

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

27 JULY 2020

DAY 238



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DATE OF HEARING:

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 27 JULY 2020

CHAIRPERSON: Good morning Mr Hulley, good morning everybody. Switch on your microphone.

ADV HULLEY SC: Good morning Mr Chairman.

CHAIRPERSON: Thank you. Are we ready?

ADV HULLEY SC: We – I believe we are ready Mr Chairman.

CHAIRPERSON: Yes. I think they must switch off the air conditioner. Thank you. It sometimes interferes with the
10 hearing – what people say.

ADV HULLEY SC: Yes.

CHAIRPERSON: Okay alright. We can start.

ADV HULLEY SC: Mr Chairman – thank you very much Mr Chairman. Mr Chair this morning is the evidence of Mr Nkosinathi Nhleko. Mr Nhleko has been implicated by several witnesses. He has – he has deposed to affidavits in respect of two of the witnesses who have implicated him. The one witness is Mr Robert McBride and you will – you have granted leave for him to lead evidence to be questioned
20 and to be – and to cross –examine Mr McBride.

Mr McBride on Sunday afternoon provided us with – through his attorneys provided us with an affidavit in which he explains why it is that he would not be present today. Counsel has been appointed to address you on the – the question of why he is not present today and I want to first

take you through the bundles and show you where is application or rather where his affidavit is in the bundles before I call upon Counsel who appears for Mr McBride to explain to you the circumstances for his absence today.

The bundle for today consist of a series of documents or bundles which comprise what we refer to as Exhibit Y8 series Mr Chair. The – if I can take you to the first one of those documents which is Exhibit Y8.1. That Mr Chair.

CHAIRPERSON: Let us start with Bundle – what...

10 **ADV HULLEY SC:** It has got a Bundle A.

CHAIRPERSON: What do – what do suggest the bundle should be called?

ADV HULLEY SC: Sorry it is Exhibit Y8.

CHAIRPERSON: I see on mine it says Exhibit.

ADV HULLEY SC: Correct Chair.

CHAIRPERSON: 8A but I understand the – if you say bundle whatever.

ADV HULLEY SC: It should say Bundle A I am not sure. It should have said Bundle A.

20 **CHAIRPERSON:** Bundle A.

ADV HULLEY SC: Correct Mr Chair.

CHAIRPERSON: But you would have to check because there may have been another Bundle A in another work stream.

ADV HULLEY SC: Sorry it is the bundle – it is the Bundle A

in the Y8 range. So Y8 consists of bundles A all the way through to bundle H but all under the Y8 stream. So if you consider the spine there should be a Y8 on the spine that shows that it is Exhibit Y8 and then there is – there is a number of documents that come under the Y8 range. So the first...

CHAIRPERSON: Let us make difference the bundles and exhibits first.

ADV HULLEY SC: Yes.

10 **CHAIRPERSON:** The exhibits will be the actual affidavits and documents.

ADV HULLEY SC: Correct Mr Chair.

CHAIRPERSON: The box – the file would be bundle what, Y or bundle?

ADV HULLEY SC: So it will – the box would be Bundle A.

CHAIRPERSON: Ja.

ADV HULLEY SC: So you would – so you would have Bundle A all the way to Bundle H.

CHAIRPERSON: Yes.

20 **ADV HULLEY SC:** The exhibits would all be under the Exhibit YH – sorry Y8 range.

CHAIRPERSON: Ja I think there is a Bundle B and I think if there is a Bundle B there must be a Bundle A.

ADV HULLEY SC: Yes.

CHAIRPERSON: In another work stream. I think the PRASA

work stream if I am not mistaken. So I think we must be – we need to be creative on this one. Maybe we should call it Bundle LEA.

ADV HULLEY SC: Yes.

CHAIRPERSON: I am thinking about Law Enforcement Agency work stream.

ADV HULLEY SC: Yes.

CHAIRPERSON: But we need to put something that will make it – that we make sure we do not confuse it with
10 another bundle. But I do not even know whether putting LE is the right thing but let us be creative.

ADV HULLEY SC: Yes. The – what my understanding was from having spoken with the administrator is that every one of the Exhibits which fall within a particular range or relate to a specific topic or witness in this case through the evidence of Mr Nhleko would fall under the Y8 range of different exhibits. Each bundle that goes with that. So you will have a Y8 and you will have a Bundle A that goes with Y8 as opposed to the Bundle – the PRASA bundle.

20 **CHAIRPERSON:** Well the – the number of the exhibit need not be connected with the name of the bundle but it could be but that might cause confusion.

ADV HULLEY SC: Yes.

CHAIRPERSON: If inside the file your exhibits are Exhibit 8A, B, C, D up to whatever.

ADV HULLEY SC: Yes.

CHAIRPERSON: We can keep that like that in terms of exhibits.

ADV HULLEY SC: So if I can just explain to you Mr Chair how we have done it.

CHAIRPERSON: Hm.

ADV HULLEY SC: If you would open the first bundle and you will see the index is Exhibit Y8.

CHAIRPERSON: Hm.

10 **ADV HULLEY SC:** And then you will see a table with a # which is your first column followed by description, followed by bundle and followed by pages. So you will see that the – under the # column you have got 1 all the way down to – on the second page you have got – all the way down to 16. So that 1 is Exhibit 8. – Y8.1 and if you look across to the Bundle number the appropriate column which is the third column that Exhibit Y8.1 appears in Bundle A. And you will see that – for instance Exhibit Y8.3 appears in Bundle – appears also in Bundle A but it passes over into Bundle B.

20 So in other words there is...

CHAIRPERSON: It seems this is more confusing than I thought it was.

ADV HULLEY SC: Yes.

CHAIRPERSON: The – my expectation is that we would have a name for the file. That is what I would say we call

Bundle. Let us say – let us say for argument sake Bundle A.

ADV HULLEY SC: Yes.

CHAIRPERSON: Okay. Then inside Bundle A there are exhibits.

ADV HULLEY SC: Correct.

CHAIRPERSON: Okay. Exhibits will consist of affidavits, documents and so on and so on. Now documents that are annexures to an affidavit would form part of the exhibit that the affidavit is.

10 **ADV HULLEY SC:** Correct Mr Chair.

CHAIRPERSON: Okay. But those that are – that stand alone they would have their own exhibits number.

ADV HULLEY SC: Correct.

CHAIRPERSON: You know. But the box would be like Bundle A and then you have Exhibit – even if you called it Y8A the first exhibit in the bundle.

ADV HULLEY SC: Yes.

CHAIRPERSON: Y8A. The next one may be – can then be Exhibit Y8B, Y8C then that is what – that is what I am
20 expecting.

ADV HULLEY SC: Hm.

CHAIRPERSON: I get the impression that is not exactly how this is.

ADV HULLEY SC: So that is not how it has been prepared. It has actually been prepared the other way around. So what

we have done is the exhibit number would be in this case – if you consider for argument sake the first – the very first item in that bundle it is the affidavit of Mr Nhleko which is part of a 3.4 Application. That together with all its annexures we have marked that as Exhibit 8 – oh sorry Y8.1

CHAIRPERSON: Ja you see for example when I look at his affidavit on page 1 I expect that something would tell me what exhibit number it is. Okay if it has not been done of course we can do it as we go along.

10 **ADV HULLEY SC:** Yes.

CHAIRPERSON: That is an option. So to be sure that this is a certain exhibit.

ADV HULLEY SC: Yes.

CHAIRPERSON: And then the annexures to it would not...

ADV HULLEY SC: Would be part of it.

CHAIRPERSON: Be allocated as separate exhibit numbers.

ADV HULLEY SC: Yes.

CHAIRPERSON: They would be part of the same exhibit. But the moment there is a document that is a stand-alone
20 that is not an annexure to his affidavit then that becomes the next exhibit. That is what – that is what – and it would be marked Exhibit whatever.

ADV HULLEY SC: Yes.

CHAIRPERSON: But if it is not marked as we go alone we could mark it. That is what I have in mind.

ADV HULLEY SC: Yes.

CHAIRPERSON: How different is this from that?

ADV HULLEY SC: The – in the present case the – each one of these was marked in the opposite way to what you describing Mr Chairman.

CHAIRPERSON: Ja.

ADV HULLEY SC: What – what we have done is the – if you look at the bundle numbers.

CHAIRPERSON: Hm.

10 **ADV HULLEY SC:** The bundle – the A range.

CHAIRPERSON: Ja.

ADV HULLEY SC: Refers to a bundle number.

CHAIRPERSON: Ja.

ADV HULLEY SC: Whereas the numeric range which is in the left column.

CHAIRPERSON: Ja.

ADV HULLEY SC: Refers to the exhibit that goes with the Y8 range.

CHAIRPERSON: Yes.

20 **ADV HULLEY SC:** So everything that is Y8.

CHAIRPERSON: Ja.

ADV HULLEY SC: Has a number attached to it. Any exhibit has a number attached to it.

CHAIRPERSON: Ja.

ADV HULLEY SC: And that – but the exhibit may appear in

a different bundle which has an alphabetical letter attached to them – the bundle.

CHAIRPERSON: Ja. My concern is that that is different from how they have been done and I do not want to ...

ADV HULLEY SC: Yes.

CHAIRPERSON: To be confused later – a few months from now. How much work would be involved in trying to do it the way that I would prefer it to be done?

ADV HULLEY SC: I would imagine that it is a quite a bit of
10 work that it will entail.

CHAIRPERSON: Ja.

ADV HULLEY SC: But...

CHAIRPERSON: But what I am having in mind is if we decide what the bundle is going to be called.

ADV HULLEY SC: Yes.

CHAIRPERSON: And then as you refer to each exhibit we then give it an exhibit number.

ADV HULLEY SC: An alphabetical number or an exhibit – or a numeric number?

20 **CHAIRPERSON:** Preferable I think alphabetical but whichever way.

ADV HULLEY SC: Yes.

CHAIRPERSON: Would make things – would make it convenient. So as – so as we go along we do that. How would that – how does that sound?

ADV HULLEY SC: We –

CHAIRPERSON: And then we do not interfere with the page numbers - with the pagination. We retain the pagination as is – well I have not – I assume it is – ja I think it is sequential from beginning to end.

ADV HULLEY SC: It is sequential.

CHAIRPERSON: Ja which is important. So in that way we do not – we will not interfere with the pagination but we will simply give exhibit numbers as we go along and if the first
10 one – if Mr Nhleko’s first affidavit is Exhibit Y8A for example.

ADV HULLEY SC: Yes.

CHAIRPERSON: Then the next stand-alone document would be Exhibit Y8B and we go along up to the end. And then the index saying that can be changed – the index can be amended later.

ADV HULLEY SC: Very well.

CHAIRPERSON: Would that work?

ADV HULLEY SC: We would certainly endeavour to do that. I – at the moment I think it would – it might be a bit of
20 trouble.

CHAIRPERSON: Yes.

ADV HULLEY SC: But if we...

CHAIRPERSON: With a little bit – with some adjournment maybe of sometime during.

ADV HULLEY SC: Perhaps I can seek instructions.

CHAIRPERSON: To give you to see

ADV HULLEY SC: As far as that is concerned. I would imagine if I were to make a call through the person that is responsible for preparing the bundles.

CHAIRPERSON: Ja.

ADV HULLEY SC: He might be able to indicate to me how difficult that might be.

CHAIRPERSON: But what I am having in mind is that – I mean we would put the exhibit number simply write it in by
10 hand. It would have to...

ADV HULLEY SC: Yes for present purposes.

CHAIRPERSON: Ja for present purposes you know.

ADV HULLEY SC: Yes.

CHAIRPERSON: And the present purposes can be forever. It can remain like that. And it seems to me as long as we do not interfere with the pagination.

ADV HULLEY SC: Yes.

CHAIRPERSON: That should be fine.

ADV HULLEY SC: You see it might just be a case of
20 amending each of the indexes or indices as we go along.

CHAIRPERSON: Yes as we go along.

ADV HULLEY SC: That is fine Mr Chairman.

CHAIRPERSON: And if we need to have an adjournment of twenty minutes just to make sure everybody understands it we could do that so that once we start everything flows.

ADV HULLEY SC: Can flow.

CHAIRPERSON: Smoothly.

ADV HULLEY SC: Thank you Mr Chairman.

CHAIRPERSON: Yes okay alright. Maybe shall we give this the exhibit number the bundle number straight away? Shall we say Bundle LAW A maybe – for Law Enforcement Bundle LAW A.

ADV HULLEY SC: That is fine let us call it that.

CHAIRPERSON: Let us – it is unlikely there will be another
10 one called LAW A.

ADV HULLEY SC: That is fine Mr Chairman. What I will do it for present purposes I will take your point, I will discuss it with the team and with the person responsible for the bundling. If that proves to be a problem we will address you on that.

CHAIRPERSON: Ja and then – ja. No that is fine. That is fine. But should we mark it now we can deal with the preliminary issues and mark it later?

ADV HULLEY SC: I think it would probably [00:15:44] if I
20 first took instructions on that because if we were to mark it now and then there is a problem with that range.

CHAIRPERSON: Ja okay. Okay alright let – okay let us deal with what the application.

ADV HULLEY SC: Yes. If I can just take you then to the affidavit. I have been careful not to refer to it as an

application Mr Chairman.

CHAIRPERSON: Yes.

ADV HULLEY SC: If I can ask you to turn for what it – to the G – sorry the H range. Under H at the moment. And if you were to turn with me Mr Chairperson to the very last – that is under the 16th file divider there is a document there that appears at page 3647.

CHAIRPERSON: Okay he is still getting me the bundle. What is the number of divider 6 – 16?

10 **ADV HULLEY SC:** It is 16 Mr Chairperson.

CHAIRPERSON: I have a letter there is that what I should be having?

ADV HULLEY SC: That is a letter from a firm of attorneys called Adams and Adams they represent Mr McBride. If you turn to page 3650 that is an affidavit of Mr McBride.

CHAIRPERSON: Yes.

ADV HULLEY SC: With your leave Mr Chairperson I would ask that Ms Harding who appears for Mr McBride be allowed to address you.

20 **CHAIRPERSON:** Yes okay alright. Thank you. Yes Counsel.

ADV HARDING: Good morning Mr Chair.

CHAIRPERSON: Good morning.

ADV HARDING: I am instructed to appear on behalf of Mr McBride to hand up or take you through this affidavit Mr

Chair.

CHAIRPERSON: Yes maybe for the record you could just place yourself on record and then we continue.

ADV HARDING: Mr Chair my name is Katherine Harding and I appear on behalf of Mr McBride.

CHAIRPERSON: Thank you. Yes.

ADV HARDING: Mr Chair an affidavit has been provided to the commission as pointed out it – you will find it Mr Chair at Bundle Y8H as it is named presently and that is at page
10 3650. The affidavit has been provided to Mr Nhleko’s legal representatives I also gave him a hard copy of the signed version a few moments ago.

If I may can I take you through the salient portions of the affidavit?

CHAIRPERSON: Yes I must just say that I think I was told yesterday about the affidavit but I am only able to see it now because yesterday was too late.

ADV HARDING: Correct.

CHAIRPERSON: The legal team did offer to send it but so I
20 said I will see it this morning here. So you can tell me the important parts of it.

ADV HARDING: Thank you Mr Chair. Mr McBride has been provided with three notices of set down for three different dates for three different cross-examinations. The first of those is today the 27th. The next if the 29th for he is set to

be cross-examined by Advocate Pretorius and the third is the 13 August where he is set to be cross-examined by Brigadier Kuba's legal team.

This affidavit does three things.

The first if I can take you to it Mr Chair is at paragraph 5 of that affidavit. It expressly reiterates Mr McBride's commitment to the commission and its processes including a commitment to appear to be cross-examined.

The second important thing that the affidavit does is
10 at paragraph 17.3. It indicates that Mr McBride is not able to appear today or on the 29th to be cross-examined but that he is in principle available and makes himself available in that affidavit to do all three sets of cross-examinations on the third date the 13 August.

And the third important thing that the affidavit does is that due to Mr McBride's respect for the commission and its processes it sets out the reasons in detail why he cannot appear today or on the 29th for that cross-examination.

CHAIRPERSON: Yes you need articulate those because as I
20 say I am only seeing the affidavit now.

ADV HARDING: Yes Mr Chair. The first of those reasons can be found at paragraph 12. Mr McBride highlights in paragraph 12 that when he received those notices of set down, he was not in a position to instruct legal representatives to advise him on those notices or to advise

him on the scheduled cross-examinations. That position changed when he was appointed into his new position at the State Security Agency and that was with the effect from the 16 July.

