SUSAN WENTZEL: Okay. So just explain this discrepancy between 4 November 2010 and 8 November 2010. Sorry. I interrupted you.

MR HUMBULANI INNOCENT KHUBA: For me it would have made sense if that call was made when Captain Maluleke was at the border with this Zimbabwean National and then General Dramat called Colonel Madilonga and say please my people want to take those people
20 across.

It would have made - but I could not make the connection because I did not know what they talk about and the deportation of the rendition day was different from the day of the call.

ADV SUSAN WENTZEL: And if you could just remind the Chair what did Colonel Madilonga say happened with regarding this call on

4 November 2010 involving General Dramat?

MR HUMBULANI INNOCENT KHUBA: He said he was - he saw the black (indistinct) vehicle - Mitsubishi and then he approached the people and they told him that they want to - to see General Dramat. He said he contacted his superiors starting with the first one. I think that was almost the junior and then the immediate Commander told him that you need to contact Brigadier Mashuku who was the superior to her and when he did that he said Brigadier Mashuku said I was never contacted by General Dramat.

10 That there are people who are coming in the country. So you have to phone General Dramat yourself and that is consent in their statement.

ADV SUSAN WENTZEL: And did you have cause to analyse cellphone records as to confirm this or not?

MR HUMBULANI INNOCENT KHUBA: Yes. I - I did check the cellphone records but what I did I could not get - because he said he used a landline but I analysed the - General Dramat's cellphone record and I could confirm that there was a call that was made on the 4th but it lasted very short. I cannot remember the minutes now.

20 **ADV SUSAN WENTZEL:** You can just address your answers to the Chair. Try and remember.

MR HUMBULANI INNOCENT KHUBA: So I - I cannot remember the exact duration of that call but there was a call.

ADV SUSAN WENTZEL: And having regard to these issues that you say concerned you what did you think may - may have happened?

What conclusions did you draw?

MR HUMBULANI INNOCENT KHUBA: You know after everything I could see that it seems as the whole investigation was aimed at getting rid of - of General Dramat. When I put the pieces of the puzzle in terms of the wrong things that took place in terms of the statement of Colonel Madilonga in terms of the pressure he was put under I just realised that it seems as the ultimate goal was to get rid of General Dramat.

ADV SUSAN WENTZEL: You say in paragraph 59 of your statement
10 that you decided to send Colonel Madilonga's statement for analysis. You mentioned this yesterday. Could you just deal with that again?

CHAIRPERSON: Where about in the statement are you now?

ADV SUSAN WENTZEL: Paragraph 59 page 19 Chair.

CHAIRPERSON: Okay.

R HUMBULANI INNOCENT KHUBA: Yes. I did send the statement of Colonel Madilonga for analysis and it is the only statement in the docket that I - that I had challenges with and she did not take time - the expert. She came back to me and she sent an email together with an attachment of how she analysed the statement and then she indicated
20 that the statement of Madilonga was not a truthful reflection of what happened.

It - it for some reason confirmed my suspicion and I still remember because I slightly bounced it with advocate just in passing and he kind of really (intervenes).

CHAIRPERSON: Is that Advocate Mosing?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay.

MR HUMBULANI INNOCENT KHUBA: And he said to me what is statement analysis. The discussion took very, very short. He - he just said if the - the witness is not really telling the truth he can be subjected to cross-examination. You know and - and I probably I just got the sentence that he was not really getting the sense of what I was talking about.

ADV SUSAN WENTZEL: This statement analysis if you have a regard
10 to your supplementary affidavit it is at - there is an annexure at page 380. It will be right at the end of the bundle. If you can have a look at that please.

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: Is this the email that you are referring to?

MR HUMBULANI INNOCENT KHUBA: That is the email.

ADV SUSAN WENTZEL: And it says:

“Attached is the statement of Madilonga. I did a
statement analysis scan on it and this statement is
not a truthful reflection of what happened. We can
20 discuss it later today when I phone you.”

If you could then have regard to page 60.

MR HUMBULANI INNOCENT KHUBA: I am there.

ADV SUSAN WENTZEL: Is this the statement and the analysis?

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: And you will see in the statement that he says

on page 60 halfway down. He says:

“Before I was transferred I was working at Beitbridge Police Station as a Commander. My duties included crime prevention, liaison with immigration officials and other police officials from other stations.”

Was he stationed at the border in Zimbabwe?

MR HUMBULANI INNOCENT KHUBA: He was stationed at the border - South African side.

10 **ADV SUSAN WENTZEL:** The South African side?

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: And is he saying that it is there that he saw the Zimbabwean Officials who wanted to talk to Dramat?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: That statement is not signed or is it?

ADV SUSAN WENTZEL: (No audible reply).

CHAIRPERSON: That statement is not signed is it at page 60? Is that the one you are dealing with Ms Wentzel?

ADV SUSAN WENTZEL: Yes. It is. Chair my understanding is that
20 what has happened is that the - the statement has been analysed. So it has been copied word for word and then the use of words is then analysed and you will see with footnotes the - the expert's analysis as to what each aspect of the - the statement indicated to her to ultimately form a ...

CHAIRPERSON: Yes but am I right to say it is not signed?

ADV SUSAN WENTZEL: Yes. This statement is not signed but I do not believe that is this actual statement itself.

CHAIRPERSON: Yes. Was there a - is there a signed one?

MR HUMBULANI INNOCENT KHUBA: There is a signed one.

CHAIRPERSON: Which is exactly the same except for the shading?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay.

MR HUMBULANI INNOCENT KHUBA: So what when I sent the statement.

10 **CHAIRPERSON:** Hm.

MR HUMBULANI INNOCENT KHUBA: She made it clear that I should not send - I need to send the soft copy or she type the statement because she does the things in the system. So I told her that I took - the statement was typed by me before he could sign. So I sent her the soft copy.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Thank you Chair. Can we start now to deal with ...?

CHAIRPERSON: What is the legal status of that analysis?

20 **ADV SUSAN WENTZEL:** I do not believe that there ...

CHAIRPERSON: Hm

ADV SUSAN WENTZEL: There is a legal status of that analysis. I imagine it is very much the same as lie detectors tests and voice stress tests.

CHAIRPERSON: Yes and ...

ADV SUSAN WENTZEL: They are just I imagine tools used by investigators to get a sense do I trust this person or not and - but we can address that to this witness.

CHAIRPERSON: Ja. I - I do not think we need to go into details ...

ADV SUSAN WENTZEL: No.

CHAIRPERSON: About ...

ADV SUSAN WENTZEL: No.

CHAIRPERSON: If it has got no legal status ...

ADV SUSAN WENTZEL: No.

- 10 **CHAIRPERSON:** But to the extent that it may have influenced - the analysis may have influenced Mr Khuba in any way he can indicate what it is that influenced him. You understand that Mr Khuba?

MR HUMBULANI INNOCENT KHUBA: (No audible reply).

CHAIRPERSON: I am saying that this - the analysis of the statement the - the legal status of the analysis I am not sure about it and Ms Wentzel is not sure about it and what that means is whether legally one can rely on that but to the extent that it may have - the analysis may have influenced your thinking then you may just indicate one, two, three or whatever features that influenced you.

- 20 **MR HUMBULANI INNOCENT KHUBA:** The analysis I was not really aware of its legal status ...

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: But what it helped me was to check what I was dealing with ...

CHAIRPERSON: Hm, hm.

MR HUMBULANI INNOCENT KHUBA: And also to approach certain issues with caution.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Now in terms of the first report ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: This - this report was somehow not part of the - the docket. I did not file it.

CHAIRPERSON: This analysis?

10 **MR HUMBULANI INNOCENT KHUBA:** this - the analysis. It was - it was not ...

CHAIRPERSON: But ...

MR HUMBULANI INNOCENT KHUBA: There.

CHAIRPERSON: It was not in the docket?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Before the first report. So it did not influence the first report?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes. Okay and did it at any stage - you know get into
20 the docket even after the first report?

MR HUMBULANI INNOCENT KHUBA: That is correct. When I filed other evidence ...

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: I included it.

CHAIRPERSON: Okay. Okay and would it have influenced the second

report as far as you are concerned because I know there were three people signed?

MR HUMBULANI INNOCENT KHUBA: Not - not necessarily. It was mentioned ...

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: But it did not have such an impact.

CHAIRPERSON: It was - it did not have a significant impact?

MR HUMBULANI INNOCENT KHUBA: It did not have the significant
10 impact.

CHAIRPERSON: *Ja* ...

MR HUMBULANI INNOCENT KHUBA: *Ja*.

CHAIRPERSON: But in your own mind it could not be - you did not disregard it?

MR HUMBULANI INNOCENT KHUBA: I did not disregard it.

CHAIRPERSON: *Ja*. You took note of it?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Thank you Chair. Before I go onto a new
20 topic the Chair asked did you remember the first name of Mr Moyo who you referred to. Have you remembered since?

MR HUMBULANI INNOCENT KHUBA: Yes.

ADV SUSAN WENTZEL: And what do you remember his first name to be?

MR HUMBULANI INNOCENT KHUBA: I think it is Bongani Moyo.

CHAIRPERSON: Bongani Moyo?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay. Thank you.

ADV SUSAN WENTZEL: Thank you. Chair if I can have an indication of how late you want to sit.

CHAIRPERSON: Oh yes. Let us talk about that. I think you may have indicated to me before that you think Colonel Naidoo might take two days. Is that right?

ADV SUSAN WENTZEL: Yes.

10 **CHAIRPERSON:** Now he was supposed to have started today and therefore tomorrow would have been a second day.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: If - if he starts tomorrow is he going to go into Monday?

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Is that the plan or ...

ADV SUSAN WENTZEL: Or ...

CHAIRPERSON: Is there another witness scheduled for Monday?

ADV SUSAN WENTZEL: What I understand is ...

20 **CHAIRPERSON:** I think next week was the week where certain implicated persons were supposed to be scheduled for or to give evidence but I understand that there may have been certain challenges but I am - I am going to be briefed later about it.

ADV SUSAN WENTZEL: Yes. I also understand that there are some challenges and there may be space next week. I - I also understand

from Ms Norman that there are two witnesses who you would like her to lead next week. She had some challenges with the one witness who would only be available on the Tuesday but not the Wednesday but subject to the - the other issues around the calendar which I am not entirely sure of being settled.

She said she would not have a problem if Colonel Naidoo testified on the Friday and the Monday. That ...

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: I think that still is an issue that needs to be
10 resolved with the legal team.

CHAIRPERSON: Oh okay well. We will finalise the issue of Monday tomorrow but I think if it suits everybody I am prepared to stay - to sit longer. Certainly up to five but maybe up to six.

ADV SUSAN WENTZEL: Thank you Chair.

CHAIRPERSON: From your side how does the situation look?

ADV SUSAN WENTZEL: Chair I think I - I will need a bit longer because I also need to canvas this Werksmans Report in - in some detail and having regard to your indication earlier this morning ...

CHAIRPERSON: Hm.

20 **ADV SUSAN WENTZEL:** And - and ...

CHAIRPERSON: But you are saying you are available to - to continue until five ...

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: And if need be until six?

ADV SUSAN WENTZEL: Yes. I could. What I might ask for Chair is

just some time overnight ...

CHAIRPERSON: *Ja.*

ADV SUSAN WENTZEL: To be able to go through this Werksmans Report more carefully with the witness.

CHAIRPERSON: *Ja.*

ADV SUSAN WENTZEL: So that I can ...

CHAIRPERSON: Maybe tomorrow morning.

ADV SUSAN WENTZEL: Lead him properly on that.

CHAIRPERSON: So that we could start with him tomorrow morning just

10 to finalise those aspects ...

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Before we start with Colonel Naidoo.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Okay. Mr Khuba how is your situation? If we sit until five or maybe even until six would that be convenient to you or would that be a problem?

MR HUMBULANI INNOCENT KHUBA: It is fine with me.

CHAIRPERSON: It is fine with you. Okay. For now let us say let us sit - let us to up to five and then at 5 o' clock we will review the

20 situation. Okay, alright.

ADV SUSAN WENTZEL: Thank you Chair.

CHAIRPERSON: Let us continue.

ADV SUSAN WENTZEL: I now want to deal Mr Khuba in some detail with what is called your first report, your amended first report and then your second report.

CHAIRPERSON: One second Ms Wentzel. Alright. Yes continue.

ADV SUSAN WENTZEL: Thank you Chair. So I am dealing now from paragraph 61 of your statement page 19 of the bundle. Just so that you have an idea. We know that your first - the first report is dated 22 January 2014 and we will go there in a minute but could you please tell the Chair under what circumstances that so called first report was prepared?

MR HUMBULANI INNOCENT KHUBA: Thank you. While I was investigating the case I was preparing a report in a form of typing the
10 statements. Now some of these statements that I obtained where I got an opportunity to type them while interviewing the witness. Instead of just evaluating and taking a certain part of that statement I would copy it the way it is into the - the report.

I will indicate the name of the witness and the category in which it is filed in the docket and then I will leave the information there. So the report becomes so voluminous because of that but there, there will be things that I change. For example because the witness will say I. Then I - because it is in a report I will say he or she but put exactly the same thing that the person said.

20 **CHAIRPERSON:** Yes, okay.

MR HUMBULANI INNOCENT KHUBA: Ja.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Now ...

CHAIRPERSON: So you just change it and put in the third person?

MR HUMBULANI INNOCENT KHUBA: Yes ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Because it was a requirement that you summarise the statement in terms of our policy which now has changed. So I would put that because I did not want to go into you know a lot of work at the end of the investigation and at some times when I look at the docket it had almost 90 something statements.

So it was not an easy thing to do at once. So I am just doing it gradually. Now that report I would update it but I started to share it with the person who was guiding the ...

10 **CHAIRPERSON:** The investigation?

MR HUMBULANI INNOCENT KHUBA: Investigation - Advocate Mosing.

CHAIRPERSON: Okay. Just before you proceed. Just now what you were saying about statements was that - was that in relation to statements going to the docket or was that what you - was going to a report or different reports?

MR HUMBULANI INNOCENT KHUBA: No. It was the statement going into the docket.

CHAIRPERSON: Oh, okay. Okay.

MR HUMBULANI INNOCENT KHUBA: Then I will - if that statement is
20 typed ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And then commissioned ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: What would happen is that the information that I have ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: In the computer I will copy the entire statement ...

CHAIRPERSON: Huh-uh.

MR HUMBULANI INNOCENT KHUBA: Into the report.

CHAIRPERSON: Oh to prepare the report?

MR HUMBULANI INNOCENT KHUBA: To prepare the report.

CHAIRPERSON: Okay. Okay. So your report would consist to a very large extent to - of the same material that is - of the contents of the various statements?
10

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Ja. Okay.

MR HUMBULANI INNOCENT KHUBA: Then I started to share the statement or the - the report rather with my partner Colonel Moukangwe and the advocate who was guiding the investigation.

CHAIRPERSON: Yes. Just something basic when you conduct an investigation such as this and you talk about a docket in the context of IPID would you have, would the docket have come from IPID and when you submit the docket to the NPA you actually submit the IPID docket as it were to the NPA, or would the NPA have their own docket and you just submit the contents of your docket to them, to their docket and you remain with your docket?
20

MR HUMBULANI INNOCENT KHUBA: It will be the same docket, when we uplift the docket from ...[intervenes]

CHAIRPERSON: The NPA?

MR HUMBULANI INNOCENT KHUBA: The NPA, no, no from the SAPS.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Because the investigation would have started by SAPS, they registered the case, then they open a docket.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: When we go to uplift the docket we will take that docket the way it is.

CHAIRPERSON: As it is yes.

10 **MR HUMBULANI INNOCENT KHUBA:** And then we would either ...[intervenes]

CHAIRPERSON: Add statements to it.

MR HUMBULANI INNOCENT KHUBA: Add statement to it or put it inside IPID docket, but that time I do not know whether we had IPID docket.

CHAIRPERSON: Oh, okay.

MR HUMBULANI INNOCENT KHUBA: Because we had a challenge where when the DPP decide on the case, and it had to be returned back they will look at the station and say a station and we end up not getting
20 that docket.

CHAIRPERSON: Oh.

MR HUMBULANI INNOCENT KHUBA: So we came to the decision to say if then it is a docket, SAPS docket we will take the cover of that docket and then put it in our docket, it will always remain our docket.

CHAIRPERSON: Yes, yes, yes, so that they know they must refer –

they must send it back to you and you are the ones who will send it to the station?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay, okay, so but before that system you worked with an SAPS docket, you would work with an SAPS docket that came from the SAPS, if this – the matter started with the SAPS?

MR HUMBULANI INNOCENT KHUBA: That's correct, in fact in this case I took, because the docket was voluminous, I had to take the actual docket cover, cut it nicely, put it on the pocket of an
10 ...[indistinct] so they were having on the outside.

CHAIRPERSON: Oh yes, yes.

MR HUMBULANI INNOCENT KHUBA: But it was not IPID docket it was ...[intervenes]

CHAIRPERSON: Just lever arch files.

MR HUMBULANI INNOCENT KHUBA: That's correct.

CHAIRPERSON: Oh okay. And when you submitted the docket to the NPA you were effectively submitting either a lever arch file or more than lever arch files but with the docket cover on the outside?

MR HUMBULANI INNOCENT KHUBA: That's correct.

20 **CHAIRPERSON:** Okay, thank you.

ADV SUSAN WENTZEL: Mr Khuba what was the purpose of compiling a report?

MR HUMBULANI INNOCENT KHUBA: A report was a requirement of the department to say you need to simplify so that whenever a person before he reads the docket he may have to just browse through to say

where do I find this statement in the docket

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Now we were also required to make recommendation, they would say you may not be legally qualified but use your opinion and express your opinion in that recommendation report, and they would not want you to say I would want you to – I recommend that you take a decision, they will say evaluate yourself, they are not bound by that recommendation but ...[indistinct] to express that because of one, two, three I recommend that this person be
10 charged criminally. Now that has currently changed, after we were charged, we no longer summarise the statement, we no longer recommend in terms of specifics, for us just to say these are the statements in the docket, it is A1, A2, A3 and we mention the name of these people, and then at the bottom there we recommend that you take decision in this matter, whether the docket may be almost ten or fifteen or twenty arc files the report may remain two pages.

CHAIRPERSON: That is because of the experience when the three of you were charged because of those two reports.

MR HUMBULANI INNOCENT KHUBA: That is correct.

20 **CHAIRPERSON:** Yes, so in a way charging you had a negative effect in the sense that the NPA now no longer has the benefit of your own analysis and views of what you think even if they were not going to be bound by that.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: You now just throw everything to them and say

effectively you study the docket and make a decision?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay

ADV SUSAN WENTZEL: So if we have regard to this first report of the 22nd of January 2014 and if you have a look at Annexure 8 page 68 all the way through to page 102.

CHAIRPERSON: Did you say page 68?

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Up to what page?

10 **ADV SUSAN WENTZEL:** 102.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Is that your first report?

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: Now before we have a look at your recommendations in that report did you submit this report to the NPA?