He then appointed legal representatives in paragraph 14 it sets out on the 23 July. He instructed Adams and Adams and retained their services to represent him in these proceedings and to advise him on the notices of set down and the scheduled cross-examinations.

10 The following day on the 24th Adams and Adams addressed correspondence to the commission that is the letter to which you were referred just before this affidavit in the bundle it is also attached to the affidavit. And in that letter Adams and Adams immediately indicated that Mr McBride would not be in a position to attend today.

 And in paragraph 15 of the affidavit Mr McBride indicates that the reason why we cannot appear is because he and his legal team require more time to consider new documentation that has been provided to him in the last few
20 days and also to obtain advice on the notices of set down and the scheduled cross-examinations.

The essence of the affidavit then Mr Chair is that Mr McBride is committed to appearing to be cross-examined and is willing to do so as indicated that he can do so on the 13th of those three suggested dates. But that he needs more

time to prepare himself and his legal team in order to go through all the documentation and in order to be efficiently prepared for those cross-examinations.

CHAIRPERSON: Is he in effectively asking to be excused today and later this week when he is supposed to appear again but as far as the 13th August he has no problem?

ADV HARDING: That is the effect of this affidavit Mr Chair. The affidavit does indicate that he and so did the letter of the 24th they both indicate that he is in principle available to
10 do all three cross-examinations on the 13th.

CHAIRPERSON: Yes.

ADV HARDING: But the effect of this affidavit would be to – to seek to be excused from today’s proceedings and the 29th.

CHAIRPERSON: Yes. Okay. And for the 13th he is fine?

ADV HARDING: He is available for the 13th.

CHAIRPERSON: And then I guess another date that will be determined for the evidence – for his appearance relating to Mr Nhleko and to somebody else later in this week then in terms of his commitment he – he will come as long as there
20 will have been enough notice.

ADV HARDING: Yes Mr Chair. He has committed to appearing as long as there is enough time to sufficiently prepare.

CHAIRPERSON: Yes. Okay alright. Thank you. Let me hear if Counsel for Mr Nhleko and Mr Hulley what they have

to say. Thank you.

ADV HARDING: Thank you Mr Chair.

CHAIRPERSON: You – it might be convenient for now if you just say something from there. You can press on your microphone and tell me Mr Mokhari what your attitude is? Oh okay is it easier – well I am just afraid that if you do not put the microphone on then it will not be recorded but you can put off – okay ja you can take off your mask – mask not mic for purposes of speaking otherwise you are supposed to
10 press a button somewhere. Oh, is it not working? Otherwise if you can move over there that is fine. Ja you can move over there ja. Ja. Oh okay, okay no that is fine. You can just place yourself on record first and then start.

MR MOKHARI SC: Thank you very much CJ – I mean Chairperson of the commission. My name is William Mokhari SC. I appear for Mr Nhleko and I am with my two juniors Mr Mokhatla [?] as well as Ms Martinglatsi [?].

CHAIRPERSON: Yes. Thank you.

MR MOKHARI SC: For – for present purposes Chair.

20 **CHAIRPERSON:** Hm.

MR MOKHARI SC: I am required to respond to Mr McBride's affidavit. Yesterday we were given or yesterday afternoon we were sent an unsigned statement or affidavit by the commission's evidence leaders that McBride is saying that he will not be coming today. And this morning when we

arrived, we were given his signed affidavit.

We had already expressed our view to the evidence leaders yesterday by saying that insofar as McBride's position that he will not be coming to be cross-examined today for the reasons that he articulates we will leave it in the hands of the – of the Chairperson to decide. But what we wish to place on record is our displeasure in us being informed on the eve of the hearing when we have taken all the time to prepare.

10 We have seen the notice that was sent to Mr McBride insofar as Mr Nhleko's request to cross-examine him and the notice from the commission which informed him as way back as on the 10th of his month and that is clearly more than fifteen days and he will have articulated these views much earlier in order to save unnecessary costs that were expended.

 But of course, we cannot really take any – we cannot take the matter any further except to say that it is not up to Mr McBride to decide that he be cross-examined by all the
20 legal teams on the 13th because that will depend on the availability of us.

 So we can only assume that insofar as the cross-examination by Mr Nhleko is concerned, we will receive a new notice from the commission which we will take into account our availability as well.

But as for the 13th then we will not be available to be able to do that. But otherwise then we leave it in the hand of the Chairperson.

CHAIRPERSON: Okay no thank you.

MR MOKHARI SC: Thank you.

CHAIRPERSON: Mr Hulley.

ADV HULLEY SC: Thank you Mr Chairperson. Mr Chairperson the – the position is as we currently have it. Mr McBride was not under subpoena at the time. It was at all
10 times the understanding of the commission that Mr McBride having been given adequate notice had always been made himself available for consultations in the past and that he would comply with – on that basis so that it was not necessary in the circumstances to subpoena him. Had we known that we would run into the danger that we ultimately did we would obviously have subpoenaed him but that was entirely based the decision not to subpoena him was based entirely upon the fact that he had at all times been cooperative until then and I do not mean to intimate that he
20 has not been cooperative. Quite the contrary he – but he has given us an indication that he wishes to – well by way of the correspondence and the affidavit that he is taken up employment elsewhere and that it has become difficult for him to comply today. But that was the situation that we were confronted with and we could not nothing more than what we

presently have.

CHAIRPERSON: Well we have generally been working – the commission has been working on the basis that when people know that they are expected to appear these certain people will comply – will come.

ADV HULLEY SC: Indeed Chairperson.

CHAIRPERSON: Without any compulsion. On Friday I had occasion to mention at the hearing that it was a pity that I had to issue a directive for a judge to appear before the
10 commission because there are so many people in a – who regard it as enough that I request them appear. They do not wait for me to issue a directive or to be subpoenaed as long as they hear that the commission would like them to appear, they say I will come.

ADV HULLEY SC: Yes Mr Chairperson.

CHAIRPERSON: As a result. So – so that has been working largely well. There are circumstances where it has not worked well. But of course, if we had – if the commission had issued a subpoena or a directive, I have no doubt Mr
20 McBride would have been here. Because even in his new job he would be able to show a subpoena or a directive but he has been cooperative in the past. I am sure that it is probably just a difficult situation and I can see that in his affidavit he says that for some time he would not have been able to afford lawyers.

ADV HULLEY SC: Yes.

CHAIRPERSON: And it is only recently that he was able to afford lawyers. So other dates will have to be determined. The one for the 18th August will remain as a date for the particular cross-examination that is indicated for it.

ADV HULLEY SC: Yes.

CHAIRPERSON: Another date will have to be determined in regard to Mr Nhleko in regard to Mr McBride's cross-examination by Mr Nhleko's Counsel. But I do want to say
10 because Mr Mokhari mentioned that or suggested his understanding that the dates would take into account their – the counsel's availability. We determine the dates without really negotiating them with lawyers because there are so many lawyers involved. It would really be very difficult if we were to negotiate them with lawyers. But we – we will be trying to make sure that there is reasonable notice so that arrangements can be made. So I am inclined to grant the postponement of Mr McBride's – the hearing of Mr McBride's evidence under cross-examination day Mr Nhleko's counsel.
20 I talked about later this week when he is supposed to appear but I cannot deal with that I think because the other party that is involved in that one is not – is not here.

ADV HULLEY SC: Yes.

CHAIRPERSON: But I think what can happen is that as soon as possible the commission must be in touch with them so

that they know what happened to day. Of course, I think we will then decide what is going to – we will decide on the day so I am afraid Counsel for Mr McBride will have to come back, I think. Is it on the 29th? I think it is the 29th or whatever the date is.

ADV HULLEY SC: That – there is – the next date is the 29th that is for the leading of the evidence of Advocate Pretorius.

CHAIRPERSON: Ja.

ADV HULLEY SC: For his questioning and of course for the
10 cross-examination.

CHAIRPERSON: Ja.

ADV HULLEY SC: In respect of Mr McBride and in respect of General Booysen.

CHAIRPERSON: Ja. So the decision I make today will be confined to this one because I cannot make a decision on another one because the other party is not here. Okay alright. The cross-examination of Mr McBride by Mr Nhleko's counsel is adjourned to a date to be determined.

ADV HULLEY SC: Thank you. Thank you Mr Chairperson.

20 **CHAIRPERSON:** Thank you.

ADV HULLEY SC: Mr Chair that then brings us to the question how the bundles...

CHAIRPERSON: Yes I think just for the – for the sake of completeness I know I think we all know the effect of that is that today we will have Mr Nhleko giving evidence and being

questioned by yourself and – and if his counsel after that seeks to re-examine him he may do so and then another – on another day his counsel will then cross-examine Mr McBride.

ADV HULLEY SC: Thank you Mr Chairperson.

CHAIRPERSON: Okay alright. Okay do you – do you need some adjournment for purposes of that housekeeping?

ADV HULLEY SC: Of the bundles.

CHAIRPERSON: Or have you done it in the meantime?

ADV HULLEY SC: I have not been able to do it Mr Chair.

10 **CHAIRPERSON:** Yes.

ADV HULLEY SC: I would require an adjournment.

CHAIRPERSON: Yes.

ADV HULLEY SC: It seems appropriate.

CHAIRPERSON: Yes.

ADV HULLEY SC: That we should perhaps have the tea adjournment at this stage. So we can use up that time to attend to this matter.

CHAIRPERSON: On my watch it is about quarter to eleven. You propose we combine it with tea?

20 **ADV HULLEY SC:** I propose so then we do not have to – subject of course to everybody's...

CHAIRPERSON: Or up to quarter past eleven or how much time do you think you need?

ADV HULLEY SC: I would imagine that I need about twenty minutes.

CHAIRPERSON: About?

ADV HULLEY SC: Around about fifteen to twenty minutes.

CHAIRPERSON: Oh okay so maybe we then say we resume at quarter past eleven.

ADV HULLEY SC: Very well.

CHAIRPERSON: Ja.

ADV HULLEY SC: As it pleases Mr Chairperson.

CHAIRPERSON: Ja Okay. Okay.

ADV HULLEY SC: Thank you very much.

10 **CHAIRPERSON:** Okay. We will adjourn – we will then adjourn and we will resume at quarter past eleven. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES:

CHAIRPERSON: Are we ready?

ADV HULLEY SC: Yes, thank you DCJ.

CHAIRPERSON: H'm.

20 **ADV HULLEY SC:** DCJ, it would seem that the proposal that you have made on how you want things to be done should be fairly easy to follow going forward.

CHAIRPERSON: Yes.

ADV HULLEY SC: There may have to be some discussion but not on this occasion about some of these documents.

CHAIRPERSON: Yes.

ADV HULLEY SC: But that is for a different occasion. For present purposes, it seems quite simple how we can deal with it practically going forward.

CHAIRPERSON: Yes.

ADV HULLEY SC: Probably for present purposes, we would have to write the manuscript on the documents ...[intervenes]

CHAIRPERSON: Yes.

ADV HULLEY SC: ...that we would want to identify as
10 exhibits.

CHAIRPERSON: No, that is fine. That is fine.

ADV HULLEY SC: Thank you, DCJ.

CHAIRPERSON: H'm.

ADV HULLEY SC: DCJ, I understand... I want... what I would like to do is to just place in context the evidence of Mr Nhleko.

CHAIRPERSON: Yes.

ADV HULLEY SC: And before we commence. I understand from Mr Mokhari that he would like to make... what he refers
20 to as an opening address.

CHAIRPERSON: H'm.

ADV HULLEY SC: That is of course with your leave.

CHAIRPERSON: H'm.

ADV HULLEY SC: And then once we have placed the evidence in context, I can then commence by leading the

evidence of Mr Nhleko.

CHAIRPERSON: Ja. Okay. Alright.

ADV HULLEY SC: So DCJ, the... as I have indicated previously, Mr Nhleko has been implicated by several witnesses. His present round of testimony will relate to... mostly to the evidence of Mr McBride. Mr McBride, Mr Sesoko and Mr Kuba who were all members of the IPID at a specific point in time.

In the case of Mr McBride, he commenced with IPID in
10 2014. I believe it was on the 3rd of March of 2014. And he has implicated Mr Nhleko who at the time was the Minister of Police.

Mr Nhleko was the Minister of Police during the period 2014. I believe it is May of 2014 and he remained the Minister of Police up until, I believe it was 2017. There was a Cabinet reshuffle which took place in 2017 which resulted in Mr Nhleko being removed as the Minister of Police.

The events relate in particular to a so-called rendition report on which Mr McBride, Mr Kuba and Mr Sesoko all
20 testified.

The rendition reports related to and some incidents or three incidents that took place in the year 2010 creeping into the year 2011 when certain Zimbabwean nationals were allegedly – and I put to say “allegedly” in inverted commas – they moved from South African and taken across the border

to Zimbabwe without following the processes of the Home Affairs processes that needed to be complied with in order to do so.

That gave rise to a report that had been published in the Sunday Times which alerted the public to the fact that there had been this rendition which resulted in an investigation that was conducted and the investigation itself has been testified to on several occasion.

It ultimately landed up with IPID. And Mr Kuba was the
10 person, for present purposes, Mr Kuba was the person who had conducted that investigation.

He produced several reports. There has been a dispute about the status of these reports, whether they were interim reports, whether they were final reports.

For present purposes, we need not to concern ourselves with the status of those reports.

Shortly after Mr McBride took office in March of 2014, Mr Nhleko became the Minister of Police which was in May of that year. Mr Nhleko established a team of people to
20 investigate certain issues relating to what he referred to the two reports and those reports came to be changed.

The issue, ultimately, resulted in the question being put to an external private firm to investigate how these two reports came about and that private firm has also been implicated.

One of the people in respect of that private firm will be testifying about the report that they had produced later on, in the course of this week.

Ultimately, Mr McBride, Mr Sesoko and Mr Kuba were suspended and they, in relation to Mr McBride, he instituted legal proceedings which resulted ultimately in him being... this suspension being set aside and he was allowed to return to work pursuant to a court order.

In relation to Mr Sesoko and in relation to Mr Kuba, their
10 processes followed a bit of a different process but ultimately, they...

When the State Capture Commission was established, they lodged affidavits before the State Capture Commission in which they complained about the complicity, as they put it, of Mr Nhleko in having them removed for an ulterior purpose.

The testimony of Mr Nhleko today is to deal with that and to attempt to clear his name insofar as that is concerned.

The papers that are before you presently Mr Chair,
20 relate to the affidavits of Mr McBride, Mr Nhleko... sorry, Mr McBride, Mr Kuba and Mr Sesoko and we would be making reference to that.

There is an affidavit that came in on, I believe it was on Friday, that relates to the affidavit of Mr Kuba where Mr Nhleko has responded to some of the allegations that have

been made by Mr Kuba.

It is not accompanied by an application to cross-examine Mr Kuba but for present purposes, we need not to concern ourselves as far as that is concerned.

I have to give an indication to Mr Nhleko's legal team that are... it is my intention to question Mr Nhleko on the affidavit of Mr Kuba and, of course, on the affidavit of Mr Sesoko as well.

For present purposes Mr Chair, that is the... well, that is
10 what I would like to highlight to you. I would have taken you through the bundle more carefully.

But given that we already have got some problems with the bundle, it would not make sense for me now, at this stage, to comment upon on the bundle but we will update the bundle as we go along Mr Chair.

CHAIRPERSON: No, that is fine. I see that there are a lot of lever arch files, certainly, behind you.

ADV HULLEY SC: Yes.

CHAIRPERSON: But from what you have said and that, of
20 course, with my understanding, the important... the most important part of Mr Nhleko's evidence and the most important part in relation to how he has been implicated would be the one relating to the IPID reports, is it not?

ADV HULLEY SC: That is so Mr Chair.

CHAIRPERSON: Yes, that is the main issue. You... as far

as, certainly as I recall, there may be other issues which, as far as I recall, might not be as critical as that one.

ADV HULLEY SC: So ...[intervenes]

CHAIRPERSON: I just want to make sure we are on the same page.

ADV HULLEY SC: Yes, if I can summarise essentially ...[intervenes]

CHAIRPERSON: Ja, in terms of issues.

ADV HULLEY SC: ...what Mr McBride has addressed. So
10 Mr McBride has made reference to quite a few different aspects.