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: And who did you submit it to?

MR HUMBULANI INNOCENT KHUBA: Advocate Mosing.

20 **ADV SUSAN WENTZEL:** And did you discuss this report, or received input on the report from Advocate Mosing as to the content of the report?

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: Could you just give some detail in that regard please.

CHAIRPERSON: Maybe just before that we have been referring to this

report as the first report, but was it your first report or were there other reports before it, it is just that it is one, it is the first of two reports that are in issue.

MR HUMBULANI INNOCENT KHUBA: There were a number of reports that I sent.

CHAIRPERSON: Before this one?

MR HUMBULANI INNOCENT KHUBA: Before this one, because I would take the report to him and sometimes when I instead of him having to read the statement I will just take the entire statement into that report
10 and he will read the report, we will sit down with also Colonel Moukangwe and discuss and they would advise me in terms of what are the important issues that I need to highlight and during that discussion I noted that. It is just that I could not get some copies of the report where I think on some of them he would write with his pen to say this is where I want you to highlight certain issues.

CHAIRPERSON: Mmm. Is there anything that makes this so-called first report different from any of the earlier reports?

MR HUMBULANI INNOCENT KHUBA: The earlier reports were slightly different because of the amount of evidence that was going in, but it
20 was just a build-up, it was a build-up that is what I can say the difference were.

CHAIRPERSON: Were the other earlier reports marked interim reports in any way or was any term used to suggest that they were work in progress or they were not final reports, was – is there anything that either was written on them to suggest that or was it – would it have

been clear from anybody reading them that they were not final reports?

MR HUMBULANI INNOCENT KHUBA: No there was nothing that I could say that I put – unless if it was on the recommendation, I cannot remember, but I think what was different from this one is that this one I signed it and the others I will just produce them the way they were.

CHAIRPERSON: Oh the other ones were not signed?

MR HUMBULANI INNOCENT KHUBA: They were not signed.

CHAIRPERSON: Yes, but are you able to say whether or not there was an understanding between yourself and Advocate Mosing with regard to
10 the earlier reports that they could not be final?

MR HUMBULANI INNOCENT KHUBA: There was an understanding and I think I need to say this Chairperson that what made me to be more comfortable and relaxed was the issue that I thought he was the one who was going to decide on the case. For me it was just an issue of working together and my ...[intervenes]

CHAIRPERSON: You mean you thought he was the one who was going to make a decision whether to prosecute or not to prosecute?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes, okay.

20 **MR HUMBULANI INNOCENT KHUBA:** And I trusted him because when you have an investigation guided by a prosecutor you start to understand that the eye of looking at it it is prosecution driven, so – and quite often I had been doing investigation for a long time, where sometimes I learn in a hard way, where you would try to push to say I have this evidence, this evidence, this evidence, and the prosecutor

says wow I am the one that is going to stand there. What you are saying I cannot be able to prove, so I have learnt to just consume humble pie when it comes to certain opinions about the value of specific evidence.

CHAIRPERSON: So you say between the two of you, you were satisfied that he knew or would have known that those were not final reports, the earlier ones.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay, alright, and with regard to this one is there
10 anything that would have told him whether this one was final or not final, when he by looking at it or reading it leaving out whatever the two of you may have discussed?

MR HUMBULANI INNOCENT KHUBA: The issue is that the previous report I am not sure of the one shortly before this one.

CHAIRPERSON: Before this one yes.

MR HUMBULANI INNOCENT KHUBA: But we worked on this report and we had been working on it as a draft.

CHAIRPERSON: You mean the two of you, Advocate Mosing – oh no, yourself and your partner.

20 **MR HUMBULANI INNOCENT KHUBA:** I was also with Colonel Moukangwe.

CHAIRPERSON: Yes, yes ja, your partner in the investigation or a member of your team.

MR HUMBULANI INNOCENT KHUBA: The one was from Crime Intelligence whom I say ...[intervenes]

CHAIRPERSON: Oh okay oh okay ja, is that the one you are not supposed to ...[intervenes]

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: That is the one you are supposed to keep secret.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay, yes. So the two of you had been working on it?

MR HUMBULANI INNOCENT KHUBA: The three of us.

CHAIRPERSON: Ja, who is the third?

MR HUMBULANI INNOCENT KHUBA: It is Advocate Mosing and it is
10 Colonel Moukangwe and one time I think Advocate Billinowitz[?] was also part of that because he would, he was not regular in our meetings.

CHAIRPERSON: Was he from the NPA too?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay, so are you saying therefore that this first report was the product of the four of you working together but one of you that you have just mentioned was not regular, but the three of you were regular?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay, alright, thank you.

20 **ADV SUSAN WENTZEL:** Was it usual for you to prepare an IPID report together with the NPA?

MR HUMBULANI INNOCENT KHUBA: It wasn't because at the time when I started to open up fully to Mr Sesoko and also spoke to McBride I still remember McBride saying to me IPID makes recommendation to NPA and not with NPA. So I found that it was a valid point, it was a

valid point, but I think sometimes it becomes so – you become comfortable that the lines are blurred you cannot really see, you talk, you laugh, you share lunch there, it does not become like something that protocol.

CHAIRPERSON: You end u like you are a team?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: And could you tell the Chair how senior an advocate was Advocate Mosing?

10 **MR HUMBULANI INNOCENT KHUBA:** When I was introduced to him I was told that he is the head of Special Operation. Now that part told me that I was not dealing with a just ordinary prosecutor. I was dealing with somebody very, very, very senior, to such an extent that even an opportunity to throw an opinion I will have internal assessment of that to say I do not want to make myself as stupid as ... will it be right to ask these questions, because I was not dealing with a junior.

CHAIRPERSON: Yes, okay.

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: And in the course of your discussions about
20 your report and being told amend this, add this, change you said in manuscript, was it made clear to you what your ultimate recommendation should be?

MR HUMBULANI INNOCENT KHUBA: It was because it was not only to deal with the body of the report, it went down to the recommendation.

ADV SUSAN WENTZEL: And what were you told when you were

dealing with that, what was discussed?

MR HUMBULANI INNOCENT KHUBA: The evidence that we were discussing was the issue of General Dramat on a number of aspects that I have already alluded to, which include the statement of Madilonga, the CI member statements, as well as the progress or success reports. Now when it came to the issue of General Sibiya it was basically the issue of witness statements and there was also an issue that because I did a 205, when we checked we found that one of the persons who was doing operation contacted, I think there were a
10 number of calls but they were not quite frequent as such, but there were a number of contacts between General Sibiya with that Colonel and when he during our discussion it was indicated that it means that he was reporting progress of how they were arresting the Zimbabwean National.

ADV SUSAN WENTZEL: So if you go to the end of your report at page 101 of the bundle you will see that the recommendation there from you is based on the available evidence, the Independent Police Investigative Directorate recommends that Lt General Dramat, Major General Sibiya, Lt Colonel Maleleka, Constable Radebe, Captain Nkosi
20 and Warrant Officer McCauw be charged criminally for:

1. Kidnapping, and
2. Defeating the ends of justice, and
3. Assault and theft, only applicable to Captain Maleleka, Warrant Officer McCauw and Constable Radebe and Captain Nkosi.

Was that your recommendation?

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: And is that your signature on that report?

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: And could you explain to the Chair why did you sign this report?

CHAIRPERSON: I'm sorry why did you?

ADV SUSAN WENTZEL: I asked why did he sign this report.

CHAIRPERSON: Oh, okay.

MR HUMBULANI INNOCENT KHUBA: During December it was the time
10 when I was subjected to a lot of pressure that he wanted the report,
and he wanted the docket.

ADV SUSAN WENTZEL: Sorry who is he?

MR HUMBULANI INNOCENT KHUBA: Advocate Mosing.

ADV SUSAN WENTZEL: Yes.

MR HUMBULANI INNOCENT KHUBA: And I kept on giving excuses to
say but they were not – they were valid excuses because I was
preoccupied in the office. Number one it was an issue of saying I was
busy with an unrested ...[indistinct] and I had to help my office to meet
the strategic objectives.

20 Now the biggest challenge was that one time I felt I need to
give this person what he wanted, even though the things were not really
complete, because I thought he just wanted probably what is there is
enough for him to take a decision, and then I indicated to him that I
have a problem with the report because I was not really signing these
reports and I said it needs to be signed by the head of the Department,

so at that time Ms Koekie Mbeki was no longer coming to the office, as I have already alluded earlier she sent a message through her PA that she was only able to sign financial related documents.

Now I had a problem to say what do I now. I asked him and he said no you can sign the report and send it. Then I signed the report and sent to him, but that part I could not have a full recollection of.

CHAIRPERSON: The signing part?

MR HUMBULANI INNOCENT KHUBA: The signing of the report. On the reason that there were a lot of reports that I sent to – that
10 exchanged hands between me and him and also when I was queried about the report by Mr Sesoko and Mr McBride it was not about whether I sent the report to NP, that was clear that I sent the report, but it was whether I signed the report and that was in 2015 when they were asking those questions whether there was a report.

Now the issue there was that when I went to collect the docket from Advocate van Zyl we perused that docket together, there was no report, but if the report was there it could have – in fact they wouldn't have asked the question, because they would have found it when we were doing the review of that evidence and also preparing the final
20 report.

ADV SUSAN WENTZEL: So you say that when you fetched the docket and we are going to deal with the sequence later, we found that this what we are calling the first report was not in the docket.

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: What was in the docket by way of a report?

MR HUMBULANI INNOCENT KHUBA: We ...[intervenes]

CHAIRPERSON: I am sorry, is that now – are you at a stage where you are dealing with the second report now?