He has referred to the fact that Mr Nhleko had appointed a chief of staff a certain Mr Mbangwa who was his Chief of Staff and who will Mr McBride was a foreigner and a convicted... and had been convicted of certain crimes relating to this identification.

Mr McBride has also taken issue with the establishment of a reference group that was established ...[intervenes]

CHAIRPERSON: Let us take them one-by-one. The one
20 about Mr Mbangwa... is it Nbwanga or Mbangwa?

ADV HULLEY SC: I understand it is not Nbwanga. Mr Leon Abednego Mbangwa.

CHAIRPERSON: Mbangwa. Yes, the one relating to Mr Mbangwa, Mr Nhleko may or may not have known what Mr Mbangwa's...[intervenes]

ADV HULLEY SC: Status was.

CHAIRPERSON: ...position is about the criminal record, but where does that take us in terms of the Commission? What is the significance of that as far as the Commission is concerned?

ADV HULLEY SC: The ...[intervenes]

CHAIRPERSON: In other words, what would be the point that you seek to be made about it?

ADV HULLEY SC: The point, as I understand it
10 ...[intervenes]

CHAIRPERSON: Ja?

ADV HULLEY SC: ...and it is certainly not something that we can see, falls necessarily within the scope of the Commission's Inquiry.

CHAIRPERSON: H'm.

ADV HULLEY SC: We have debated amongst ourselves. It was a point that we did not think we ought to pursue it. Mr Nhleko has, of course, produce some documentation relating to the circumstances around the appointment.

20 He may well, of course, feel that he is entitled given that evidence has been led on that point. He may well feel that he is entitled to at least place before the public what transpired as far as that is concerned so that at least the public has a sense of what the explanation is around that.

But as far as the evidence leaders are concerned, we

did not think that it was a point that we should pursue because it does not take the issue anywhere.

But maybe a point that is relevant for other purposes, I am not sure but it is a point... we do not believe that it is a point that is relevant for the State Capture of Commission Inquiry.

CHAIRPERSON: Yes, because I do not want us to spend too much time on issues that are not really important for the Commission.

10 **ADV HULLEY SC:** Yes.

CHAIRPERSON: Obviously, I do not have a problem if Mr Nhleko says, “Look, may I just set the record straight because somebody came here and said I appointed somebody who should not have been appointed”.

Then takes a few minutes to deal with that but I do not want us to spend too much time on peripheral issues as far as the Commission is concerned.

I want us to focus on the real issues.

20 **ADV HULLEY SC:** With respect, I think that must be correct Mr Chair.

CHAIRPERSON: And then the next one is... what was the next one in terms of issues ...[intervenes]

ADV HULLEY SC: So the next issue relates to the appointment of the reference group. A reference group was established when Mr Nhleko... shortly after Mr Nhleko came

into office, he has established a reference group.

He has referred to some documents relating to the establishment of the reference group and that he has included in a certain bundle.

There are certain additional documents that we have referred to relating to the establishment of the reference group and that is referred to elsewhere.

But as far as the reference group is concerned, the complaint was, as I understand Mr McBride's evidence, was
10 that this reference group had been established to... had been properly established and had been established to, as it were, as almost as hit squad to get rid of people that were perceived to be opposed to some of what the minister had wanted to achieve at that point in time.

And I use the word "hit squad" in inverted commas because I do not believe that it was Mr McBride's testimony but I believe it is the thrust of his testimony.

CHAIRPERSON: Yes. No, that one is fine subject to what evidence, obviously, is there at this stage.

20 **ADV HULLEY SC:** Yes, Chair.

CHAIRPERSON: Of course, the investigations of the Commission continue.

ADV HULLEY SC: Ja.

CHAIRPERSON: But if that is what was said about the reference group, that might be fine. And what other issues

are there?

ADV HULLEY SC: So the next issue that has been raised relates to the appointment of the private firm of attorneys to conduct an investigation which Mr McBride complaints was an investigation that ought to be conducted... all it appears to have been a criminal investigation that has been conducted by a private firm of attorneys.

And so the circumstances relating to the appointment of this firm of attorneys, in the first place, that seems, according to Mr McBride's testimony, appears to be improper in the first instance.

And second instance which relates to the outcome of that investigation and the report itself, the content of the report which Mr McBride has complaint.

Obviously, Mr McBride complaints that the firm of attorneys came to a conclusion which is just completely unsustainable insofar that is concerned.

The firm concerned or a representative of the firm concerned, will come and testify to that. Insofar as mister ...[intervenes]

CHAIRPERSON: Yes. H'm.

ADV HULLEY SC: ...insofar as Mr Nhleko is concerned, it relates mostly to the fact that this firm of attorneys had been appointed and according to Mr McBride's evidence, to use the language that he used, be tuned.

That is Mr Nhleko, and the firm were in cahoots to use this language in order to achieve a particular outcome which was that they were ultimately to be charged on a criminal level and also in terms of internal disciplinary processes.

CHAIRPERSON: Yes, that would follow with... within what I call the important issue.

ADV HULLEY SC: Yes, Chair.

CHAIRPERSON: So that is fine. And then, what would be another issue?

10 **ADV HULLEY SC:** The additional issue relates to the actual institution of the criminal proceedings that emanated... that stemmed or arose in the wake of the production of that report.

And there was a criminal investigation that started and ultimately resulted... was ultimately withdrawn. It was a criminal case against Mr McBride, Mr Kuba and Mr Sesoko.

And where Mr McBride says that the entire process related to that was improper. He implicates a number of people in relation to that, that criminal investigation.

20 But apart from the minister, one of whom is supposed to come and testify on Wednesday and that relates to the prosecution within the NPA's office and how that prosecution took place. So ...[intervenes]

CHAIRPERSON: Well, what I am looking at is what would the issues ...[intervenes]

ADV HULLEY SC: To Mr Nhleko ...[intervenes]

CHAIRPERSON: ...today ...[intervenes]

ADV HULLEY SC: Shall I refresh them?

CHAIRPERSON: ...in relation to Mr Nhleko because ...[intervenes]

ADV HULLEY SC: So Mr Nhleko's involvement in instituting those or in how those criminal proceedings came about ...[intervenes]

CHAIRPERSON: Yes.

10 **ADV HULLEY SC:** ...because it seems that Mr Nhleko did play a role in ensuring that the criminal investigation actually took off.

CHAIRPERSON: H'm. Okay. No, that is important to clarify because otherwise the question would be, is it suggested that he got involved in decisions that should be made by the NPA?

ADV HULLEY SC: I agree.

CHAIRPERSON: Or did he... is it suggested that he influenced the making of certain decisions. So that is what I
20 am looking...

ADV HULLEY SC: Yes.

CHAIRPERSON: Because as I see it, today should look at decisions that he made or whatever other conduct, you know, that he is implicated in.

ADV HULLEY SC: Yes.

CHAIRPERSON: Rather than conduct of other people
...[intervenes]

ADV HULLEY SC: Sure.

CHAIRPERSON: ...decisions made by other people that may
have adversely affected Mr McBride and whoever else.

ADV HULLEY SC: Yes. So particularly, it relates to the
process by which having received the report, why the private
firm of attorneys... how it came about that the charges, those
are the criminal charges, were ultimately instituted because
10 it seems that the ministry played a role in that.

And of course, it seems that Mr Nhleko as the head of
that ministry, would have of course had been involved in
ensuring that happen.

CHAIRPERSON: Okay, okay. Would that cover the issues?

ADV HULLEY SC: That would cover the issues as far as
that is concerned.

CHAIRPERSON: That would cover the issues. Okay. No,
that is fine.

ADV HULLEY SC: Then in relation to... the next point Mr
20 Chairperson related to the appointment of Mr Ntlemeza to
take over... sorry. Of General Ntlemeza to take over the
position of a... Lieutenant General Dramat who was at the
time had been the head of the HAWKS.

And just to put it in context of course. The initial
investigation had been the investigation which had

implicated mister. Sorry. Lieutenant General Dramat and Lieutenant General Lebeya, arising out of that.

And once the two IPID reports had been produced and arising out of those two IPID reports and the investigation relating to that by the ministry, this is now an investigation which had... which proceeded the HAWKS(?) investigation - arising out of that, Mr Kuba states in his affidavit that he received a telephone call from General Ntlemeza in which General Ntlemeza informed him that he must watch the news
10 because there was going to be a hit on mister... General Dramat.

He puts that date at the 6th of December of 2014. On that very day, the 6th of December 2014, Mr Nhleko sent a letter to Mr Dramat in which he called upon Mr Dramat to explain why... or to give reasons why he should not be suspended on the 23rd of December of that same year. General Dramat was then suspended.

So the point that has been made is that it is just far too much of a coincidence that the... that Lieutenant General
20 Ntlemeza would have known about this on the very day that the minister made the... sent the letter to General Dramat.

So it is been implied or inferred from them that general... that Mr Nhleko not... must have been in communication with mister... or rather, with General Ntlemeza and they were trying to ensure that General

Ntlemeza was ultimately appointed as the Head of the HAWKS.

And then arising out of that, of course, are the issues related to the actual suspension of General Dramat but that also flows from the same thing.

Then Mr Chair, there is the question of Mr Nhleko's involvement in the suspension of various people within IPID and the disciplinary processes within IPID.

In relation to Mr Kuba. The... Mr Kuba had testified
10 about certain events which took place just before he was placed on suspension and he just spoke about one of the PA's from his... from the IPID head office who travelled up to Polokwane to hand over a letter of suspension that the minister wanted to make available to Mr Kuba or... and so he spoke about that incident.

I understand that the... it is... the most recent affidavit that is coming from Mr Nhleko would address... addresses that issue.

I understand, if I read the affidavit correctly, it seems
20 that Mr Nhleko is disputing the fact that he had given those instructions. And then there is also a Cape Town meeting ...[intervenes]

CHAIRPERSON: Would the suspension not have been or the suspension decision not have been taking by the acting director or...?

ADV HULLEY SC: The acting executive director.

CHAIRPERSON: Or is the suggestion that are being made that the acting director had acted on the instructions or request or ...[intervenes]

ADV HULLEY SC: So basically, under the IPID Act... pardon Mr Chairperson. That is absolutely correct. So under the IPID Act, of course, those decisions, operational decisions should be taken by the executive director.

CHAIRPERSON: H'm.

10 **ADV HULLEY SC:** And the complaint, insofar as that is concerned, is that the executive director ought to have taken if he had reason to believe that there was any misconduct that had been committed and which warranted a suspension but it should have been the executive director who took that decision.

CHAIRPERSON: H'm.

ADV HULLEY SC: In truth, the suggestion is... well, the inference drawn from the fact is that the person who took that decision and imposed it upon the executive director was
20 in fact the minister ...[intervenes]

CHAIRPERSON: Okay.

ADV HULLEY SC: ...who had given instructions as far that is concerned.

CHAIRPERSON: Okay.

ADV HULLEY SC: Then there is the question of the Cape

Town meeting that had been called by the minister's office. Mr Kuba testified to the fact that there was a meeting that he had been invited to, to meet with the minister in Cape Town and that he was contacted by the minister's PA who had made several attempts for him to meet... to travel through to Cape Town.

And the complaint was because that because these were operational issues the minister ought to have approached the executive director to meet with any of the people that were
10 beneath him and the minister did not do that but the minister was, in fact, approaching Mr Kuba directly.

And the inference that Mr McBride certainly draws from that, is that it was the intention of the minister to try and improperly get him, that is Mr Kuba, to implicate Mr McBride in the so-called of the first report to produce what was then... what became known as... has become known as the second report.

Now that is what the... the inference that Mr McBride draws from that as I understand it based on the affidavit that
20 has been filed recently.

The minister will challenge the question of whether he had invited Mr Kuba to that meeting, but as I understand it, he acknowledges that he did phone Mr Kuba but it was only to instruct him to cooperate with the Werksmans investigation which at that stage was underway.

And so Mr Chairperson, I believe those are the issues that will be dealt with insofar as the evidence of Mr Nhleko is concerned.

CHAIRPERSON: Yes. No, that is fine. Now you did indicate that ...[intervenes]

ADV HULLEY SC: That Mr Mokhari ...[intervenes]

CHAIRPERSON: ...the counsel for mister would like to ...[intervenes]

ADV HULLEY SC: Address.

10 **CHAIRPERSON:** ...what you referred to as an opening statement. I have... I not had occasion, I think, to allow opening statements in this circumstances but I think I should rather put that to Mr Mokhari if he would like to make it because if I allow it with him, I will have to be prepared to allow it with everybody. So let us... so let me hear whether he wishes to pursue the issue.

ADV HULLEY SC: As it pleases.

CHAIRPERSON: H'm. Ja. I do not remember Mr Mokhari that I have allowed any opening statements before and I am
20 reluctant to allow it because then if any other counsel would ask for it in the future I would have to allow it. So I have got that reluctance. So what do you say? How strongly do you feel about it?

ADV MOKHARI SC: I thank you, Chair. I appreciate that. The reason I requested the evidence leaders that I shall

make an opening statement was to deal with the procedural matters which Mr Nhleko indicated that he would rather not deal with so that he can go straight to the evidence.

And that if I am able to deal with them regarding the processes that have unfolded from the time when Mr McBride came to testify until when he is now given the opportunity.

So he prefers those matters be dealt with by myself instead of him.

CHAIRPERSON: H'm. H'm.

10 **ADV MOKHARI SC:** He would prefer to go straight to the evidence himself.

CHAIRPERSON: Well, maybe that assist because the one thing that I have done on some occasions when a request has been made, is allow a witness a little bit of time before being questioned to say something. I allowed it with Mr Mokonyane last Monday. I allowed with the former president and may have allowed it with maybe a few other witnesses.

20 So Mr Nhleko would have been entitled to say, "May I also have some time before I am questioned to make some statements".

So the way in which we could do it is if you take the time that I would have given him to do that. Then you do that. So in the future, I can always say, it is not going to be both.

ADV MOKHARI SC: Yes.

CHAIRPERSON: It is not going to be... or it is going to be

one. You must choose whether it is the witness who will take that time or it is counsel. So I think I will allow it on that understanding.

ADV MOKHARI SC: Yes, indeed.

CHAIRPERSON: Yes.

ADV MOKHARI SC: So he has elected it will be done by my and he is not going to repeat it himself.

CHAIRPERSON: Yes, yes. How much time do you have in mind?

10 **ADV MOKHARI SC:** Not more than ...[intervenes]

CHAIRPERSON: Five, ten minutes?

ADV MOKHARI SC: Not more than ten minutes.

CHAIRPERSON: Okay. Alright.

ADV MOKHARI SC: Yes. I thank you, Chair. Chair, Mr Nhleko is relieved that finally he is afforded this opportunity to put his side of the story. He watched McBride testifying on television without having received McBride's affidavit which ought to have been given to him in terms of Rule 3.3 of the Commission's Rules. He, on the second day of
20 McBride's testimony, instructed an attorney, Mr Mabuza, to come to the Commission to inform the Commission or the evidence leaders that Mr Nhleko has watched Mr McBride then testifying and mentioning his name but he has not been favoured with anything which suggests that McBride was going to say those things. It was only at that time that

Mr Mabuza, the attorney, was furnished then with a copy of McBride's affidavit.

Again, Chairperson, Mr Nhleko only heard about the evidence that was given by Mr Sesoko and Mr Kuba again without having been furnished with the Rule 3.3 notice from the Commission that the two have implicated him or might implicate him but he was also informed that in their testimony they also mentioned him in the manner that suggested that he might have committed some impropriety.

10 On several occasions, Chairperson, Mr Nhleko through his attorneys wrote to the Commission, of course, and the Commission's secretariat after then he has made an application to the Commission to testify and also to cross-examine Mr McBride as to when will he be given an opportunity to testify.

 What he was told was that his affidavit has been given to Mr McBride for a response but the response never came from Mr McBride and to date he is unaware of any response to his affidavit which came from Mr McBride but it
20 seems as if that has not been responded.

 When he made follow ups as to when will be given an opportunity to put his side of the story given the serious impact, the allegations that were made by Mr McBride to his career prospects and that he is unable to find a job as a result of that he was told that he should wait and that he

will be told. Until when Mr Nhleko threatened legal action against the Commission that he will rather go to court to compel the Commission to treat him fairly, then he was told that he will be given a date before the end of June and indeed he was given that date which was the 14 May to come and testify.