ADV SUSAN WENTZEL: No.

CHAIRPERSON: It is still this report?

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Okay.

MR HUMBULANI INNOCENT KHUBA: What was in the docket, when we perused the docket we found ...[intervenes]

10 **CHAIRPERSON:** This is now before compiling the first report or when the first report was ready? What was the stage where ...[intervenes]

MR HUMBULANI INNOCENT KHUBA: I think let me put it in perspective.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: I will start from where it started first.

CHAIRPERSON: I am trying to keep my eye on the times and the timeframes.

20 **MR HUMBULANI INNOCENT KHUBA:** Let me start where things started first. Now after the submission of the docket and the report then I started getting evidence.

CHAIRPERSON: And when you say and report you mean and the first report?

MR HUMBULANI INNOCENT KHUBA: The first report and the report, I said and the report, I mean the first report.

CHAIRPERSON: Yes, okay.

MR HUMBULANI INNOCENT KHUBA: Now what happened was that in fact when I sent that report I was constantly calling the expert who was analysing the cell phone records of General Sibiya.

CHAIRPERSON: Mmm.

MR HUMBULANI INNOCENT KHUBA: And he told me that he was doing a business of water, setting plants for water, Botswana and a number of countries. Then he told me that he was busy in the project, he could not have time to finish but now he is done.

10 **CHAIRPERSON:** Mmm.

MR HUMBULANI INNOCENT KHUBA: He has got, he has done the plotting, and unfortunately he had that news for me, and he said General Sibiya was not at Fourways as alleged by witnesses, and he was not at Diepsloot as alleged by witnesses.

Now when I got that information the report had already gone but I just felt let me send something to Mr Sesoko because I used to send a report for him to take it Secretariat for update. Now I did another report and I sent an email on the 23rd, the report for Advocate Mosing was despatched on the 22nd. On the 23rd, the following day, I
20 did a report that had a change in recommendation, it says I still recommended General Dramat, but when I came to General Sibiya ...[intervenes]

CHAIRPERSON: Oh you still recommended that action – that General Dramat be charged?

MR HUMBULANI INNOCENT KHUBA: Yes.

CHAIRPERSON: Ja.

MR HUMBULANI INNOCENT KHUBA: But with General Sibiya I said I do not recommend any criminal charges against General Sibiya because the cell phone records has shown that he was not at the scene. That is how I put it.

CHAIRPERSON: Mmm.

MR HUMBULANI INNOCENT KHUBA: Now that report I just sent it, I left like that, now there was a time I got now the response of General Sibiya, he sent his warning statement, he sent the warning statement
10 through the PA, I got it, there was a change of hand between the – Mr Sesoko and the PA on that report and it ended up coming to me, then when I got that report I then sent it to Advocate Mosing to show I have the new evidence and that time I had already known about the cell phone records. Now when I sent that report – those responses he responded to me on an email dated 28th February 2014, and it was just shortly after a month, after I sent the first report, to say that I have acquired this evidence and he said the docket is not with him, it is in Gauteng, but I got an indication that it was with Advocate van Zyl in Gauteng. Then I took that email as it saying to me I need to go and
20 collect this docket, so that I can attach the evidence.

McBride according to my understanding then started working on the 3rd, somewhere there, on the 3rd of March and then I was called I think it was on the 5th to brief him on high profile cases, so in the Department we had two main high profile cases, it was the rendition case, as well as the Cato Manor case which I investigated earlier but it

was then handed over to a director from Mpumalanga, Glen Angus.

So when we briefed him we were together. On the 5th he was the one who started. He briefed him about Cato Manor. It took some time but I was just listening. Then my opportunity came. Then I briefed him about the rendition investigation but because I was the second in terms of briefing I could not finish and he said we will meet the following day.

That was on the 6th. Now during the briefing I remember Mr Sesoko was there. The issue of not involving him I indicated that.

10 The issue of collaboration with the CI Official Colonel Moukangwe. I indicated that. Now I still remember vividly when it come to the issue of excluding Mr Sesoko that Mr McBride says if in this department I give you this instruction please refuse and I did not say anything.

I just looked at him on the basis that when you are a subordination sometimes there it is grey line because you look at what I am being told to do. Does it constitute misconduct or contravention or any policy of the department? There are things that you look at and say this is not - it is not right. There is something not right.

CHAIRPERSON: You mean when you get giving an instruction

20 sometimes you - you listen to or look at the instruction and say this instruction is not right?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: It - it is - it is unlawful. It is illegal or it might be contrary to the policies of the organisation and if I were to do it I may be committing misconduct. Is that what you are talking about?

MR HUMBULANI INNOCENT KHUBA: What I am saying is that there is some instructions ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: That may not be right ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: But not necessarily unlawful.

CHAIRPERSON: Hm, okay.

MR HUMBULANI INNOCENT KHUBA: So ...

CHAIRPERSON: Like - like ethically?

10 **MR HUMBULANI INNOCENT KHUBA:** That is correct.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Because I just looked at him to say if then you tell me not to report there and you are the Head of the Department your instruction may not sound right - may - but may not be necessarily unlawful.

CHAIRPERSON: Hm. So when he said if I give you that instruction you must refuse. What instruction was he talking about?

MR HUMBULANI INNOCENT KHUBA: To exclude or to side-line the National Head of Investigation.

20 **CHAIRPERSON:** Oh. Was that - did he say that in - in reaction to you telling him that Ms Mbeki had asked you to exclude Mr Sesoko from the investigation?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes, okay. Before you proceed let us go back to the first report. Now when you sent it to the NPA would you have sent it

together with the docket as it were - whatever files that you would call the docket with all the statements that you have collected from various witnesses and other evidence?

MR HUMBULANI INNOCENT KHUBA: In fact it - it is a policy requirement ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: That you cannot send a docket - a report without docket.

CHAIRPERSON: Hm, hm.

10 **MR HUMBULANI INNOCENT KHUBA:** That report must accompany the docket.

CHAIRPERSON: Hm, hm and that is what you did?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: So - okay and you may have said something about this earlier or even yesterday. A report such as the types of reports that IPID personnel or investigators would send to the NPA which had recommendations always went with the statements or maybe sometimes the statements would already be with the NPA and the report would just be - to be added to the docket.

20 **MR HUMBULANI INNOCENT KHUBA:** What is required is that you take both together.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Which means it is the copies of the docket ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Or the actual docket ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Together with the - the report.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: It is in the - in the recommendation to SAPS.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: That you will make copies of the docket ...

10 **CHAIRPERSON:** Hm.

MR HUMBULANI INNOCENT KHUBA: And then put a report on top ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And then send it to SAPS for them to initiate disciplinary steps.

CHAIRPERSON: Yes and whoever has to make a decision at the NPA about whether to prosecute or not to prosecute on what would - would they need to base their decision?

MR HUMBULANI INNOCENT KHUBA: They need to base their decision on a docket.

20 **CHAIRPERSON:** Huh-uh.

MR HUMBULANI INNOCENT KHUBA: In fact I have spoken with a number of prosecutors saying that we do not even read sometimes the report that you send.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Some of them indicated that I

may - it may help me only to check or this statement where is it filed in the docket. Then they will be able to navigate that.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: That is why Chairperson when I am seated here ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Really my heart goes out.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: That something which was not
10 supposed to be anything to be concerned about ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Became a big deal.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: That interfered with my career.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: That landed me in the cell.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: So it is something that I have not yet got even a concrete answer about it.

20 **CHAIRPERSON:** Hm. Well that is - that is why I ask these questions and I have been asking them. I asked them with Mr Sesoko. I asked them with Mr McBride because I am trying to understand what it is really that was a problem but also I am trying to understand whether there is something that I do not understand in what you, Mr Sesoko and Mr McBride have been telling me that may make me think that the NPA

and Werksmans and maybe the Minister were abusing their powers when maybe there was something.

Maybe I just do not see it. So that is why I keep on asking these questions because I am trying to understand whether really we could be dealing here with a situation where certain people were just abusing their powers. You people had absolutely nothing wrong or whether maybe there was something wrong. I just do not see it. That - that is why I keep on asking these questions.

MR HUMBULANI INNOCENT KHUBA: Now the - Chairperson the - the
10 challenge with this case is that both reports were in the hands of NPA.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Now I still remember the charges. They said I deleted the January report which is the first report. I deleted it. There is something that was deleted in the report. That report if they give you a copy there was nothing deleted.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: The fact is that it was not similar in everything with the second report.

CHAIRPERSON: There were certain things which you could find in the
20 first report ...

MR HUMBULANI INNOCENT KHUBA: Report.

CHAIRPERSON: Which you would not find in the second report?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: But it did not mean they were deleted from the first report?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: These were two separate reports?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: But now the report constituted - did the reports that you prepared as IPID personnel or investigators including the ones that we are dealing with here. Did they constitute the investigators summary or the investigators understanding of what the evidence is that is to be found in the statements and to the extent that the investigator made a recommendation that was just his opinion as he
10 sees the evidence?

MR HUMBULANI INNOCENT KHUBA: That is correct. The report itself it is after summarising ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Or taking synopsis from each and every statement.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: You go down there and express your view.

CHAIRPERSON: Yes.

20 **MR HUMBULANI INNOCENT KHUBA:** If probably because you may find that some investigator did not do law. They just have extensive ...

CHAIRPERSON: Hm, experience?

MR HUMBULANI INNOCENT KHUBA: Experience.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: You get sometimes ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And investigator ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Analysing in such a way that the defence will not even argue - will laugh at you ...

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Because it does not make sense ...

CHAIRPERSON: Hm.

10 **MR HUMBULANI INNOCENT KHUBA:** But we allow that because it was a policy requirement to say we do this report just (indistinct) there you - it - it was like a game for us to say how we ...

CHAIRPERSON: Hm, hm.

MR HUMBULANI INNOCENT KHUBA: We analyse.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: It had no bearing ...

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: On the decision of SAPS.

CHAIRPERSON: Did it have ...?

20 **MR HUMBULANI INNOCENT KHUBA:** On the - on the decision of DPP.

CHAIRPERSON: Now maybe just to get it. You yourself you - you are not a lawyer. You do not have a legal background or you do have some legal background?

MR HUMBULANI INNOCENT KHUBA: I did law

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Courses and ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: But I cannot really be compared with a ...

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Practicing lawyer.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: *Ja.*

CHAIRPERSON: Yes, but for your position you do not necessarily
10 require to - to have a Law Degree?

MR HUMBULANI INNOCENT KHUBA: No they ...

CHAIRPERSON: Or at that time what - the position that you had at the time.

MR HUMBULANI INNOCENT KHUBA: They required either - it - it depends.

CHAIRPERSON: *Ja.*

MR HUMBULANI INNOCENT KHUBA: It is not a requirement is that you have ...

CHAIRPERSON: You must have a Degree.

20 **MR HUMBULANI INNOCENT KHUBA:** You need to have knowledge of the Criminal Law. You may have a - a Degree in Investigation ...

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And Honours ...

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: But what happens is that you

apply law on - on your level.

CHAIRPERSON: On - *ja*, on your level.

MR HUMBULANI INNOCENT KHUBA: On your level.

CHAIRPERSON: Yes, yes.

MR HUMBULANI INNOCENT KHUBA: For example at the Provincial Level ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Most of reports they come to me ...

10 **CHAIRPERSON:** Hm, hm.

MR HUMBULANI INNOCENT KHUBA: And then I will take these reports ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And check them ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And - and during those days because we used to analyse ...

CHAIRPERSON: Hm.

20 **MR HUMBULANI INNOCENT KHUBA:** I will tell the investigator oh here ...

CHAIRPERSON: This is superficial analysis?

MR HUMBULANI INNOCENT KHUBA: *Ja*, this is one.

CHAIRPERSON: Will you do more work.

MR HUMBULANI INNOCENT KHUBA: We will talk and laugh about it ...

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And he said no I feel that we need to put it there.

CHAIRPERSON: Yes, yes.

MR HUMBULANI INNOCENT KHUBA: Then because I am the Head of the Office I will end up telling him what to - to put there.

CHAIRPERSON: To put in, *ja*.

MR HUMBULANI INNOCENT KHUBA: *Ja*.

CHAIRPERSON: But the requirement that you should put in the reports where did that requirement come from? Was it an IPID requirement?
10 Was it an NPA requirement? Was it a requirement based - that came from a policy document? Was it - did it come from a regulation? Did it come from an Act of Parliament? Where did that come from?

MR HUMBULANI INNOCENT KHUBA: Okay.

CHAIRPERSON: Or was it just a practice?

MR HUMBULANI INNOCENT KHUBA: Fortunately Chairperson I was involved in the process of the formation of IPID Act itself ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: And I did a number of public ...

CHAIRPERSON: Engagements?

20 **MR HUMBULANI INNOCENT KHUBA:** Engagements ...

CHAIRPERSON: Engagements.

MR HUMBULANI INNOCENT KHUBA: On the ...

CHAIRPERSON: On the - on the bill.

MR HUMBULANI INNOCENT KHUBA: On the bill itself.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Now the issue of the recommendation ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: It was already a practice that we send ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: A docket together with a report ...

CHAIRPERSON: Hm.

10 **MR HUMBULANI INNOCENT KHUBA:** And then you make recommendation. Now in terms of the Act ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: The Act talks about two types of recommendation. The recommendation to SAPS for disciplinary steps. The recommendation to NPA for them to take the decision on that docket but on SAPS it is where there is some level of obligation ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: On the side of SAP because it indicates that upon receipt of IPID ...

20 **CHAIRPERSON:** Hm.

MR HUMBULANI INNOCENT KHUBA: Recommendation they need to initiate departmental process.

CHAIRPERSON: So there - there is some kind of expectation that they must give effect or implement the recommendation?

MR HUMBULANI INNOCENT KHUBA: That is correct but that ...

CHAIRPERSON: That is the SAPS?

MR HUMBULANI INNOCENT KHUBA: SAPS.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: But that obligation ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Is not there in the ...

CHAIRPERSON: In the N - NPA?

MR HUMBULANI INNOCENT KHUBA: The NPA.

CHAIRPERSON: Yes.

10 **MR HUMBULANI INNOCENT KHUBA:** Hence there is an issue now that
when we send our recommendation ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: We recommend that - we
recommend that you take decision.

CHAIRPERSON: Yes, yes.

MR HUMBULANI INNOCENT KHUBA: It is still recommendation.

CHAIRPERSON: So in other words what you are telling me is as far as
the NPA is concerned they were not obliged to even look at your
recommendation or even look at your - at - at the reports. Is that right?

20 They could look at it if they wanted to. They could disregard it and just
look at the statements in the docket and make their decision and if they
did not look at it you would have no cost to complain because it - it -
they were not bound by your opinions.

MR HUMBULANI INNOCENT KHUBA: Chairperson what you are saying
now it is what was said in the statement ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Of a person whom I collected this rendition from.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: To say I am not bound by this report.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Yet when I collected ...

CHAIRPERSON: Hm.

10 **MR HUMBULANI INNOCENT KHUBA:** I was not yet charged.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Despite this statement ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: I was charged.

CHAIRPERSON: Is that now Advocate Mosing?

MR HUMBULANI INNOCENT KHUBA: Advocate Van Zyl.

CHAIRPERSON: Van Zyl. He - he being from the NPA as well?

MR HUMBULANI INNOCENT KHUBA: That is correct.

20 **CHAIRPERSON:** So - but - but basically we are going back to saying these reports really had no legal status. You might or might not be able to answer that but they had no legal status with the NPA. They - they could not make it a - a decision and say it is because the IPID investigator said so.

They - they would have to base their decisions on the statements in the docket.

MR HUMBULANI INNOCENT KHUBA: That is correct Chairperson. I can say that they do not have legal ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: Status.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: However what we use ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: We use only statistical ...

CHAIRPERSON: Hm.

10 **MR HUMBULANI INNOCENT KHUBA:** Information to say ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: How many recommendation - because recommendation referred.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: It means docket referred.

CHAIRPERSON: Yes, yes, yes. So - so now you see it raises this question again of why was such a big fight - why did such a big fight get initiated because you gave them an opinion of what you thought in the first report and later gave - gave them an opinion that was different
20 from the first opinion. Why did it matter for purposes of their decision?

MR HUMBULANI INNOCENT KHUBA: Chairperson I think this was an issue of being hit by whatever object is available for a person who wants to deal with you.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: If there was something else I

think they would have used that ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: But it was an object of convenience.

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: That they use this report ...

CHAIRPERSON: Hm.

MR HUMBULANI INNOCENT KHUBA: To put us in the cell.

CHAIRPERSON: Hm.

- 10 **MR HUMBULANI INNOCENT KHUBA:** They used this report to make sure that I am dismissed and stayed for almost two years with a job.

CHAIRPERSON: Hm. Just because you gave an opinion.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: In one way - one way and then you gave another opinion in a different and you had - you had your reasons for the different opinions and - and they were not bound by your opinions. They - they could have said he - he is made and then just make their own decision.

MR HUMBULANI INNOCENT KHUBA: That is correct.

- 20 **CHAIRPERSON:** Hm. Yes.

ADV SUSAN WENTZEL: Thank you Chair. Do you want to continue?

CHAIRPERSON: I think let us - at 5 o' clock we will - we will decide - we will decide. Just continue.

ADV SUSAN WENTZEL: Thank you. I want to unpack what you have been saying because we can show it through the documentation the

sequence of events and how your views changed from your first report, your amended report and then what is called the second report. Now it is - it is important also that the criticism - and you must tell me if I am right - was between the difference between the first report and the second report.

There was no criticism of the - or comparison between your amended first report because you amended the first report because you said after you got the cellphone records you changed the recommendation that General Sibiya be charged because it proved that
10 what the witnesses were saying was not true but the two reports that you were charged about was the first and the second.

The amended report was not referred to. Am I correct in that regard?

MR HUMBULANI INNOCENT KHUBA: That is correct.

ADV SUSAN WENTZEL: Now ...

CHAIRPERSON: I am - I am sorry. When you refer to the amended report are you referring to the report to which I understood you to refer earlier where you said after you had submitted what we call the first report there was another report that you submitted. I do not know if
20 you said it was one page but you submitted another report before what we call the second report. Is my understanding correct?

MR HUMBULANI INNOCENT KHUBA: That is correct. It was where I made an amendment but that amendment was not made in a full report but only on the recommendation.

CHAIRPERSON: Yes. Was it one page?

MR HUMBULANI INNOCENT KHUBA: No.

CHAIRPERSON: It was not - it was ...?

MR HUMBULANI INNOCENT KHUBA: It was a complete report.

CHAIRPERSON: It was a complete and that is the one where you say you recommended that General Sibiya should not be charged ...

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: But you stayed with the recommendation that General Dramat be charged?

MR HUMBULANI INNOCENT KHUBA: That is correct.

10 **CHAIRPERSON:** So in other words you - you filed a number of reports earlier where you made no recommendations?

MR HUMBULANI INNOCENT KHUBA: I made one between the first and what is called the second.

CHAIRPERSON: Yes. No, no. I am talking about before the first report.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: You made - you made a number of - of - you submitted a number of reports?