On the 11 May, when he was hearing nothing from the Commission, his lawyers had to write a letter to the Commission to enquire whether all systems go and
10 everything was in order for him to testify on the 14th only for his attorneys to be told just two days before the 14 May when Mr Nhleko was already in Johannesburg, having conducted preparations with his legal team, that there will be no hearings at all and that he will be told as to when he will come.

And, Mr Nhleko, who had travelled all the way from KZN to consult with his legal representatives and to attend the hearing, had to certainly then return to KZN empty handed.

20 Mr Nhleko received the notice now to attend this hearing today, which he gladly accepts and he gladly accepts that today the Commission is giving him an opportunity to say his side of the story. However, the Commission was still not forthcoming to assist him in terms of the processes that will unfold when he testifies in a

sense that documentation and the index to the documentation and how documents will be identified was never forthcoming until in the afternoon of yesterday. Nevertheless, Mr Nhleko took a position that this shall not be used as a cause for a postponement because he wants to have his day before this Commission. He said that he has read all the documents and he knows each of the documents which are relevant for the inquiry and for him to testify, it does not matter that he has received the index in
10 the afternoon of yesterday as long as the documents can be identified in terms of which page and that document will be found, he will be able to identify those documents.

So Mr Nhleko is happy that this Commission is affording him this opportunity and he will deal with the crisp issues that the Chairperson has identified because Mr Nhleko from the beginning, he has been clear that the issue that is relevant and central for the Commission to enquire upon is whether as a result of the two reports which emanated from IPID, one of the 22 January and the
20 other one of the 18 March 2014, resulting in him commissioning a law firm, Werksmans, was that a state capture and whether Werksmans in accepting the brief in conducting the investigation was a state capture and a collusion between the law firm and Mr Nhleko and whether he was not required as a minister upon receiving the

recommendations of Werksmans not to implement them even though he was happy with them and whether, when you accepted the recommendations of Werksmans and instituted disciplinary proceedings against Mr McBride, he was committing a state capture and an improper conduct in collusion with Werksmans.

So those are the issues that he has identified to be central for the Commission to determine. But also, he would like then the Commission, whilst he is not a lawyer, 10 to interrogate the judgments of the High Court where Mr McBride challenged his suspension and the institution of disciplinary proceedings as being unconstitutional because the Minister, according to him, was given unconstitutional powers by Section 6(3) read with Section 6(6) of IPID Act whether that judgment has pronounced on the allegations of Mr McBride that indeed the minister was acting improperly and that the Constitutional Court confirmed the unconstitutionality of Section 6(3) and 6(6) but never for once ever said that the minister acted improperly and also 20 then we would like to – and this Commission will enquire into whether then the Constitutional Court and the High Court were remiss in not pronouncing that Mr Nhleko committed an improper conduct because that has never been the case.

But also then, the Commission will also, as a matter

of the legal issues that arise from the Constitutional Court judgment, whether the fact that the suspension of Mr McBride was never lifted even by the Constitutional Court but remained intact on the order of the Constitutional Court for 30 days to allow parliament to take a decision on whether Mr McBride should be disciplined and parliament never took any decision until 30 days lapsed and Mr McBride was reinstated, whether that on its own was indicative of Mr Nhleko's ulterior purpose.

10 So, at the end of the day, there are some legal issues which Mr Nhleko, whilst he will try to articulate them, him, not being a lawyer, may not be able to articulate them but the Commission is well-versed then to be able to read those judgments and the Constitutional Court judgment and to formulate a view as to what precisely did the Constitutional Court find and why did the Constitutional Court not uplift Mr McBride's suspension, if indeed Mr Nhleko improperly, and why it allowed Mr McBride to remain on suspension and also then why
20 parliament was remiss in its duties to take a decision one way or the other about Mr McBride should face disciplinary proceedings. So, at the end of the day, Mr Nhleko says that he is in the hands of the Commission and he is available to answer all questions that may be put to him.

Insofar as I heard Mr Hulley then saying something

about the cross-examination of Mr Kuba and Sesoko, Mr Nhleko's never given those affidavits but of course then they were given to him last week and he has taken a view that there is nothing which will warrant him having to cross-examine Mr Sesoko and Mr Kuba because nothing turns on their affidavits. Thank you, Chair.

CHAIRPERSON: Thank you, Mr Mokhari.

ADV MOKHARI SC: Thank you very much for the time.

CHAIRPERSON: I am sure that some of the things that
10 you have said which caused Mr Nhleko concern about
maybe not getting some notices either at all or timeously, I
have a suspicion that some of those things, even if not all
may be true while most of time Rule 3(3) notices have gone
out and been received timeously by, I would imagine, most
people. There have been occasions when notices have
either not been received timeously or not at all. Actually,
as recently as last Monday, Ms Sikhakhane appeared here
for Mr Fraser and Mr Manzini complained or his clients
complained that they had not been given the 3.3 notices.
20 But, as I say, most of the time one does not hear any
complaints and one assumes that that is because people
receive them timeously. So Mr Hulley might or might not
be able to deal with some of those things and because
some of them may have happened before this time in the
Commission but if there are any problems that happened,

which should not have happened like notices not being received on time, it would really be administrative challenges within the secretariat, it would never have been because somebody did not want him to receive them.

ADV MOKHARI SC: No, I accept that, Chair.

CHAIRPERSON: Yes, yes.

ADV MOKHARI SC: In fact, all what we are happy about is that we are now here.

CHAIRPERSON: Yes.

10 **ADV MOKHARI SC:** And Ms [indistinct] 11.47 was able to comprehensively respond to the affidavit of Mr McBride.

CHAIRPERSON: Yes, yes.

ADV MOKHARI SC: Well, of course, the Chairperson will see in the bundle that there are affidavits of like Mr July which are part of the bundle of the hearing and supplementary affidavits of McBride, Kuba and Sesoko, but all those affidavits they were responding to Mr July.

CHAIRPERSON: Yes.

20 **ADV MOKHARI SC:** So at no stage have they responded to the affidavit of Mr Nhleko.

CHAIRPERSON: Yes, yes. Well, from what you say it appears to me that there certainly should have been a response from Mr McBride to Mr Nhleko's affidavit and so on. But let's see how things go and I must just say that I am aware that Mr Nhleko at some stage was corresponding

with the Commission expressing his concern at not been given a chance to come and testify or cross-examine Mr McBride. The fact is simply that the Commission has to follow its own programme, there would be hundreds of other people who also want to get their time as soon as possible so it's inevitable that people are not going to get their chance as quickly as they would like, so – but I am sure he understands that.

ADV MOKHARI SC: No, I understand that, Chair.

10 **CHAIRPERSON:** Ja, okay. Thank you very much.

ADV MOKHARI SC: Thank you, Chair.

CHAIRPERSON: And while they are sanitizing, just say that, Mr Mokhari, I am aware that over this past week there have been challenges in the secretariat of the Commission which prepares bundles, there have been delays, it is unfortunate that you did not get, when Mr Nhleko did not get the bundles timeously, I think the Commission must take responsibility for that. There have been certain administrative challenges but we are grateful that your
20 attitude and Mr Nhleko's attitude has been to say we do not want to postpone, we want to use this opportunity. So we apologise certainly about the bundles not being available in time, that is a problem, that is within the secretariat which has been looked into.

ADV MOKHARI SC: Thank you, Chair. In fact, in respect

of the bundles and we are not saying that we have been inconvenienced in terms of the contents of the documents.

CHAIRPERSON: Yes.

ADV MOKHARI SC: Because we are the following with the content, the documents.

CHAIRPERSON: Yes.

ADV MOKHARI SC: The inconvenience will simply be in respect of the ...[intervenes]

CHAIRPERSON: Numbering.

10 **ADV MOKHARI SC:** Where do you find it.

CHAIRPERSON: Yes, yes.

ADV MOKHARI SC: But the Chair has come with a practical view, I mean, a solution of how we deal with it.

CHAIRPERSON: Yes, okay.

ADV MOKHARI SC: And we also accept.

CHAIRPERSON: Okay, thank you.

ADV MOKHARI SC: Thank you, Chair.

CHAIRPERSON: Mr Hulley?

20 **ADV HULLEY SC:** Thank you, Mr Chair. Mr Chair, of course the – in trying to – and I am not sure that I should take up some of the time relating to the issues that have been raised by my learned friend regarding the procedural aspects. I am certainly in a position to address some of the complaints, I was not [inaudible – speaking simultaneously]

CHAIRPERSON: Yes, I think you can address those that you are able to address but I would like in due course, maybe tomorrow, I would like to know why – whether factually all the issues that he has raised about Mr Nhleko not receiving certain things timeously. Even in regard to last year, I would like to know so that one, we should know it is factually correct and two what, if anything, still needs to be done about it.

ADV HULLEY SC: Yes.

10 **CHAIRPERSON:** But I am sure your juniors have been making notes about this.

ADV HULLEY SC: Yes.

CHAIRPERSON: So I think you can deal with those that you are able to.

ADV HULLEY SC: Indeed. Thank you, Mr Chair. Mr Chair, according to the records that I have received it appears that Mr McBride would have testified on the 11 April, the 12 April, the 15th and the 16th April, according to the records that I have over here, it appears that a notice
20 dated the 8 April would have been sent to Mr Nhleko of 2019, by the way.

Then insofar as the evidence of Mr Sesoko is concerned – and when I say a notice I am referring to the Rule 3.3 notice - insofar as the evidence of Mr Sesoko is concerned, according to what I have here, Mr Sesoko

would have testified on the 24 September 2019 and it seems that a notice in terms of Rule 3.3 was sent out to him on the 10 September of 2019. It appears to be 15 days before that. According to the schedule I have got there was a receipt which was confirmed on the day – on the very same day.

Then in relation to Mr Kuba, the notice was sent on the 11 September of 2019 and I understand that Mr Kuba testified on the 26 September of 2019. So there does
10 seem to have been insofar as Mr McBride’s testimony is concerned, there seems to have been about three days notice that was given if this schedule is to be accepted as correct which, for purposes I accept it is correct, but in relation to Mr Kuba and Mr Sesoko, there seems to have been at least 15 and in one instance 16 days notice that had been given.

So that is what I can address at this stage. I know that there was correspondence that had flowed previously in relation to Mr Nhleko’s desire to come and testify and he
20 had been notified that he was going to testify during the period which was during the lockdown but then because of a range of different issues that had arisen relating to the lockdown and whether the Commission was ready to proceed at that stage, that could not happen.

CHAIRPERSON: Ja. Ja, I think that the May date that he

may have been given had been determined together with dates, other dates for other people on the understanding that the lockdown would have ended on the 16 April.

ADV HULLEY SC: Exactly.

CHAIRPERSON: Because that is when it was supposed to end but then the lockdown was extended.

ADV HULLEY SC: Correct.

CHAIRPERSON: And that is why all of those people who were supposed to have appeared towards the end of April
10 and in May – actually in early June, all of those had to be postponed, so it was simply because of the extension of the lockdown.

ADV HULLEY SC: That is so. If I understand the complaint that has been raised by my learned friend, what he is complaining about, is the late notification of that but it was always – given the fact that there had been an extension, if my recollection serves me well, it was always a danger that arose as a result of the extension.

CHAIRPERSON: Okay, alright.

20 **ADV HULLEY SC:** Thank you, Mr Chair. Mr Chair, I would like to refer to the – if we might be permitted at this stage then to deal with the evidence of Mr Nhleko that we can take you through ...[intervenes]

CHAIRPERSON: I am thinking whether you want to deal with that before the oath is administered or you want to

deal with that after?

ADV HULLEY SC: No, no, no, I am going to lead his evidence so you have to start by administering the oath first.

CHAIRPERSON: Yes.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MR NHLEKO: Nkosinathi Phiwayinkosi Thamsanqa
10 Nhleko.

REGISTRAR: Do you have any objection to taking the prescribed oath?

MR NHLEKO: [IsiZulu]

REGISTRAR: Do you consider the oath to be binding on your conscience?

MR NHLEKO: [IsiZulu]

REGISTRAR: Do you swear that the evidence you will give will be the truth, the whole truth and nothing else but the truth? If so, please raise your right hand and say so help
20 me God.

MR NHLEKO: [IsiZulu]

CHAIRPERSON: Thank you very much, that was – the responses were in isiZulu and I think Mr Nhleko will just have to indicate whether he intends giving evidence in isiZulu or in English. Mr Nhleko?

MR NHLEKO: No, thank you very much, Chairperson of the Commission and members of the Commission. Indeed, I would like to attempt my level best at English in presenting you my evidence.

CHAIRPERSON: Yes.

MR NHLEKO: And I am not too sure whether am I allowed to do so straightaway, as we speak.

CHAIRPERSON: I am sorry, I cannot hear you. I know you are entitled to look at your counsel, you are paying
10 him, but I think ...[intervenes]

MR NHLEKO: I was basically just looking for a signal from his end as well because my intention is to basically present my side of the story and I am asking whether am I now allowed to do so. I think there has been quite a bit of technical issues we dealt with. Now that has been dispensed with and then I would like to go ahead.

CHAIRPERSON: Okay, let us take it step by step. I just want to you to confirm first whether you will be giving evidence in English or in isiZulu? I did not hear the
20 answer to that question.

MR NHLEKO: I did say I will try my level best in, you know, to attempt to speak English.

CHAIRPERSON: I think your level best will be very good. You see, you gave your answers to the questions for the oath in isiZulu. For the record we need to confirm what –

confirm those answers in English. We did not provide an interpreter who is going to tell us but I know that you can do so. Do you want to confirm what you said in isiZulu so that the record reflects when you were asked or would you like to be asked again? You cannot remember the questions?

MR NHLEKO: Honourable Chairperson, I would really prefer to be led in that respect, ja.

CHAIRPERSON: Okay, maybe – do you mind if we do it in
10 English?

MR NHLEKO: Ja, no, it is alright, ja.

CHAIRPERSON: Ja, so that we do not have to translate.

MR NHLEKO: Yes, I can accommodate you there.

CHAIRPERSON: Alright, certainly it can be done in isiZulu, it is just that if it in isiZulu then we have got to translate it for the record.

REGISTRAR: Please state your full names for the record.

MR NHLEKO: My name is Nkosinathi Phiwayinkosi Thamsanqa Nhleko.

20 **REGISTRAR:** Do you have any objection to taking the prescribed oath?

MR NHLEKO: I certainly do not.

REGISTRAR: Do you consider the oath to be binding on your conscience?

MR NHLEKO: Indeed it is.

REGISTRAR: Do you swear that the evidence you will give will be the truth, the whole truth and nothing else but the truth? If so, please raise your right hand and say so help me God.

MR NHLEKO: So help me God.

REGISTRAR: Thank you.

CHAIRPERSON: Thank you. Okay, now I think e can get to the issue you were raising. I think you were saying something about you want to give your side of the story.

10 Just talk to me again about that or you..?

MR NHLEKO: I was looking for a signal from my senior counsel representing me in this particular matter whether am I now allowed to do so, proceed. I need to ...[intervenenes]

CHAIRPERSON: Well, Mr Hulley, the evidence leader is going to put questions and when you answer those questions then you put your side of the story in regard to that issue. What I said to your counsel earlier on was that what has happened sometimes that the witness would ask
20 to be given a time to make a statement and I have allowed them but if I was going to allow him to speak then I would not allow you to take the same time, so it is not a duplication, but even during – even if we do it this way, you will get a chance in regard to each point to put your side of the story properly.

MR NHLEKO: No, with due respect, Chair, I disagree with that approach.

CHAIRPERSON: As?

MR NHLEKO: I disagree with that approach largely because essentially it is tantamount to channelling.

CHAIRPERSON: Sorry?

MR NHLEKO: I am saying essentially that approach is tantamount to channelling what it is that I have got to say. Now, the fact of the matter is that there has been range of
10 issues that have been said.

CHAIRPERSON: Yes.

MR NHLEKO: And that the issue at hand, we do not need to be selective about it, we need to first and foremost to be able to walk through and answer the critical question and the critical question is what happened and how it happened.

CHAIRPERSON: Yes.

MR NHLEKO: Now I would have really – and I am not – I do not have a problem with being questioned.

20 **CHAIRPERSON:** Ja.

MR NHLEKO: In fact that can happen.

CHAIRPERSON: Yes.

MR NHLEKO: But after I would have presented my story.

CHAIRPERSON: Yes.