MR HUMBULANI INNOCENT KHUBA: That is correct.

20 **CHAIRPERSON:** But in those reports there was no recommendation?

MR HUMBULANI INNOCENT KHUBA: There was - there was recommendation.

CHAIRPERSON: Yes. Relating to the two - General Sibiya and General Dramat?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: And what were the recommendations in regard to that?

MR HUMBULANI INNOCENT KHUBA: It was the recommendation that they - I was recommending that they should be charged.

CHAIRPERSON: Yes. Okay. Was that in a number of reports or only one of the earlier reports that you talked about or you cannot remember?

MR HUMBULANI INNOCENT KHUBA: Depending on the issue that when we say number or reports ...

10 **CHAIRPERSON:** Yes.

MR HUMBULANI INNOCENT KHUBA: It is how many times have given to ...

CHAIRPERSON: *Ja.*

MR HUMBULANI INNOCENT KHUBA: Advocate Mosing or Colonel Moukangwe ...

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: But however most of the time when I would give him the recommendation will sometimes remain like that but I put statement in (intervenes).

20 **CHAIRPERSON:** Oh, okay. No that is fine. So - but then we come to the report that we have called the first report. In that first report your recommendation is both General Sibiya and General Dramat should be charged?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: And then you say soon after you had submitted that

first report there was another report that you submitted and that report changed - was different in terms of recommendations to the first one?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: And it was different in this respect that in regard to General Sibiya you now said he should not be charged but with regard to General Dramat you remained with the recommendation that he should be charged?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: And then there was what we call the second report
10 but maybe we should be calling it the third report ...

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: But I do not want to confuse the record. What we call the - the second report and in the second report you then changed your mind about General Dramat as well in terms of your recommendation and then in the second report you took the view that even General Dramat should not be charged?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: And when you were being confronted with discrepancies between the first report and the second report - and I
20 think that is the question that Ms Wentzel was putting - nobody was talking about the - the amended report. The one that was between the two reports?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Where already you had changed your mind about - with regard to the recommendation relating to General Sibiya. You had

changed your mind about that one ...

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: In the amended one but you had not changed your mind in regard to the recommendation relating to General Dramat?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: And when it came to the second report you had changed your mind about both of them?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay. Thank you. Let us - how much - how much
10 time do you estimate we will need to finish his evidence?

ADV SUSAN WENTZEL: I think probably about two hours.

CHAIRPERSON: About two hours?

ADV SUSAN WENTZEL: Yes Chair.

CHAIRPERSON: Okay. Okay. So if we were to go for another hour we would then at least reduce his time on the stand tomorrow to at least an hour if your estimate is correct.

ADV SUSAN WENTZEL: Yes. If my estimate is correct.

CHAIRPERSON: Yes. I need to have a meeting about among other things the program for next week and I need - that - that meeting
20 should be very short and I am tempted to say because both of you said we could go up to six. I am tempted to say I should adjourn for about 15 or so minutes.

Deal with that issue and then come back and we continue for about an hour up to 6 o' clock or just after six and so that if we - so that we then - remain with maybe one hour with him for tomorrow.

ADV SUSAN WENTZEL: Yes. That is convenient.

CHAIRPERSON: Mr Khuba that would still be fine with you?

MR HUMBULANI INNOCENT KHUBA: It is okay chairperson.

CHAIRPERSON: Yes. Okay, alright. We are - we are going to adjourn then for a very short time up to quarter past five and then we resume. We adjourn.

ADV SUSAN WENTZEL: Thank you Chair.

REGISTRAR: All rise

INQUIRY ADJOURNS

10 **INQUIRY RESUMES**

CHAIRPERSON: Okay let's continue, we have a job to do yes, thank you.

ADV SUSAN WENTZEL: I beg your pardon before we leave the issue of the first report you said that...[intervenes].

CHAIRPERSON: I think you might be too far from your mic.

ADV SUSAN WENTZEL: You said that your investigation wasn't complete at the stage you submitted the first report, could you tell the Chair what was outstanding?

20 **MR HUMBULANI INNOCENT KHUBA:** There were a number of things that were outstanding, it was a warning statement of General Sibiya and General Dramat. The analysis of the cell phone record for General Sibiya.

ADV SUSAN WENTZEL: And did you tell Advocate Mosing that these things were still outstanding?

MR HUMBULANI INNOCENT KHUBA: Yes I did.

ADV SUSAN WENTZEL: And what was his attitude?

MR HUMBULANI INNOCENT KHUBA: He said despite the outstanding information I needed to submit a docket with the report.

CHAIRPERSON: That is still in relation to the first report?

MR HUMBULANI INNOCENT KHUBA: That's correct.

CHAIRPERSON: Okay, and he knew that you – or rather let me ask this question, as at that time when you submitted your first report, did you intend to make efforts to get those statements?

MR HUMBULANI INNOCENT KHUBA: That's correct I continued with
10 the investigation.

CHAIRPERSON: Yes and did he know that, Advocate Mosing?

MR HUMBULANI INNOCENT KHUBA: Yes he did.

CHAIRPERSON: And obviously if he knew that you were going to continue with the investigation he would know that whatever you got from the investigation would have to be factored into – would have to be put into the docket?

MR HUMBULANI INNOCENT KHUBA: That's correct.

CHAIRPERSON: Did he know exactly what else you were going to be looking into as part the investigation other than trying to obtain the
20 statement from – did you say General Sibiya and General Dramat?

MR HUMBULANI INNOCENT KHUBA: That's correct, he knew that the cell phone analysis, because he was the one who gave me instruction to get an expert who would analyse the location of the two Generals when they received and made calls.

CHAIRPERSON: But at the stage at which you submitted the first

report, were there any cell phone records relating to the two Generals that were there in the docket and that had been analysed already?

MR HUMBULANI INNOCENT KHUBA: They were no yet analysed because they used something that we call coordinates, these are numbers, you may find there's four or five numbers and they will indicate the name of the tower but the name of the tower will not exactly tell you where because it may be named - probably a name of a person, you may not know that it wasn't – but he, when we discussed, we had an agreement to say let's get these coordinates to be plotted on
10 a Google map so that we can know exactly where was this person standing when he received or made a call.

CHAIRPERSON: So there were cell phone records in the docket at the time you submitted the first report but those cell phone records had not yet been analysed?

MR HUMBULANI INNOCENT KHUBA: That's correct.

CHAIRPERSON: And that can make a big difference?

MR HUMBULANI INNOCENT KHUBA: That's correct.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: Thank you, now you've testified that after you
20 received these cell phone records they showed that General Sibiya was – could not have been at the place where the witnesses had placed him and so it disproved what the witnesses had said?

MR HUMBULANI INNOCENT KHUBA: That's correct.

ADV SUSAN WENTZEL: And...[intervenes].

CHAIRPERSON: I'm sorry is it the analysis of the cell phone records

that revealed that, in other words not just the records but the analysis or the records themselves also disproved without the analysis?

MR HUMBULANI INNOCENT KHUBA: If the record clearly disapproved that, there would not have been a need to analyse them.

CHAIRPERSON: Oh okay so from the records which were in the docket – from the cell phone records that were in the docket, those records did not disprove what the witnesses had said?

MR HUMBULANI INNOCENT KHUBA: That's correct.

CHAIRPERSON: And that gave rise to the need for the records to be
10 analysed so as to establish exactly where the two persons were?

MR HUMBULANI INNOCENT KHUBA: That's correct.

CHAIRPERSON: Okay.

MR HUMBULANI INNOCENT KHUBA: And I may wish to add there because there was a time when we went through the record together and we got some funny names in terms of towers and I still remember Advocate was saying this one seems to be where – but it was all about guesswork and that's where he said, Mr Khuba get the thing analysed by the expert.

CHAIRPERSON: So apart from the fact that you, yourself may have
20 been intending that there should be an analysis of the cell phone records, he himself told you to please get the records analysed?

MR HUMBULANI INNOCENT KHUBA: It was his idea.

CHAIRPERSON: It was his idea?

MR HUMBULANI INNOCENT KHUBA: That's correct.

CHAIRPERSON: Okay.

ADV SUSAN WENTZEL: So now, once you received this information, you changed your recommendation that General Sibiya should be charged and you produced, what I've referred to...[intervenes].

CHAIRPERSON: I think you need to be careful about the terminology, you know when you say, he changed his recommendation, it could mean he changed his view about the recommendation but it also could mean he physically changed a recommendation that had been made.

ADV SUSAN WENTZEL: I appreciate that.

CHAIRPERSON: Yes.

- 10 **ADV SUSAN WENTZEL:** Chair and that is an important distinction. What I meant is that you, in essence changed your mind or changed your view, you didn't take the report and amend the first report physically, you produced a new report that had a different conclusion?

MR HUMBULANI INNOCENT KHUBA: That's correct.

ADV SUSAN WENTZEL: So if you have a look at page 104 of the bundle you'll see that that this is an email from you dated the 23rd of January 2014 to Mr Sesoko and it says,

"Diepsloot [indistinct] case report".

So did you send this report to Mr Sesoko?

- 20 **MR HUMBULANI INNOCENT KHUBA:** That's correct.

ADV SUSAN WENTZEL: And why did you send it to him?

MR HUMBULANI INNOCENT KHUBA: Because I wanted him to deliver it to the Secretary of Police as he used to do for me.

ADV SUSAN WENTZEL: So if we have a look at...[intervenes].

CHAIRPERSON: Which one is this report, is it the first report, is it

the amended report, is it the second report?

ADV SUSAN WENTZEL: Is this the amended report?