MR NHLEKO: In terms of what happened, how it

happened and essentially also what it is that I make the particular issues that ...[intervenes]

CHAIRPERSON: Ja. No, no, we are not going to do it like that, Mr Nhleko. Mr Hulley is going to ask you questions. When he asks you a question in relation to each point, I am saying that I will allow you to present your side of the story in regard to that point. When he has finished with his questions, if there are still points, some issues that you would like to address, you raise that with
10 me at that stage and then I hear what those issues are and I will allow you to deal with them.

MR NHLEKO: Chairperson, that was not my understanding in terms of the interaction between the two legal teams. My team as well as the legal team of the Commission.

CHAIRPERSON: Well, that is how we have been doing it.

MR NHLEKO: So may I – I do think that matter would have to be dealt for it.

CHAIRPERSON: Well, that is how we have been doing it with everybody. That is how we have been doing it with
20 everybody, so you get asked questions, you answer them, you put your side of the story. If you do not understand the questions, you say so and you give your answer and your answer might be one sentence, your answer might be like a paragraph depending and we move to the next issue. At the end, when he is finished with his questions, when I

am finished with my questions, if you say there are some issues that have not – I have not been given a chance to deal with then I allow you to deal with them.

ADV MOKHARI SC: Chair, if I may clarify?

CHAIRPERSON: Yes.

ADV MOKHARI SC: Mr Nhleko's confusion.

CHAIRPERSON: Yes.

ADV MOKHARI SC: In fact, then what the evidence leaders and ourselves agreed on when we had a
10 prehearing – of course it was subject to your approval.

CHAIRPERSON: Yes.

ADV MOKHARI SC: Was that Mr Hulley will allow Mr Nhleko to narrate his story.

CHAIRPERSON: Like an opening statement or remarks, opening remarks.

ADV MOKHARI SC: No really opening statement because I dealt with the procedural aspect, which I will repeat.

CHAIRPERSON: Yes.

ADV MOKHARI SC: But you will deal with the facts. So
20 we deal with the facts, you allow him to flow.

CHAIRPERSON: Ja.

ADV MOKHARI SC: And then from there he will then cross-examine him, so that is what was narrated to him, that is why he has that confusion.

CHAIRPERSON: Well, you see, if the evidence leader

says – if the evidence leader’s question is broad and allows you to say quite a lot, that is one thing. If the evidence question goes to a specific question, issue, that is a different thing. So maybe it will help if we start, let us see.

ADV MOKHARI SC: Yes.

CHAIRPERSON: You might not have any complaint. Let us get started and then let us see.

ADV HULLEY SC: Thank you, Mr Chairperson.

10 **CHAIRPERSON:** Ja. I do not think your counsel is concerned. So it may be that because you are not a lawyer, I think all of us have an understanding that there is no problem in how we propose to do it. In the end when you are done, my chances are that you will feel that you have been given a fair opportunity.

MR NHLEKO: Okay, no, thank you very much, Chair. It is just that English is complicated. Thank you very much.

CHAIRPERSON: Okay, alright.

ADV HULLEY SC: Thank you Mr Chair. Mr Nhleko, sorry,
20 you have already submitted an affidavit to the Commission and perhaps if I ...[intervenes]

CHAIRPERSON: Well I am sorry, I am sorry Mr Hulley.

ADV HULLEY SC: Yes, Mr Chair?

CHAIRPERSON: You see one of the things Mr Nhleko I want to try and control, you will have heard me say earlier

that there are lots of lever arch files behind Mr Hulley and lot of lever arch files, but as I see it the issues don't seem to me to warrant so many files, but maybe it is convenient to have those files at hand to deal with whatever issues, so I am more concerned, I want us to focus on what I call the real issues, and not peripheral issues. In that way we use our time profitably. Okay, alright.

ADV HULLEY SC: Thank you very much Mr Chair. Mr Chair if I could just take you to the first bundle in the YC's
10 of bundles, this is EXHIBIT Y – sorry 8 ...[intervenes]

CHAIRPERSON: Oh, I am sorry, let's mark this bundle so that we know whenever we refer and I think that ...[intervenes]

ADV HULLEY SC: This Bundle Mr Chair will be, this is LEA bundle, we can call it LEA1 and inside LEA1 would be a number of exhibits, the first of those ...[intervenes]

CHAIRPERSON: You are too fast, we will call it bundle?

ADV HULLEY SC: LEA1.

CHAIRPERSON: LEA1?

20 **ADV HULLEY SC:** That is correct Mr Chairperson.

CHAIRPERSON: LEA1, okay that is the bundle. Now the witness's bundle must be marked accordingly as well.

ADV HULLEY SC: Correct, so ...[intervenes]

CHAIRPERSON: Somebody must mark it for him so that when he is told Bundle LEA1 he must know which one that

is. Well you better show him which one is Bundle LEA1 so that he will – ja, okay alright Mr Hulley then you can explain.

ADV HULLEY SC: Thank you Mr Chair the – that bundle, the first document that appears in that bundle is currently an index, the second document, which is page two, is a Notice of Motion and the – attached to the Notice of Motion is the affidavit of Mr Nhleko.

CHAIRPERSON: Yes.

10 **ADV HULLEY SC:** And that document, the Notice of Motion, affidavit and the Annexures attached to that Notice of Motion run from page two to page 187 of Y8, we would call that entire document Exhibit Y8(A).

CHAIRPERSON: Well we don't actually need the notice of motion anymore, do we, or do we?

ADV HULLEY SC: I don't believe we do...[intervenues].

CHAIRPERSON: Ja we should just start on the affidavit, I think.

ADV HULLEY SC: Very well.

20 **CHAIRPERSON:** Ja, so, the affidavit – you want the affidavit to be admitted as Exhibit?

ADV HULLEY SC: Y8(A)

CHAIRPERSON: Okay the affidavit of Mr Nkosinathi Phiwayinkosi Thamsanqa Nhleko and its Annexures will be admitted as Exhibit Y8(A).

ADV HULLEY SC: Thank you Mr Chairman.

CHAIRPERSON: Okay and then as and when you refer to another stand-alone Exhibit, we'll give it a number or you already have given them?

ADV HULLEY SC: What we'll do is – we haven't given it a number thus far but what we'll do is, we'll take the lunch adjournment to make sure we – what we don't want is if we go to the next document and call that document, for argument sake, B, because it's second in the – in terms of
10 what we're discussing with Mr Nhleko then it throws the sequence of everything out.

CHAIRPERSON: Ja.

ADV HULLEY SC: So, we would have to make sure that the A, B and C also follows the numbering system as well.

CHAIRPERSON: Okay that's fine.

ADV HULLEY SC: So, Mr Nhleko, for your benefit do you have the document which we've just currently marked Exhibit Y8A?

MR NHLEKO: Yes, I do have it.

20 **CHAIRPERSON:** So you can mark it if you did do so while you were doing so, so namely the first page of your affidavit at page five and I'm saying – when I say page five I'm looking at the red top number, you can then mark it Exhibit Y8(A), okay.

ADV HULLEY SC: If you look at page five of the bundle

that has been given to you sir, look at the top, you'll see it's in red.

MR NHLEKO: Yes.

ADV HULLEY SC: You'll see there's a Y8-NPN-0005, the 0005 refers to the pagination system, it's the page number and that's the system that we'll use. So, when we refer to the page number, you'll want to look at that particular sequence in terms of the top right-hand corner.

MR NHLEKO: Okay.

10 **ADV HULLEY SC:** So, now, this I would like to take...[intervenes].

CHAIRPERSON: So maybe, Mr Hulley we can also verify – because I see there are two red numbers on each page. So, when you refer to a page number, you'll be referring to the top number not the...[intervenes].

ADV HULLEY SC: The top number.

CHAIRPERSON: Ja do you understand Mr Nhleko.

MR NHLEKO: Yes, I do.

20 **CHAIRPERSON:** Yes, and he might not say, for example, page 0005 he will just say page five, so if you – just so you can follow the pagination, yes Mr Hulley.

ADV HULLEY SC: Thank you very much Mr Chair. This document is...[intervenes].

CHAIRPERSON: I'm sorry, how is the space there Mr Nhleko, it looks like you're struggling with the space, are

you comfortable, are you able to open that file?

MR NHLEKO: No, I'll try my level best Chair, otherwise we'll land up with the situation where we'll have to buy new furniture and I don't think this Commission can afford to do so, so I'll try my level best.

CHAIRPERSON: Okay, alright, thank you.

ADV HULLEY SC: Perhaps, Mr Chair if I can be of some assistance to Mr Nhleko perhaps, because I believe that his microphone can adjust, so perhaps if he were to raise it
10 up in the manner that I'm demonstrating, so that he can put his file underneath the microphone. Mr Nhleko the document that you've just marked Exhibit Y8(A) is, if you look at the tramlines on page five, you'll see between there, it says the sworn statement by Nkosinathi Phinwayinkosi Thamsanqa Nhleko, do I pronounce it correctly.

MR NHLEKO: No, you're not, it's Nkosinathi Phinwayinkosi tongue sound.

ADV HULLEY SC: Yes.

20 **MR NHLEKO:** Yes, but I think you've given it your best shot.

ADV HULLEY SC: Thanks, if you'll turn with me to page 109 on that same...[intervenes].

CHAIRPERSON: Well on a lighter note Mr Nhleko, I see that your first two names have got nothing to do with

Nkosi.

MR NHLEKO: Yes.

CHAIRPERSON: Ja, [laughter].

ADV HULLEY SC: Page 109 you'll see that just below three, paragraph 312 is a signature, is that your signature sir?

MR NHLEKO: I have a – we said we are using the red numbers at the top, isn't it?

ADV HULLEY SC: That's correct, right at the top.

10 **MR NHLEKO:** So, it's Y8 NPN 0009, is that what we're using?

ADV HULLEY SC: In this instance we're referring to page 109 top right-hand corner.

CHAIRPERSON: What page did you say Mr Hulley?

ADV HULLEY SC: 109 Mr Chair.

CHAIRPERSON: 1-0-9?

ADV HULLEY SC: That's correct.

MR NHLEKO: I don't see it here.

20 **CHAIRPERSON:** Ja you use the top red number at the corner.

MR NHLEKO: Yes, the 09, yes, I see that ja.

CHAIRPERSON: Ja.

ADV HULLEY SC: Have you got the page?

MR NHLEKO: Yes, it's actually page five of – is that what it is?

ADV HULLEY SC: Your original pagination system, was
15 our is 109.

MR NHLEKO: And then I'm somewhere confused in this,
because I don't seem to be seeing it here...[intervenes].

CHAIRPERSON: Mr Hulley...

MR NHLEKO: Okay, this is right here, excellent, thanks
for your patience Chairperson, I'm now following, thank you
very much, indeed that's my signature sir.

ADV HULLEY SC: Thanks – thank you very much and this
10 is the statement that you've given – the affidavit that
you've prepared in response to the allegations that were
made by Mr McBride is that correct?

MR NHLEKO: Right.

ADV HULLEY SC: I want to take you through to deal with
your background which appears on page nine, Mr Chair,
but if I understand your affidavit...[intervenes].

MR NHLEKO: Now I'm getting educated yes, I am on
page nine ja.

ADV HULLEY SC: If I understand your affidavit correctly
20 and just to place it in context, I understand you to be
saying that this particular affidavit is not information that
you have first-hand knowledge of entirely, there are
aspects that you do have first-hand knowledge of and there
are certain aspects that you don't have first-hand
knowledge of, do I understand that correctly?

MR NHLEKO: Yes.

ADV HULLEY SC: And if I can ask that you would give an indication when we're dealing with a particular topic where a particular aspect is within your knowledge, tell us what that – that you have personal knowledge of it and if you can also indicate when something is not within your knowledge, you can tell us where it is that you got that information from but that's just by way of a general precursor. Now in relation to – on page nine section A, you
10 deal with the background and if I understand correctly, you're setting out over there your history within the ANC and your history leading to your qualifications and, ultimately, your appointment but I think I'd like to leave it to you, just to take us through that and to explain to the Chairperson what your background is.

CHAIRPERSON: Obviously only with only that which you feel is important to deal with because it is a lengthy background but if you think – those parts that you think are important to articulate, you don't have to go through
20 everything on the background part.

MR NHLEKO: I'll try Chairperson and sum it up for you, I think, indeed, it's summarised yes but it's still long in my statement. I think it has been established that I'm the former Minister of Police and essentially Minister of Public Works at a later point until the latest Cabinet reshuffle by

President Cyril Ramaphosa in 2018. I hold a Master of Science Degree in leadership and change management with Leeds Metropolitan University in the United Kingdom as well as a National Diploma in Labour Law at an Honours Degree level with the Global Institute of Management Technologies and I can also confirm that I, indeed, I am a member of the African National Congress in good standing and that I am in no gainful employment as we speak in my term of Parliament and that with the fifth Parliament having
10 the National elections of 8 May 2019.

Now, my history cuts across, and indeed, what I avoided in this particular statement is to talk about, you know, my student and youth social activities and issues and so on but at a professional level, my history cuts across my early days in the trade union movement. In 1987 I joined the, then Transport and General Workers Union, in today's terms it's now known as SATAWU, I was the branch secretary, eventually – no I was the branch organiser, that's how I started off and later on I became
20 the branch secretary. So, essentially, I was responsible for the administrative activities of the Trade Union within the designated – your graphical scope. At the time, I think the branch was called Northern Natal, so that's where I started off. Three years later, I then became the general secretary, I was elected general secretary of the same

union, Transport and General Workers Union which meant a greater, sort of, National responsibility and an administrative level as well as issues of policy development and enforcement of such policies and the constitution of the said union and so on.

That was – I played that particular role up until, of course we're approaching the democratic elections of 1994, so I stepped down from being the general secretary in 1993 in September, I think because I wanted to go back
10 to KZN where I come from. So, I - 30 September COSATU Congress, it was a special congress basically, I was then the nominated, you know, elected but I'm using this term quite qualifying because I think it was a nomination for the ANC candidature of Parliament for 1994. So, I was amongst the twenty so delegates nominated for that COSATU Congress. Now, from that point onwards, given that I had already stepped down from the general secretary position of the Transport and General Workers Union, I then was assigned in KZN to work briefly on a COSATU
20 project which was there for some few months, just before the 1999 elections, it was more to do with the overall election 1994, yes, specifically COSATU was, broadly speaking for the ANC and I also had to, you know, amongst the functions that I had to undertake there was the question of integrated that subsequently, you know,

eventually to the ANC election machinery in the province of Kwa-Zulu Natal in 1994.

In that brief role I was responsible for your ongoing, you know, sector analysis and the critical, sort of, Political environment at the time, included in that was the question of, you know, negotiating for peace, precisely because KZN at that time was engulfed by a terrible period of violence that occurred amongst our people there and so on. Then post that I, you know, elections came and I was then sent
 10 to Parliament by the ANC in 1994 when I started off there, I was assigned for the ANC study group on transport which, essentially, in its broader institutional context then was the Portfolio Committee on the – on transport. There, I was, largely responsible for the coordinating, sort of, coordination function of that very same study group in dealing with the critical policy issues of transport. I think that's the period between 1994 to 1999.

ADV HULLEY SC: In 1999 you were – you Chaired the Public Service Administration Portfolio
 20 Committee...[intervenues].

MR NHLEKO: Public Service and Administration Portfolio Committee, with responsibilities of drawing up the annual programmes and plans and essentially directing the work programmes of the Portfolio Committee and the presentation of such reports before Parliament and other

structures of course but at the centre of that Portfolio function was liaising between stakeholders such as Ministers, departments, institutions in support of democracy, civil society and others. So, that essentially, was the function there.

In 2001 I was appointed Chairperson of the ANC Parliamentary caucus, function which essentially placed myself as a point of contact between ANC MP's the leadership of the organisation being the ANC and of course
10 enabling discussion on the work of study groups. So the ANC which play of Portfolio Committee work and have sub-structures of the National caucus, lasting enabling members of Parliament to discuss and agree on their approach pertaining to all matters on the Parliamentary agenda and that – in that function as the Chair of the ANC Parliamentary caucus I also represented the ANC caucus at the ANC National Executive Committee meetings.

In 2002, honourable Chair I was appointed Chief Whip for the ANC which responsibility was Political and
20 Resource Management of the ANC in Parliament and it's also a function that required coordination between relevant structures of Parliament, Public Ministers, and ANC Head Quarters and of course, critical in that function was the liaising function between political parties, Presiding Officers and the Programming Committee of Parliament.

ADV HULLEY SC: If I could be of some assistance Mr Nhleko and if I – and I don't mean to hurry you along.

MR NHLEKO: Right.

ADV HULLEY SC: What I would like is, if you could highlight the aspects that you believe are important that the Chairperson has to have regard to in relation to your background. You obviously – most of this is already set-out in your affidavit but if you'd like to highlight certain portions, I will appreciate that.

10 **MR NHLEKO:** I – no I'll try and do that, the one area, of course, was my function as the Regional Commissioner of the Correctional Services in KZN, coordination of security programmes as constitutionally mandated and so forth. The – and the question of promoting community involvement and awareness in correctional matters was amongst those but I was, essentially, also responsible for all accounting issues at Provincial level but response – the reporting to – at a National level to the National Commissioner as the Accounting Officer. In 2008 I worked
20 for Umhlati Municipality as Deputy Municipal Manager there but most of the time I functioned as the Acting Municipal Manager, given the variety of reasons that occurred there in that municipality. In that I had the responsibility, I was then responsible for the implementation your IDP's, maintaining Organisational

Management System, coordinating Human Resource activities and national relationships, risk management, strategic management of local economy development initiatives as well as public relations and communication.

I do also need to mention that in the period set out in my affidavit, in 2002 to 2005 I served as a member of the Judicial Services Commission, the structure primarily concerned with courts and administration of justice as well as the appointment of Judges. I also served, within the
10 said period, 2002 to 2005 served as a Deputy Chairperson of the ANC Political Committee in Parliament where largely, that's a structure responsible for political direction of the work of the ANC in Parliament.

I then left, Umhlathuze Municipality, I think, at the beginning of 2010 because I was asked by the Minister – then Minister of Public Service and Administration, Mr Baloyi that I needed to come in and assist him in the setting up of the Special Anti-Corruption Unit in the Department of Public Service and Administration. I
20 performed in this particular function for – for some few months, I think it must have been four months and the work there was still at a conceptual stage. The intention was that the entity itself needed to form out as a Government entity eventually, the Anti-Corruption Unit in the Department of Public Service and Administration. So, I

could not see that kind of work to fruition precisely because I then moved on, after being hired as Director General of the Department of Labour in 2011 and I functioned in that particular position up until the May elections of 2014. Then I was appointed in May 2014 as Minister of Police. I think the rest then is...[intervenes].

ADV HULLEY SC: Very well and that was because the – if I understand correctly from your affidavit, you – the general elections had just been held and a new Cabinet
10 was appointed by the then, President Mr Jacob Zuma?

MR NHLEKO: Yes, correctly so.

ADV HULLEY SC: Now if we can just move forward, paragraph 40 you set-out that there was a Cabinet reshuffle that took place in 2017 and you assumed a new role as the Minister of Public Works.

MR NHLEKO: Yes, that's correct.

ADV HULLEY SC: Okay and you presently not – you're not a Minister in any portfolio, is that correct?

MR NHLEKO: No, no I'm not, I'm not gainfully employed
20 as they say.

ADV HULLEY SC: Yes, and that was as a result of a Cabinet reshuffle by the present President, Mr Cyril Ramaphosa?

MR NHLEKO: That's correct.

ADV HULLEY SC: Now, the – if we can move forward to

page 18 of that bundle you deal there with the complaint that had been raised by Mr McBride relating to Mr Mbongwa. Now, is there – and obviously very briefly you've heard some of the discussion that has taken place between myself and the Chairperson regarding the attitude of the evidence leaders towards the complaint relating to Mr Mbangwa, is there anything, obviously you've been accused of employing a fraudster – a person who is a foreigner, is there anything that you'd like to say, as far as
10 that is concerned before we move on to the more weightier matters, as it were?

MR NHLEKO: No, indeed I do need to say something about that.

ADV HULLEY SC: Yes.

MR NHLEKO: There are two issues that have been raised there, both before this Commission and also at a public level. The first one is that Mr Leon Abednego Mbangwa whom I hired as Chief of...[intervenes].

CHAIRPERSON: Mr Nhleko, I don't know if you could
20 raise your voice a little bit.

MR NHLEKO: Oh okay.

CHAIRPERSON: Now, you have a deep voice, I think, and sometimes I can hear you quite clearly but sometimes I can't, so maybe you can raise it a bit.

MR NHLEKO: No, my apologies Chair. There are two

issues that were raised with regards to Mr Mbangwa's employment. The first one is that he's a fraudster and the other one that he's a foreigner. Now, just a little bit of background is that, how I linked up with Mr Mbangwa was that I actually found him as part of the recruitment exercise and hunting around that I conducted, which then located him being Kwa-Zulu Natal Legislature. This is after, of course, I had Ms Kathy Hendriks there who was my Chief of Staff who then moved over to the South African Police

10 Service for another function. So, Mr Mbangwa, in KZN Legislature was a Senior Manager, basically a Chief Director kind of position that he held there within the Legislature. On the qualification front, Mr Mbangwa holds a Masters Degree in Business Administration with Regent Business School, a Diploma in Human Resource Management, a Diploma in Industrial Marketing with Unisa,

20 Management with the American Institute Graduate University and currently he's awaiting results of his dissertation for his Masters in Public and Development Management with WITS University. Now, these documents, I've also provided them in a separate Annexure to this Commission.

Now on the work experience, Mr Mbangwa has been with the South African Public Service for no less than 20 years, in different functions but he started teaching in Zimbabwe, Zambia, Botswana and South Africa between 1986 and 1995 and he headed communications for the Mpumalanga Provincial Government, 1995 to 1998 and he was a Director of the Independent Electoral Commission of South Africa from 1999 to 2001 and also a Director of the Department of Justice, 2001 to 2002 and the Chief
10 Director, KZN Department of Health 2005 to 2010 and of course where I got his was that he was then – by then the Senior Manager of Kwa-Zulu Natal Legislature 2011 to 2015, 2015 that's the time he was then transferred to the Ministry of Police.

Now as I have said he has been with the South African Public Service for over 20 years, he was awarded a Merit Certificate by the Mpumalanga Provincial Government and as Director for IEC together with Judge Kriegler and they represented South Africa in East Moore as an
20 Electoral Officer of the United Nations and that also, the appreciation note by the United Nations is also a document that we have just handed in. He was also in the Minister of Justice Office dealing with the implementation of the e-Justice Programme.

Now given this history and of course the level of

qualification, I was satisfied that he was the correct candidate for the Chief of Staff position in my office and I accordingly arranged for the lateral transfer. Now, I must then point out to the honourable Chair, members of the Commission that - just basically two things, the issue being raised about his criminal record and so on, those are issues that, if this was a fresh and direct sort of employment, would have been declared – or perhaps would have looked at establishing some veracity about this man
10 and so on but a transfer, lateral transfer, already that person is in the system, within Government. So, you wouldn't start the exercise all over again and so on.

So at the time when I hired him, I wasn't aware about the criminal offence that he allegedly committed, which was, by the way it's about an ID document and it's the first time I come across somebody who was arrested, sentenced – and served a sentence for an identity fraud. So, I – it was just one of those things but nevertheless. Now, so on one occasion I'm participating in a – there's a radio station
20 which is quite popular here in – around Johannesburg, I think, called Power FM. So, I went in there, it was more to do with the Police Portfolio and many other things that I had to deal with, the anchor then asked this question about Mr Mbangwa's employment and citizenship and of course I had no direct answers at the time. So, except undertaking

that I was going to follow through on these issues and try and establish what, actually happened. Now, indeed, I saw then after that, that sure, then confronted Mr Mbangwa, I asked him these questions, are you a fraudster, what happened? Then he provided the brief background to that issue, in fact an extensive background to that issue. Firstly, that indeed he was sentenced to 36 months imprisonment of which he served 18 months and released from prison in 2004 and at which point, the point being that
10 he's releases, he was given a letter to apply for citizenship by decent. Note that he was not deported and Mr Mbangwa informed me that in all positions of employment, in other words pre the 2015 transfer to my office he had – he always declared his criminal record and completed his Z204 form for security clearance, and upon releasing 2004 he took steps to rectify his citizenship and documents in accordance with Section 3 sub-section1 of the South African Citizenship Act 88 of 1995.

Now it has got – this point has got to be noted, to
20 date, the Department of Home Affairs has not been forthcoming in dealing with this particular issue. As a result of which the Pietermaritzburg High Court was approached to give force to this particular attempt. The Pietermaritzburg High Court, case number 6840/09 ordered that and ordered that evidence be held on 16, 17, 18 March

2011 on determining descendance for Mr Mbangwa. On 17 March 2011 a settlement agreement was entered into before the Pietermaritzburg High Court for a deoxy nucleic acid test between Mr Mbangwa and a surviving sibling in South Africa and such a DNA test results were in Mr Mbangwa's favour, that document I've also provided it for this Commission. In other words, the actual DNA, he did test results and so on. Today the Department of Home Affairs has continuously reneged from this Court Order.

10 Now I do need to raise two things here, Chair, about this thing. For me this is a very worrying tendency for some State Departments not to comply with Court Orders. Now I'm saying this thing because, indeed, the advantage that I have got is that I've been an administrator so I've seen the administrative aspect of the State, so I've participated in that. So, I do have particular experiences when it comes to such issues but also, I have an extensive sort of experience around issues of Political Management, I've also seen these particular issues. Now, for me this is
20 a political problem, precisely because if you – if we allow a situation such as this for an example our efforts on the creation of a developmental State on the basis of the rule of law gets compromised. So, I'm throwing this point because I think this point is quite fundamental, even with regards to this issue but also far beyond this particular

issue and so on.

Secondly, the second point I want to raise is that, in any case it is absurd and lunacy, at best for anyone to suggest that an African person is a foreigner on the African soil. Africans by birth, Chairperson, in this continent of ours, are understood to be of a tree of origin, this very same land of our forebearers. At issue here, Chair, is what the European powers did in 1884 when they met at a billing conference wherein, they said divide, plunder rape, maim, 10 rape and dehumanise the African person. All of these atrocities were committed on the basis, of nothing else, except that they considered themselves as being White superior human beings and that's the matter.

I'm raising this point because, even in this Commission reference is being made to a fellow African person as a foreigner and that can't be correct and I think Princess Mugure Ndarathimirwo was correct when, in a song, with tears on her face articulated that those who worship foreign Gods are swallowed by them. The 20 greatness of our land lies in the glory of our children as we fight our battles, we create ...[intervenes].

CHAIRPERSON: But Mr Nhleko, how far can you take that because ...[intervenes]

MR NHLEKO: I am done with it.

CHAIRPERSON: ...because you were a member of

Parliament.

MR NHLEKO: Yes.

CHAIRPERSON: An act of Parliament recognises foreigners as including Africans, you were a member of Parliament, under democracy that Parliament – the majority of which are members from your political party recognises by way of a law that an African who is from Zimbabwe, an African who is from Kenya, Swaziland is a foreigner in South Africa.

10 **MR NHLEKO:** I don't know, perhaps you are probably well read with regards to that piece of legislature but for me, Chair...[intervenes].

CHAIRPERSON: Well I'm talking about, I mean, you were Minister of Police and when it comes to people who are regarded as foreigners, as I understand the position, there is no distinction being made to say, if you are a – if you are from Zimbabwe or from within the continent you are not a foreigner in South Africa.

20 **MR NHLEKO:** I think, honourable Chair, the correct reference it's an illegal immigrant or I think there is another term that is being utilised. I'm not too sure whether that piece of legislation, for instance, is termed in that kind of manner in terms of referring to Africans being... [Chair and witness speaking together] but I'm not sure...[intervenes].

CHAIRPERSON: It might have, since then, been amended and maybe different terminologies...[intervenes].

MR NHLEKO: Yes, I think the proper reference is that, if you do not have – you are not properly documented, you are then...[intervenes].

CHAIRPERSON: An immigrant.

MR NHLEKO: An immigrant, an illegal immigrant or...[intervenes].

CHAIRPERSON: You are an illegal immigrant.

10 **MR NHLEKO:** Yes, something to that effect I think that's the...[intervenes].

CHAIRPERSON: Would you not have the same concerns if ...[intervenes].

MR NHLEKO: That's – conceptually that's a different definition as opposed to saying to an African person, foreigner.

CHAIRPERSON: Okay.

20 **MR NHLEKO:** On the African side you can't say that, in any case, Chair, even if what you just spoke to is correct, that perhaps, maybe the law says that I still maintain my position it's incorrect to have such a reference regardless of what the law books say.

CHAIRPERSON: Yes, no, no that's fine, I don't want us to spend too much time on it but you have made the point that, for you there's a distinction between a foreigner and

an immigrant.

MR NHLEKO: Exactly.

CHAIRPERSON: And if the word, immigrant, is used that's acceptable, yes.

MR NHLEKO: So I've clarified this issue, you know, up to a point where there were Court Orders for an example and the status of Mr Mbangwa – for me then, all of this, clarified why, perhaps, even the other State Department hired him, this is now my deduction from this but as I had
10 qualified it earlier on - that look there was no way, given the lateral transfer that I would know about the criminal record that he has got and his nationality kind of status and so on, there was no – the original file, then is with the Department that – or State institution that he used to work for. So, when you do a lateral transfer you take that right over and that's basically it.

CHAIRPERSON: So, your point – the points you make about Mr Mbangwa is, one, you had a vacancy you wanted to fill.

20 **MR NHLEKO**: Yes.

ADV HULLEY SC: Two, he was – he had the qualifications and the knowledge and experience that was required for that position.

MR NHLEKO: Correct.

COMMISSIONER: Three, to the extent that he had a

criminal record, one that you didn't know and two you couldn't know because he was coming from another department he was not being employed as a new person in the Public Service.

MR NHLEKO: Correctly so.

CHAIRPERSON: Yes okay, thank you.

ADV HULLEY SC: Just to – if I might just to complete that, if I understand correctly, Mr Mbangwa took the matter to Court and you say that the Department of Home Affairs
10 has reneged upon the Court Order as things stand, to the best of your knowledge, Mr Mbangwa – the Court has not yet declared Mr Mbangwa to be a South African Citizen by decent?

MR NHLEKO: No, I'm not sure whether I'm getting you correctly there. The High Court established the descendency of Mr Mbangwa through the DNA test, it established that.

ADV HULLEY SC: If I understand your – and correct me if I'm wrong, if I understand your narration, what you're
20 saying is that there was a settlement agreement in terms of which it was agreed that he would go for DNA testing in order to establish whether he was a South African citizen by decent, well presumably whether he was related to a person who was a South African citizen and you're saying that the test came out in his favour.

MR NHLEKO: Yes.

ADV HULLEY SC: But the Department has reneged on the agreement, in other words, the Department either had to implement – having come up with an agreement it had to implement it and the Department had to make him a citizen by decent, alternatively he had to go back to Court to get a Court Order declaring that he is a South African citizen by decent?

MR NHLEKO: No, it's not what I'm saying, it's an order of
10 Court.

CHAIRPERSON: Let me put it this way, of course you may or may not understand the picture completely, you can nod, you – but what I understand from your affidavit, whatever issue there was between Mr Mbangwa and the Department of Home Affairs with regard to his status in the country, that was taken to Court.

MR NHLEKO: Right.

CHAIRPERSON: And a process was agreed between Mr Mbangwa and the Department of Home Affairs in terms of
20 which his descendancy was established. As you understand the position the Court made an order and in terms of the order, was the Home Affairs Department supposed to issue him with the citizenship documents or was it required to decide on his citizenship application? What is your understanding of what...[intervenes]?

MR NHLEKO: My understanding is that they were supposed to issue him with...[intervenes].

CHAIRPERSON: With a citizenship.

MR NHLEKO: A citizenship.

CHAIRPERSON: A citizenship yes, and the point you make is that, as far as you understand, up to now the Department has not complied with that Court Order.

MR NHLEKO: Yes.

CHAIRPERSON: But you can't take it beyond that.

10 **MR NHLEKO:** Of course.

CHAIRPERSON: Ja, okay, thank you, alright. Mr Hulley we are at seven minutes past one.

ADV HULLEY SC: Perhaps we should take the adjournment now.

CHAIRPERSON: Ja let's take the adjournment, lunch adjournment, and we are going to resume at ten past two. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 **CHAIRPERSON:** Thank you. Mr...

ADV HULLEY SC: The – from time to time Mr Chair if you would perhaps forgive me I might just lean back against the thing for my lower back I suffer with.

CHAIRPERSON: Oh is that so.

ADV HULLEY SC: Back pain yes.