MR HUMBULANI INNOCENT KHUBA: That is the amended between the first and the second.

CHAIRPERSON: Okay let's - think let's call it the amended report because if we change and say it's the second report as it should have been said, should have been labelled, it will cause confusion. So we have the first report, the amended report and the second report.

ADV SUSAN WENTZEL: Yes Chair and the reason that the
10 terminology was used is because in the subsequent charges and disciplinary proceedings it was the distinction between what was called a first report and a second report, so it was in that context that, that terminology was used.

CHAIRPERSON: Yes okay.

ADV SUSAN WENTZEL: So if we have a look at page 129 of the bundle it says, recommendation and then at page 130 now reads,

20 "Based on the available evidence the Independent Police Investigative Directorate recommends that General Dramat, Lieutenant Colonel Malaleka, Constable Radebe, Captain S C Nkosi and Warrant Officer Makoe be criminally – charged criminally of, again kidnapping, defeating the ends of justice, assault and theft only applicable to Captain Malaleka, Warrant Office Makoe, Constable Radebe and Captain Nkosi, then in brackets it says (the Independent Police Investigative Directorate cannot recommend any criminal charge against

Major General Sibiya because the witnesses versions are not corroborated by other evidence that he was at the crime scene e.g. cell phone records)".

Is that correct?

MR HUMBULANI INNOCENT KHUBA: That's correct.

CHAIRPERSON: I had a look at some stage, either last night or this morning at the Werksmans report and I made the mistake but I think somewhere it may have – it may be saying something to the effect that it is not true that there were no cell phone – there was no cell phone
10 analysis at the time of making – submitting the first report because it was there but it may be that it doesn't say that maybe it says you said to them, that is Werksmans, you changed your view because earlier on when you submitted the first report there were no cell phone records. The investigation had to continue because you wanted to obtain cell phone records. Now you may have a better recollection than I have of what they say but based on what you are saying, to the extent that they may be saying part of the reason why the investigation was continuing was that you wanted to obtain cell phone records, then they must have misunderstood because your evidence is, the cell phone records were
20 there, what was not there was the analysis and the further investigation was going to include obtaining an analysis of cell phone records that were already there.

MR HUMBULANI INNOCENT KHUBA: I think they misunderstood me because cell phone records were there, the problem we had was to understand where these Generals were in terms of exact location and I

still remember when I spoke to the expert I even requested to say, just show me even the picture to say this person was standing here and he did that and indicated that if there is any variance from what he indicated and where the person was standing it would be only ten metres. Now if they say that there was no cell phone record why would I then – I don't think even Advocate Mosing would have asserted that without cell phone records. The issue that we could not analyse.

CHAIRPERSON: But your own understanding of what they say in this context is it more or less along my own understanding as well or how
 10 is your understanding because I think somewhere they seem to say they don't believe you with regard to something relating to the records, I just can't remember whether they say you said part of the reason why the investigation still had to continue was because you had to obtain cell phone records and then they say but the cell phone records were already there or whether they say, you said you were going to get analysis and they say, no but the analysis was there. I can't remember those – that distinction. Do you have any particular recollection of what they say in criticising your evidence?

MR HUMBULANI INNOCENT KHUBA: Chairperson I think I need to put
 20 the report of Werksmans in perspective because they interviewed me three times and the first day I still remember because we had already discussed with Mr Sesoko to say, when we arrived there we need to ask whether these things are going to be used for departmental or for criminal. So unfortunately I did not record but I indicated to them and they gave me the same assurance they gave to Mr Sesoko. Now when I

was telling them exactly what happened what they used to do, any information that will show that I was towing the line in terms of this investigation, they would not really allow that. I still remember I even said, I have an email that shows that I requested this docket, this is not necessary and that is when I realised that this thing is one sided because this three interviews was not basically that we were starting very late and that they could not finish. Sometimes they would start in the morning and they say we are done with you then I left. Probably they sat down and said, no we can't really hook this guy, how do we

10 change the questions and I went back again. When I went back I found that the – they were asking similar questions but trying to trick me there and there, there was one time I was so tired and I wanted to know, what is it that you really need because I could show – even this report, they were not interested, they were not interested in things that – they wanted a situation, what they were pressurising me is that, did McBride force you to change the report. Then I said to them, I did statement analysis McBride was not yet appointed, I then did the – there were cell phone analysis which was done and I sent the email requesting the docket, McBride was not yet employed because they

20 were pushing me to a point to say, you need to say you were forced by McBride and it was not true. If really I was forced, I would say the same way and say, I was forced.

CHAIRPERSON: Okay I asked you about the Werksmans report, we'll get there later or tomorrow but I asked because of some connection that I was seeing, please continue.

ADV SUSAN WENTZEL: Yes thank you Chair. So, now after you had submitted the first report, what is now referred to as the amended report you say in your statement in paragraph 72 on page 22 that on the 26th of February 2014 General Sibiya responded to the questions which you had sent to him. Was this his warning statement?

MR HUMBULANI INNOCENT KHUBA: That's correct.

ADV SUSAN WENTZEL: And it was sent to Mr Sesoko on the 27th of February 2014, is that correct?

MR HUMBULANI INNOCENT KHUBA: That's correct.

10 **ADV SUSAN WENTZEL:** And then what did you do with this information?

MR HUMBULANI INNOCENT KHUBA: I forwarded it to Advocate Mosing.

ADV SUSAN WENTZEL: And if we have a look at page – in fact it's probably best to look at page 134 of the bundle and...[intervenes].

CHAIRPERSON: What page?

ADV SUSAN WENTZEL: 134 Chair.

CHAIRPERSON: Okay.

20 **ADV SUSAN WENTZEL:** And you'll see at the bottom half of the page is an email from you dated the 28th of February 2014 to Anthony Mosing and subject forward email response to questions posed by IPID Major General Shadrack Sibiya. Is that the email in which you forwarded the responses to Advocate Mosing?

MR HUMBULANI INNOCENT KHUBA: That's correct.

ADV SUSAN WENTZEL: And he then responded to you on the same

day and said,

“Dear Mr Khuba, in light of the fact that the matter has been referred to the DPP of South Gauteng, Gauteng for decision you are requested to file this evidence in the docket which is presently with the DPPSG and in future forward any additional evidence or other matters directly with him, kind Regards”,

So what did you understand from this?

MR HUMBULANI INNOCENT KHUBA: I understood that I could access
10 or get the docket from the person who was having the docket.

ADV SUSAN WENTZEL: And did you understand you would then update that docket with this evidence?

MR HUMBULANI INNOCENT KHUBA: That’s correct.

ADV SUSAN WENTZEL: Now could you explain to the Chair how it came about that what is now called the second report that was signed by, I think Mr Sesoko and Mr McBride came about?

MR HUMBULANI INNOCENT KHUBA: After I did a briefing with Mr McBride as well as Mr Sesoko then I indicated the email which was sent by Advocate Mosing and then he permitted me to go and collect the
20 docket because I had to attach the evidence and then – that time I still remember indicated that this time you need to involve Mr Sesoko. So I managed to get the docket and I’ve already indicated what was in the docket.

ADV SUSAN WENTZEL: So let’s just stop there for a minute, who went with you to get the docket?

MR HUMBULANI INNOCENT KHUBA: It was Glen Innes.

ADV SUSAN WENTZEL: And who did you get the docket from?

MR HUMBULANI INNOCENT KHUBA: Advocate Van Zyl.

ADV SUSAN WENTZEL: And why did Advocate Van Zyl now have the docket as opposed to Advocate Mosing?

MR HUMBULANI INNOCENT KHUBA: Seemingly it was transferred to Advocate Van Zyl but all along I was under impression that Advocate Mosing was going to prosecute the case.

ADV SUSAN WENTZEL: So if you have regard to page 136, what is
10 that – sorry are you there, no?

MR HUMBULANI INNOCENT KHUBA: Page?

ADV SUSAN WENTZEL: 136.

MR HUMBULANI INNOCENT KHUBA: 136?

ADV SUSAN WENTZEL: Ja.

MR HUMBULANI INNOCENT KHUBA: Sorry I thought you said 126,
okay.

ADV SUSAN WENTZEL: What is this document?

MR HUMBULANI INNOCENT KHUBA: 136 – oh this document it's a
letter, it was sent to Advocate Chauke by Advocate Mosing. So this
20 letter was part of the docket. When I went to collect the docket
Advocate Van Zyl took the copy of this letter and he scribbled it so that
I could sign acknowledging the docket. So the docket was in terms of
the Act 5 as I indicated earlier. So he indicated that there were six
arch lever files, one thin file, it was handed to Mr Khuba from IPID and
it indicated that I was accompanied by Glen Innes, he even wrote the

cell phone number there and I signed for it.

ADV SUSAN WENTZEL: Now when you had the docket and perused the contents you indicated earlier that your first report wasn't in the docket, is that correct?

MR HUMBULANI INNOCENT KHUBA: That's correct.

ADV SUSAN WENTZEL: And what report was in the docket?

MR HUMBULANI INNOCENT KHUBA: It was Advocate Mosing's report.

ADV SUSAN WENTZEL: And was there a recommendation from Advocate Mosing?

10 **MR HUMBULANI INNOCENT KHUBA:** That's correct.

ADV SUSAN WENTZEL: And do you remember what that recommendation was?

MR HUMBULANI INNOCENT KHUBA: The recommendation was to the effect that he was recommending that General Dramat be charged but he could not recommend that General Sibiya be charged, he only recommended General Dramat.

CHAIRPERSON: So at that stage when you took the docket as reflected in the document at page 136, this was after you had subtitled the first report?

20 **MR HUMBULANI INNOCENT KHUBA:** That's correct.