CHAIRPERSON: Well if you have an ailment like that I do not want it to be made worse because...

ADV HULLEY SC: No, no I will continue until it becomes a problem and then I will mention it to you.

CHAIRPERSON: Okay but if you – you wish to sit because of that situation I would understand.

ADV HULLEY SC: Thank you Mr Chairman.

CHAIRPERSON: Ja okay.

ADV HULLEY SC: Mr Chair if I might just indicate I have
10 had the opportunity during the adjournment just indicate who
– what the exhibit numbers are because it may cause a
problem if later on if we do not have the exhibits in their
sequential order.

CHAIRPERSON: Yes.

ADV HULLEY SC: So item 1 which is Mr Nhleko – it says
here Mr Nhleko's Rule 3.4 Application of course it must be
Mr Nhleko's affidavit – his sworn statement. So item – so if
you look at the – the index.

CHAIRPERSON: You want me to look at the index?

20 **ADV HULLEY SC:** That is right and then when we go there
at a later stage to a particular document, I will then ask you
Mr Chair with your leave to mark that particular document
with a particular number.

CHAIRPERSON: Hang on one sec. Hang on one second.
Ja the main index. Ja.

ADV HULLEY SC: So – so you will see there that the item 1 is – it says the – Mr Nkosinathi Nhleko’s Rule 3.4 Application. Now the affidavit itself will be the Exhibit Y8A. It is – because the notice of motion does not form part of that. But that item 1 will be Exhibit Y8A

CHAIRPERSON: Hm.

ADV HULLEY SC: Exhibit – item 3 on the – on that list which is – it is Mr Sandile July’s reply to Robert McBride that will be Y8B.

10 **CHAIRPERSON:** Okay let us – let us start from item 1. You want us to say to – what do you want us to do?

ADV HULLEY SC: So if you can in your – just to the left of it in manuscript for present purposes mark that as Y8A that will be Exhibit Y8A.

CHAIRPERSON: I am – just switch on your microphone if you are able to switch on your microphone. Ja.

ADV MOKHARI SC: I was saying that we can make it easy by just deleting Rule 3.4 application then it will be Nhleko’s affidavit.

20 **CHAIRPERSON:** Yes. I think that is...

ADV HULLEY SC: That is right.

CHAIRPERSON: So – so we basically delete – cross out Rule 3.4 application.

ADV HULLEY SC: Correct.

CHAIRPERSON: And put in affidavit and then you want us

maybe in bracket to say Exhibit.

ADV HULLEY SC: Y8A.

CHAIRPERSON: Y8A.

ADV HULLEY SC: That is correct Mr Chair.

CHAIRPERSON: Alright. And – and then the next one that is 2.

ADV HULLEY SC: Then number 2 already has an exhibit number.

CHAIRPERSON: So just say Exhibit.

10 **ADV HULLEY SC:** So that is Exhibit Y7 but that was a historic document so I cannot interfere with that.

CHAIRPERSON: Sorry?

ADV HULLEY SC: So item number 2 is an historic document. It has already got an exhibit number.

CHAIRPERSON: Ja.

ADV HULLEY SC: So it is Exhibit Y7 you will see.

CHAIRPERSON: Oh okay. So – so – but we can make it clear it is Exhibit Y7.

ADV HULLEY SC: Correct.

20 **CHAIRPERSON:** So it is Y7 ne?

ADV HULLEY SC: That is so Mr Chair.

CHAIRPERSON: Ja okay.

ADV HULLEY SC: Then item 3 Mr Sandile July's reply to Robert McBride his affidavit that would be Exhibit Y8[B].

CHAIRPERSON: Yes okay. Hm.

ADV HULLEY SC: Then the next one item 4 that is an historic document so it has already Y5. Then item 5.

CHAIRPERSON: Okay. Y5. Hang on one second. Somebody should be doing the same exercise for the witness because otherwise when we get to...

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: On the witness's file. Okay alright.

ADV HULLEY SC: So item 5 would read – that is the affidavit of Mr July in reply to Matthews Sesoko that would
10 be Exhibit Y8[C].

CHAIRPERSON: Yes that is fine.

ADV HULLEY SC: Then the next item is Mr Sesoko's reply to Sandile July that is item 6 that would be Exhibit Y8[D].

CHAIRPERSON: Yes.

ADV HULLEY SC: Then the following affidavit – item which is item 7 it already has an exhibit number that is Y6. Then the item 8 will be Y8[E], Exhibit Y8[E].

CHAIRPERSON: Item 8 is Exhibit Y8[C]?

ADV HULLEY SC: E.

20 **CHAIRPERSON:** No, no we have had – we have had C.

ADV HULLEY SC: E – that is Echo, E for Echo.

CHAIRPERSON: Oh E?

ADV HULLEY SC: That is correct Mr Chair.

CHAIRPERSON: Oh okay. Exhibit Y8[E]. Okay.

ADV HULLEY SC: Then item 9 will be Exhibit Y8[F] for

foxtrot.

CHAIRPERSON: Yes.

ADV HULLEY SC: Then Exhibit 10 I am going to break that up into two if I can just take you – take you to that item Mr Chair.

CHAIRPERSON: Hm.

ADV HULLEY SC: It is – explain. If you would turn with me Mr Chair in Bundle G.

CHAIRPERSON: Hm.

10 **ADV HULLEY SC:** The first part of that is a docket and it says over here Ex – the description.

CHAIRPERSON: One second – one second. What page?

ADV HULLEY SC: So it is at page 3207.

CHAIRPERSON: 3207?

ADV HULLEY SC: That is so Mr Chair.

CHAIRPERSON: Yes.

ADV HULLEY SC: So page 3207 would be one bundle of documents which is – which are extracts from the police case docket.

20 **CHAIRPERSON:** Hm.

ADV HULLEY SC: Pretoria Central CAS245405/2015 and that will be marked as Exhibit 8 – Y8[G].

CHAIRPERSON: Exhibit Y8[G]?

ADV HULLEY SC: That is so Mr Chair.

CHAIRPERSON: Okay we – right.

ADV HULLEY SC: And then we will – if you turn to page 3215.

CHAIRPERSON: 3215?

ADV HULLEY SC: That is so.

CHAIRPERSON: Ja.

ADV HULLEY SC: That will – that page together with the correspondence running to page 3221.

CHAIRPERSON: Hm.

ADV HULLEY SC: And that would be Exhibit Y8[H].

10 **CHAIRPERSON:** Exhibit Y8[H].

ADV HULLEY SC: That is correct.

CHAIRPERSON: Okay.

ADV HULLEY SC: And then if you would – the next document would be item 11 on your...

CHAIRPERSON: We are done with this file? Are we done with this file?

ADV HULLEY SC: No we are not yet done with that file Mr Chair.

CHAIRPERSON: Okay.

20 **ADV HULLEY SC:** There is – there is still a few items.

CHAIRPERSON: We go back to the other one.

ADV HULLEY SC: So the next item is page 3 – sorry is 3222 in the bundle that you have got but the index is item 11.

CHAIRPERSON: Just repeat that.

ADV HULLEY SC: Okay let me do it a little at a time. So if you turn with me Mr Chair to page 3222.

CHAIRPERSON: Hm.

ADV HULLEY SC: And if you can mark that on that page Exhibit Y8[I].

CHAIRPERSON: Exhibit Y8?

ADV HULLEY SC: [I].

CHAIRPERSON: [I].

ADV HULLEY SC: And then...

10 **CHAIRPERSON:** That is the Rendition Report by the Reference Group.

ADV HULLEY SC: Correct. Now if you turn to – follow the sequence on your – on your index Mr Chair if you look at item 11.1 on your index.

CHAIRPERSON: Ja.

ADV HULLEY SC: If you can mark that item 11.1 that is your Exhibit Y8[I] so it is the document we first looked at.

CHAIRPERSON: 11.1 will be Exhibit Y8[I].

ADV HULLEY SC: That is so Mr Chair.

20 **CHAIRPERSON:** Okay.

ADV HULLEY SC: The 11.2 on your index.

CHAIRPERSON: I am sorry. What did we – what did you say we must mark item 10 on the previous page?

ADV HULLEY SC: Okay item 10 is going to be broken up into two.

CHAIRPERSON: I do not have to write anything on that column?

ADV HULLEY SC: Yes because it will be difficult to write it in the column.

CHAIRPERSON: Oh.

ADV HULLEY SC: Because that column just has one item which is 10.

CHAIRPERSON: Oh okay. Alright and then 11.2?

ADV HULLEY SC: So 11.2 on your list would be
10 appointments and that would be item – sorry Exhibit Y8[J].

CHAIRPERSON: Okay.

ADV HULLEY SC: So if you can go to page 3241 of the bundle that you were looking at in [G]. Now that on the – on page 3241 if you can write Exhibit Y8[J].

CHAIRPERSON: Well 41 is just the label of what comes after that is it not?

ADV HULLEY SC: Yes. It is – we can take that away.

CHAIRPERSON: Ja should we not have – go to 3242?

ADV HULLEY SC: That is fine.

20 **CHAIRPERSON:** And then that will be Exhibit?

ADV HULLEY SC: J8[J].

CHAIRPERSON: Y8[J].

ADV HULLEY SC: That is so Mr Chair.

CHAIRPERSON: Okay.

ADV HULLEY SC: And that exhibit will continue right up to

page 3250 so that is all – would all be one exhibit. And then...

CHAIRPERSON: Well it is – it is different letters is it not?

ADV HULLEY SC: They are different letters but all – all related to the – they are different letters my only fear is that if we start breaking up individual letters within that series then it may lead to – but I am quite happy to do that except that it may lead to problems.

CHAIRPERSON: Yes otherwise the Rule we are following
10 will be breached.

ADV HULLEY SC: Correct.

CHAIRPERSON: Because they are separate document is it not?

ADV HULLEY SC: They are separate documents. They all relate however to – to the same issue which is – sorry which is the appointment letters of the various people that sat on the Reference Group.

CHAIRPERSON: I – I think your – your – well why do we not make them K, L, M whatever.

20 **ADV HULLEY SC:** Very well.

CHAIRPERSON: Ja. So the next one at 3243 would be Exhibit Y8.

ADV HULLEY SC: K

CHAIRPERSON: [L] no K

ADV HULLEY SC: J, K.

CHAIRPERSON: K ja. And then the next one will be Y8[L].

ADV HULLEY SC: That is so Mr Chair.

CHAIRPERSON: The next one will be Exhibit Y8[M].

ADV HULLEY SC: Correct.

CHAIRPERSON: Then the next one will be Exhibit Y8[N]

ADV HULLEY SC: That is so.

CHAIRPERSON: The next one Y8[O]. The next one Y8[P].

ADV HULLEY SC: Correct.

CHAIRPERSON: Q – so then – the one at 3249 is Exhibit
10 Y8[Q].

ADV HULLEY SC: Correct.

CHAIRPERSON: The next one is Exhibit Y8[R]. Q, R. The
next one is Y8[S].

ADV HULLEY SC: That is 3251.

CHAIRPERSON: Ja.

ADV HULLEY SC: That has two pages.

CHAIRPERSON: Oh that one has got two pages. So we
skip the page – the second page of the letter and the next
one will be Exhibit Y8[T], is that right?

20 **ADV HULLEY SC:** That is so Mr Chair.

CHAIRPERSON: Hm.

ADV HULLEY SC: That is correct.

CHAIRPERSON: R, S, T.

ADV HULLEY SC: That is correct.

CHAIRPERSON: Ja okay. That is the one at 3253 it has got

also two pages.

ADV HULLEY SC: It does.

CHAIRPERSON: That takes care of those letters. Ja.

ADV HULLEY SC: Then the next bundle of documents which are all your Rule 3.3 Notices. There is no reason why that should have an exhibit number and which would then take us through if I could to what should be page 3342 in the sequence and that will be given that the last number was T this one would be U, Y8[U].

10 **CHAIRPERSON:** What item number?

ADV HULLEY SC: 3 – it is on the list it is item 14.

CHAIRPERSON: Right.

ADV HULLEY SC: So it is at page 3342.

CHAIRPERSON: So that will be Exhibit?

ADV HULLEY SC: Y8[U].

CHAIRPERSON: U. Okay. Alright.

ADV HULLEY SC: And then attached to that – in fact separately because it is not really attached. This is a document that we have received from Mr Nhleko's
20 representatives but it seems to be a – it is the affidavit of Mr Gamanyane. I am not sure if it is already in the bundle I do not know where it is but I just received it. They have obviously found it somewhere and I am not sure if we should give it a separate ...

CHAIRPERSON: Well maybe should your juniors not have a

look at that while we continue and at some stage they can tell you what the position is and then we can take it from there.

ADV HULLEY SC: The – it does not seem that he is testifying which means that he would not have an Exhibit number to his document.

CHAIRPERSON: Yes but is it needed for purposes of Mr Nhleko's evidence?

ADV HULLEY SC: I do not know they have asked us to put
10 it in and we have put it in for their benefit.

CHAIRPERSON: Yes.

ADV HULLEY SC: But I would imagine that they would want it in.

CHAIRPERSON: Yes well let us see when we get to – to when somebody talks about it.

ADV HULLEY SC: If I – if I can then just – so that the last item was U there are additional. Then item 15 which was the bundle that had been handed up to us for inclusion in the record was a series of documents relating – or that had been
20 provided to us by Mr Nhleko's representatives. A lot of the documents in that bundle are duplications of things that are found elsewhere and it would seem to me that the preferable way in which to deal with it is to give it – the entire bundle its own exhibit number because if we try to break it down we are going to find that the document already has an exhibit

number elsewhere. So rather give the bundle as a whole an Exhibit number subject to what you have to say Mr Chair.

CHAIRPERSON: And that of course would breach our other rule.

ADV HULLEY SC: It would.

CHAIRPERSON: Well you could have a document – we could have a – well have those that may have been given exhibit numbers in previously under a different work stream have they been identified as to which ones they are? They
10 have not been identified?

ADV HULLEY SC: It is difficult. Some of the documents – most of the documents that I know are duplications seem to relate to documents that have been taken out of the affidavits of either Mr McBride, Mr Sesoko Kuba or alternatively the affidavit of Mr Sandile July one – some – certain things have been extracted from that and put in here.

CHAIRPERSON: Well I guess what we could have – we could have – we could give them an exhibit number for present purposes.

20 **ADV HULLEY SC:** Hm.

CHAIRPERSON: And if they happen to be identical to a document that has been given an exhibit number in another work stream it is just identical.

ADV HULLEY SC: Hm. We just live with the consequences.

CHAIRPERSON: It – ja I think if – I think if they are

identical but it is known that they have been given different exhibit numbers that is better than when there is two documents that have the same exhibit number but they are different because that makes it more confusing.

ADV HULLEY SC: Yes of course. That is problematic.

CHAIRPERSON: Ja. So – so maybe let us give them Exhibit numbers for purposes of Mr Nhleko's

ADV HULLEY SC: Evidence.

CHAIRPERSON: Evidence and if – if they happen to have –
10 to be identical to others that are there – different exhibit numbers elsewhere at least they are – they are the same.

ADV HULLEY SC: Thank you Mr Chair. So the next item and on this list would be at page 3368. In fact, it started on 3369 this forms part of the bundle that was handed up.

CHAIRPERSON: No that must be another bundle not this one.

ADV HULLEY SC: Sorry this is Bundle H. Mr Chair this is Bundle H.

CHAIRPERSON: What is the page number?

20 **ADV HULLEY SC:** So from 3369 to 329 – sorry 3391 those are all – that is all correspondence.

CHAIRPERSON: Ja what page do...

ADV HULLEY SC: Is this case notices.

CHAIRPERSON: Starting on page?

ADV HULLEY SC: 3369.

CHAIRPERSON: Yes.

ADV HULLEY SC: So that is a notice in terms of Rule 3.3.

CHAIRPERSON: Okay let us deal with – oh that is just a notice.

ADV HULLEY SC: Now this was part of what Mr Mokhari was addressing on when he asked to make his opening statement, he was addressing you on this bundle of documents.

CHAIRPERSON: Ja.

10 **ADV HULLEY SC:** So unless we are going to make that an exhibit number?

CHAIRPERSON: Ja no the notice has no evidential.

ADV HULLEY SC: Value.

CHAIRPERSON: Value. And the correspondence it also depends what the purpose is, is that...

ADV HULLEY SC: As I understand...