CHAIRPERSON: Was it also after you had submitted the amended report or was it before you submitted the amended report?

MR HUMBULANI INNOCENT KHUBA: The amended report was already submitted but not to NPA it was submitted to Mr Sesoko.

CHAIRPERSON: Oh.

MR HUMBULANI INNOCENT KHUBA: But what I – I may not remember what really happened but knowing that I was updating Advocate Mosing in everything I think I told him that I spoke with the expert and he says, this person was not there.

CHAIRPERSON: Oh so his decision to recommend – or his recommendation that General Sibiya should not be charged, the fact that, that is in line with your amended report might be because you told him even before he got the amended report?

MR HUMBULANI INNOCENT KHUBA: Yes because when I gave him
10 the – when I got the information, I got it telephonically from the expert, what I am suspecting is that I think I had spoken with him but I cannot really precisely remember, I'm drawing that conclusion on the basis that I would tell him of everything that was taking with the investigation and with this type of discovery for me it was serious that warranted me to phone him.

CHAIRPERSON: Yes, so it would be unlikely that you delayed telling him once you knew it, okay. So the 14th of February 2014 as reflected in the document at page 136 by that time had General Dramat's statement and General Sibiya's statement been sent to Advocate
20 Mosing?

MR HUMBULANI INNOCENT KHUBA: I had already received those documents if I remember well ja.

CHAIRPERSON: But had you sent them to Advocate Mosing or not, or are you not able to remember?

MR HUMBULANI INNOCENT KHUBA: What I remember is when I sent

the statement of General Sibiya but I cannot remember in terms of
...[intervenes]

CHAIRPERSON: The dates?

MR HUMBULANI INNOCENT KHUBA: No I sent it on the 27th in terms
of ...[intervenes]

CHAIRPERSON: 27 February?

MR HUMBULANI INNOCENT KHUBA: February.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: When I went there I had already
10 sent, when I went to collect the docket I had already sent him the copy
of the warning statement.

CHAIRPERSON: This letter, I'm sorry I think I may have misunderstood
something, the memorandum at page 136 is dated 14 February 2014,
but that is not the date when you saw it. You saw it much later.

MR HUMBULANI INNOCENT KHUBA: Yes, I saw it on the
...[intervenes]

CHAIRPERSON: There is 18 June there and 27 June, 18/6, 27/6 and
then there is 7 March 2014 at the bottom just under the central number
of Mr Glen Angus, that is 13 June somewhere on the side.

20 **MR HUMBULANI INNOCENT KHUBA:** I can be able to talk about these
dates, some of them.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: For example the 7th March 2014
was when I collected the docket.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: That is why there are signatures there.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: And also next to my signature there is the same date, which is 2014/03/07.

CHAIRPERSON: Yes.

MR HUMBULANI INNOCENT KHUBA: Because that ...[intervenes]

CHAIRPERSON: Oh is that your signature?

MR HUMBULANI INNOCENT KHUBA: That is my signature.

10 **CHAIRPERSON:** Next to, just below 7 March 2014, that is under the cell number of Ms Jangus, the signature at the extreme right bottom of the page?

MR HUMBULANI INNOCENT KHUBA: Mmm.

CHAIRPERSON: Whose signature is that one?

MR HUMBULANI INNOCENT KHUBA: That is Glen Angus who was accompanying me.

CHAIRPERSON: And where is your signature, I am trying to see your one?

20 **MR HUMBULANI INNOCENT KHUBA:** It is the one that Khuba with fine print, small one. The one just under 7 March 2014.

CHAIRPERSON: Oh you know it looks like somebody had written something and crossed it out. (Laughing) Okay so on – so it was the 7th of March 2014, the first time that you saw this document?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay. Was it on that day that you also saw or found

out that Advocate Mosing had made the recommendation that General Dramat should be charged?

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Okay, but in terms of sending the General Dramat and General Sibiya's statements to Advocate Mosing you said you think you sent them on the 27th, but you did not say which month.

MR HUMBULANI INNOCENT KHUBA: It was February.

CHAIRPERSON: 27 February?

MR HUMBULANI INNOCENT KHUBA: 2014.

10 **CHAIRPERSON:** Okay and the – do you remember in case it is not here but if it is here Ms Wentzel will tell me the document which contained Ms Demorsingh's recommendation that General Dramat be charged do you remember what date it was dated?

MR HUMBULANI INNOCENT KHUBA: I cannot remember.

CHAIRPERSON: You cannot remember, okay alright. Is it here?

ADV SUSAN WENTZEL: No, it is not here.

CHAIRPERSON: Because an important aspect is whether the decision that he should be charged was taken after his statement has been received and studied or not.

20 **ADV SUSAN WENTZEL:** Yes Chair we will try and see if we can locate that, but Chair if we do have regard to page 134 again we can see that the response to the questions posed by General Sibiya were forwarded by Mr Khuba to Advocate Mosing on the 28th of February 2014. He said now it is the 27th but it was in fact the 28th and then if you have regard to the document at page 136.

CHAIRPERSON: I'm sorry at 134 what were you drawing to my attention?

ADV SUSAN WENTZEL: So if you look at the second half of the document you will see the first email dated the 28th of February 2014, and you see the subject says forward emailing response to questions posed by IPID Major General Shadrack Mitzibiya so that is when Advocate Mosing gets this and then tells him you need to file this evidence in a docket, and I do not have the docket any more so you need to go to the DPP of South Gauteng for the 7th.

10 **CHAIRPERSON:** Yes.

ADV SUSAN WENTZEL: Then if we have a look at HIK136 you will remember that the testimony was from Mr Khuba that Advocate van Zyl had the docket and he made them sign for all the files, so you will see there it says 16 large files and one thin file and hand it to Khuba from IPID, is phone number, accompanied by Glen Angus, his cell phone number, the date and he made them both sign, so that is certainly the date that that docket was collected which is after the email was sent, but what is important is that if you look at the date on page 136 when the docket was forwarded that was the 14th of February 2014, so at that
20 stage he would not have had the warning statement from Sibiya.

CHAIRPERSON: Oh you say he forwarded the docket to the DPP on the 14th of February and one would expect that that is when – one would expect that the document containing his recommendation would have been contained in the docket as well.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: And that was way before the statement from General Sibiya and General Dramat, or General Sibiya?

ADV SUSAN WENTZEL: Yes Chair and so that – if that is correct then it means that his ...[intervenes]

CHAIRPERSON: He made the decision before he could see the statements of General Sibiya.

ADV SUSAN WENTZEL: So it must mean that he could not have made it on the basis of what General Sibiya said but it probably was as a result of the cell phone records.

10 **CHAIRPERSON:** Yes, yes, okay. Are you saying it was on the basis of the cell phone records as opposed to the analysis of cell phone records?

ADV SUSAN WENTZEL: Yes I mean the analysis of the cell phone records I am sorry.

CHAIRPERSON: Okay, okay, and this is a situation where he knew based on what Mr Khuba has testified he knew that Mr Khuba was still trying to get statements from General Sibiya and General Dramat, so he makes a decision that General Dramat must be prosecuted before hearing what he has to say in his statement.

20 **ADV SUSAN WENTZEL:** It would appear that because it does not look like General Dramat's final warning statement was forwarded to him.

CHAIRPERSON: Ja. Okay

ADV SUSAN WENTZEL: Chair is it a convenient time to adjourn or ...[intervenes]

CHAIRPERSON: Oh I did not realise we are already at two minutes to

six, no I think we need to adjourn now, I think I am probably not the only one who is getting tired. I don't know if we made as much progress as we hoped to make after the final break, I guess it does not matter much if I say let us go another ten minutes to make it an hour.

ADV SUSAN WENTZEL: I am in Chair's hands.

CHAIRPERSON: No I think that is fine, let's adjourn, it does look like – so maybe tomorrow we should start at half past nine.

ADV SUSAN WENTZEL: Yes Chair.

CHAIRPERSON: Then maybe we could go up to half past ten. I see
10 that with regard to Colonel Naidoo in the program for next week there is much space for him, there is space I think for about three days, except that on Tuesday Reverend Chikane is also put in there but I don't want Colonel Naidoo's evidence to be interrupted by another witness's evidence, we would need to finish with him, so it may be that there is – not much need to start too early then half past nine tomorrow.

ADV SUSAN WENTZEL: Chair sorry, I just want to make sure I am understanding you, are you proposing that Colonel Naidoo would start tomorrow and continue on Monday or he would only continue on Wednesday, he would only start on Wednesday?

20 **CHAIRPERSON:** No, no what I am saying is remember that earlier on you said that you thought that on Monday you would be – his day when he could continue if we do not finish tomorrow, which you did not think would happen, but I said I was still going to look at the program, so I am simply saying once we are finished with Mr Khuba tomorrow we can start with Colonel Naidoo and then we will continue on Monday, we can

continue on Monday with him and if we do not finish on Monday with him we can continue on Tuesday also and let Reverend Chikane only start his evidence after we have finished with him, with Colonel Naidoo.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: That is what I am saying. I have asked that Reverend Chikane be alerted to the fact that if by Monday afternoon we have not finished with Colonel Naidoo then on Tuesday morning we would continue with him and only start his evidence after we have finished with Colonel Naidoo.

10 **ADV SUSAN WENTZEL:** Yes that would – that seems a solution.

CHAIRPERSON: Ja, okay. Mr Khuba tomorrow you would be fine with starting at half past nine?

MR HUMBULANI INNOCENT KHUBA: Yes.

CHAIRPERSON: Ja, okay, so we are going to adjourn at this stage and then tomorrow we will continue at half past nine. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 27 SEPTEMBER 2019