CHAIRPERSON: Or was it simply about the procedural issues as the service of notices because if it was about the service of notices, we should not put that – I think Mr
20 Mokhari agrees.

ADV HULLEY SC: Keep it out.

CHAIRPERSON: We should not – ja we should keep it out of – out of it. If it remains in the bundle for convenience that might be fine but preferably it should be taken out.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: So we – but we – we will not give them exhibit numbers.

ADV HULLEY SC: Correct.

CHAIRPERSON: Ja.

ADV HULLEY SC: Then Mr Chair if we can go to page 3393.

CHAIRPERSON: What page?

ADV HULLEY SC: 3393 of the same bundle that you have got before you.

CHAIRPERSON: Yes.

10 **ADV HULLEY SC:** So this is the corres – these are the – the degree certificates and so forth that Mr Nhleko was referring to in respect of Mr Mbangwa.

CHAIRPERSON: Yes. What exhibit number should we give to?

ADV HULLEY SC: So we – the previous one was Y8[T] so this one will be Y8[U].

CHAIRPERSON: Just say that again please?

ADV HULLEY SC: This document on 3393 will be Y8[U].

CHAIRPERSON: Exhibit Y8[U]?

20 **ADV HULLEY SC:** That is correct Mr Chair.

CHAIRPERSON: Okay. The next one is the certificate.

ADV HULLEY SC: So that would be V.

CHAIRPERSON: Y8 – U, V.

ADV HULLEY SC: V.

CHAIRPERSON: Ja. Is the next one a different diploma or

same thing? It looks like the same as the one we have just done.

ADV HULLEY SC: The...

CHAIRPERSON: It is the same.

ADV HULLEY SC: It is the same.

CHAIRPERSON: So we have duplication. Let us go to the next one 3396.

ADV HULLEY SC: That is so.

CHAIRPERSON: That is Exhibit?

10 **ADV HULLEY SC:** W.

CHAIRPERSON: Y8.

ADV HULLEY SC: Y8[W].

CHAIRPERSON: W okay certificate at 3397.

ADV HULLEY SC: X

CHAIRPERSON: Y. Exhibit Y8[Y]?

ADV HULLEY SC: W – sorry this is – this should be Y8[X] – W, X.

CHAIRPERSON: X okay. Okay the one at 3397 is Exhibit Y8[X]. Ja. Has it got page 2 or is the next one.

20 **ADV HULLEY SC:** It looks like it is a two page document.

CHAIRPERSON: Okay. Then the one at 3399 is Exhibit Y8 what?

ADV HULLEY SC: Z.

CHAIRPERSON: Z okay. 3400?

ADV HULLEY SC: Should be Y8[AA].

CHAIRPERSON: 3401?

ADV HULLEY SC: Y8[AB]. Y8 – sorry we have called it Y8 – we either call it Y8[AB] or Y8[AA] – ag sorry [BB].

CHAIRPERSON: The previous one we said is what AA?

ADV HULLEY SC: AA.

CHAIRPERSON: So this would be BB.

ADV HULLEY SC: We can call it BB.

CHAIRPERSON: Ja it is Exhibit Y8[BB]. And then the one at 3403?

10 **ADV HULLEY SC:** CC – Y8[CC].

CHAIRPERSON: Ja. And then – then the one – the next one at 3404 is Y8[DD].

ADV HULLEY SC: That is so Mr Chair.

CHAIRPERSON: And then the next one is Y8[EE].

ADV HULLEY SC: That is so.

CHAIRPERSON: That is at 3405. Y8[FF] is the one at 3406.

ADV HULLEY SC: That is so.

CHAIRPERSON: And 3407?

ADV HULLEY SC: It would be Y8[GG].

20 **CHAIRPERSON:** Okay.

ADV HULLEY SC: 3408 Y8[HH].

CHAIRPERSON: Okay.

ADV HULLEY SC: 3409 is Y8[II].

CHAIRPERSON: Yes.

ADV HULLEY SC: 3411 is Y8[JJ].

CHAIRPERSON: Yes.

ADV HULLEY SC: 3412 is Y8[KK].

CHAIRPERSON: And then?

ADV HULLEY SC: 3413 is Y8[LL].

CHAIRPERSON: And that is two pages.

ADV HULLEY SC: There is two pages to that.

CHAIRPERSON: And the settlement agreement.

ADV HULLEY SC: Is Y8[MM].

CHAIRPERSON: And that has got ...

10 **ADV HULLEY SC:** That has got six pages.

CHAIRPERSON: A number of pages. It ends at 3420 is that right?

ADV HULLEY SC: Up until 3420 that is correct Mr Chair.

CHAIRPERSON: Yes. 3421?

ADV HULLEY SC: Is Y8[NN] that is N for November.

CHAIRPERSON: Y8 double?

ADV HULLEY SC: NN.

CHAIRPERSON: M?

ADV HULLEY SC: N for November.

20 **CHAIRPERSON:** Oh okay. Is that a one page or...

ADV HULLEY SC: It is a one page document.

CHAIRPERSON: Okay. 3422?

ADV HULLEY SC: Is Y8[OO].

CHAIRPERSON: Okay.

ADV HULLEY SC: And 3423 is Y8[PP].

CHAIRPERSON: Yes.

ADV HULLEY SC: And then after that there are some extracts taken from legislation.

CHAIRPERSON: Ja.

ADV HULLEY SC: That is at page 3425.

CHAIRPERSON: But let us...

ADV HULLEY SC: I understand that we do not give them exhibit numbers anymore.

CHAIRPERSON: Legislation is – does not have to be proved
10 is it not? So it is put in just for convenience. We do not have to put it as an exhibit is it not?

ADV HULLEY SC: Correct Chair.

CHAIRPERSON: As long as we know where to find it when we looking for it. Yes are we done?

ADV HULLEY SC: And then there is a document at page 3431.

CHAIRPERSON: 34?

ADV HULLEY SC: 3431.

CHAIRPERSON: 3431

20 **ADV HULLEY SC:** That is correct Mr Chair. That based on my reading of it appears to be an extract that is taken from the 2001 Regulations Public Service Regulations but I am not exactly sure what it is but it seems to be taken from the Public Service Regulations of 2001.

CHAIRPERSON: Ja. I think Regulations we do not have to

put – give it an exhibit number really as long as the index tells us where to find it.

ADV HULLEY SC: Then the next item we can ignore. So we can ignore that. Our next item would be at page 3434.

CHAIRPERSON: 34?

ADV HULLEY SC: 34.

CHAIRPERSON: Okay.

ADV HULLEY SC: And that would be Y8[QQ] I believe it is.

CHAIRPERSON: Double?

10 **ADV HULLEY SC:** QQ.

CHAIRPERSON: Have we done OO?

ADV HULLEY SC: So OO was at page...

CHAIRPERSON: Oh we have – if we have done it it is fine.

ADV HULLEY SC: We have.

CHAIRPERSON: Oh okay. QQ. Alright QQ

ADV HULLEY SC: So this is QQ.

CHAIRPERSON: Yes.

ADV HULLEY SC: It is – it runs until 3437. So the next item would be at page 3439 and that would be Y8[RR].

20 **CHAIRPERSON:** Okay.

ADV HULLEY SC: And that is a two page document. And the next one would be at Y8 – sorry at page 3442.

CHAIRPERSON: Are we about to finish this exercise?

ADV HULLEY SC: What I propose...

CHAIRPERSON: Because this is something that I should not

be doing.

ADV HULLEY SC: It is going to take – it is going to take a while. Can I propose...

CHAIRPERSON: Is there something that you and your team should be doing?

ADV HULLEY SC: We can do – we can do that separately Mr Chair.

CHAIRPERSON: I should not be doing this.

ADV HULLEY SC: I have got to the document that I wanted
10 to identify so anything beyond this.

CHAIRPERSON: Ja. Okay let us get going.

ADV HULLEY SC: Thank you Mr Chair. The – Mr Nhleko sorry just you will recall that we – before we took the adjournment, we have referred to...

MR NHLEKO: Yes Sir.

ADV HULLEY SC: A settlement agreement in relation to Mr Mbangwa's situation. If you would turn with me to a bundle which presently is marked Bundle H.

CHAIRPERSON: And I think if we can from what – from my
20 understanding of the issues we should not be detained too long about them.

ADV HULLEY SC: We are definitely not I just want him to confirm that this was the document he is referring to. Thank you Mr Chair.

MR NHLEKO: 8H – yes Sir

ADV HULLEY SC: If you can turn to page 3415.

MR NHLEKO: 3415. That is the – this is Exhibit Y8[MM] and that is the settlement agreement you were referring to before the adjournment, is that correct?

MR NHLEKO: Yes correct Sir.

ADV HULLEY SC: Insofar as the meaning of that settlement agreement is concerned Mr Chair I am not going to debate it with the witness the settlement agreement is there.

CHAIRPERSON: Ja.

10 **ADV HULLEY SC:** Now I would like us to turn back to your affidavit which is Y8[A].

MR NHLEKO: Alright.

ADV HULLEY SC: Now you came in if I recall your testimony correctly you came through – you were appointed as the Minister of Police in May of 2014?

MR NHLEKO: Yes correct.

ADV HULLEY SC: And you set about establishing what you refer to as a Reference Group. Could you explain to us how that Reference Group came about?

20 **MR NHLEKO:** No thank you very much Honourable Chairperson and the members of the commission. The – when I came in in 2014 there were a number of – matters that were also in the public domain insofar as the police were concerned some were institutional in nature, some were of a different sort of nature and so on. But key was that I

was new to the portfolio. Now the National Development plan vision 2013 makes specific sort of areas of policing focus that needs to be looked into, driving the police service towards the attainment of those [indistinct 00:37:46] there are five of them. The first one is that there is a need to strengthen the criminal justice system. Secondly that the police service itself has got to be professional body and we have got to make it professional as a service. The third one is that the police service has to be demilitarised that is one
10 vision by the NDP. The fourth area is that there is a need to build safety as an integrated approach and building community [indistinct 00:38:29] in community safety. So I think point 4 and 5 are intertwined in the – in a sense. Now – so I needed to familiar about what the police service was all about and in this regard I engaged with a number of institutions internally but also including professional bodies outside of the – of the police service. In that process there were a number of issues that then came out quite prominently. There was an issue for instance with regards to
20 what I categorise as the Human Resources Management area and that pertained to the issues of – of a – the appointments, promotions and dis – and certain disciplinary matters that were there. I will also just provide just a few examples. For instance, in my first meeting with the – with the top management of the South African Police Service one

of the generals stood up and introduced himself and said, I am General so and so but I am sitting at home I am not doing anything. You know. And I think that was alluded to the issue of restructuring that had taken place at the time and so forth. But it was not only him I think there were – there was also another one – I may want to revisit this kind of detail. For instance General Lebeya who was now with the – the Head of the Hawks was one of the people that we – you know was also engaged with in relation to a specific
10 matter relating to Human Resources kind of issues and so on. On operational issues it was also this issue of the Rendition of the Zimbabweans. The Zimbabwean Nationals. The third area that was quite prominent in the – in the – now the Renditions of the Zimbabwean Nationals let me just – briefly just take a step back. It is a matter that even before I came in it was in the public domain. I think there was an expose by the Sunday Times the criminal justice cluster at the time also even issued a statement in this regard.

Advocate Mosing in the work that Werksmans eventually
20 did within, you know, of the National Prosecution Authority, also does refer to a meeting of top management there being addressed by the then Minister of the Justice and Constitutional Development specifically also about this particular matter and so on.

So it was really a matter that was out there in the public

domain. Now on Crime and Intelligence, I think in my first week or two when I was there, there were a lot of things that came out of the Sunday newspapers pertaining to Crime and Intelligence and some of the issues that were also happening there.

But one area of my major interest also was the question of the perpetually suspension of Mr Richard Mdluli. Now you will appreciate Chair, in terms of the background that I gave, you know, which is a background in trade unions and
10 industrial relations and all of that and so on.

That certainly it is something that from a labour relations point of view, you have to be concerned about somebody who is sitting at home and he is not being utilised effectively for the intended goals of what the institution is all about. So for me that was ...[intervenes]

CHAIRPERSON: Also from simple the position of further administrator or minister, you would be concerned if there are people who are being paid, sitting at home for extended periods.

20 **MR NHLEKO:** Exactly.

CHAIRPERSON: Ja.

MR NHLEKO: Exactly, we should.

CHAIRPERSON: H'm.

MR NHLEKO: We should be concerned about that. You know, it is either you arrive at a position where you clearly

know whether this person is part of your labour force or not part of your labour force. You know, it is... there is no in between when it comes to that.

Now the fourth area which I found also, perhaps, I think for me, amazing, was that, you know, in 2014 where you still had issues of integration particularly, you had the people that were still being referred to as non-statutory forces.

Now my understanding is that we had integrated and transformed as the South African Police Service and we are
10 still continuing with that process of transformation.

So for me, I think it was even startling that there was a specific project called MSF (Man Statutory Forces) and so on which I found quite peculiar if I may it put it that way.

And it did not sit well with me and I thought something needs to be... and there specifically, the major complaint was around issues of structure, issues of promotion and perceived salary discrepancies and so on. And also, generally speaking, lack of progress with regards to integration of this, the non-statutory forces and so on.

20 The last point. There was a lot of talk about the reviewal of the National Key Points Act and it was also made with the question of the then public protector's report.

And there was an anticipated referral of four specific issues for determination by the Minister of Police from the side of parliament who determined whether indeed those

issues... they say it related and so on.

So naturally, these were the five areas that were concluded upon. And this part, it was... it involved quite... some extensive... a lot of work because one, you had to travel from province to province, basically, and engaging even with practitioners on that law in terms of how they perceive their work and so on.

And secondly, the organisations that had a key interest for the work of the South African Police Service who also
10 may interact with that, but also internally, the portfolios that I was responsible for.

And so all portfolios such as your DPCI for an example. The Private Security Independent Regulatory Authority, (PSIRA). All those institutions within the police ministry that I was responsible for, I had to meet up with, go to and engage around their work and so on.

The question was, at least for me was, so how do we attend to these issues? Now... and without Chair, what we are debating, we know there were areas where I certainly
20 needed the information and it was difficult to find information from within the institution.

But I also felt that you needed to have an objective view and objective sort of intervention of sorts. So it became important that you need people that are less polluted by their environment, the intended environment, you know.

It is the same thing of you cannot ask me to investigate myself or check on my doings and so on. It just does not make sense. So you need somebody who from the... who looks from the outside in and be able to look into some of these things.

And it was important that as minister then, I needed to be able to articulate with a certain degree of clarity on these issues and particularly because they were matters of public interest.

10 And because they were matters of public interest. I also had the leadership, sort of a role to play in clarifying those issues at a particular level and so on.

Now... so I led the whole question of what hurdle do we then use and what are enabling areas of... what are the instruments that can empower me as a minister then to be able to make these interventions and do some thorough work insofar as they were concerned?

The first instrument is the Civilian Secretariat for Police. Now that instrument in terms of Section 3(e) and (j) of the
20 South African Police Act 1995 states that:

“The Civilian Secretariat for Police has to provide the minister with legal services and advise on constitutional matters...”

Remember, as Minister of Police in terms of Section 206, I think. I think the lawyers will correct me. You are

appointed by Cabinet as the minister responsible for policing.

And Section 207 says, in terms of the administration and control of the police portfolio with the South African Police Service. That is with the National Commissioner but on the basis of the directives, the minister is responsible for policing. The long and short of it.

Both... two sections and the constitution talk to that and I suspect that when this law was drafted, it needed to give
10 affect exactly to Section 206 and Section 207 of the Constitution.

Now the Section 3(j) of the South African Police Service Act speaks particularly and specifically to the Civilian Secretariat for Police. It says that entity has to evaluate the form of the service and report to the minister thereon.

Section 9(b) of the Civilian Secretariat for Police the 2011 ...[intervenes]

ADV HULLEY SC: Sorry, sir.

MR NHLEKO: Oh, sorry.

20 **ADV HULLEY SC:** Before you continue. This part of the Reference Group, are you saying that Reference Group is part of the Civilian Secretariat for Police? Sorry, I have got water. Are you saying that it is part of the Civilian Secretariat for Police?

MR NHLEKO: No, I am not saying that.

ADV HULLEY SC: Okay.

MR NHLEKO: But I am coming to that.

ADV HULLEY SC: Okay.

MR NHLEKO: Because it then... it is a build-up towards responding to your question.

ADV HULLEY SC: Sure.

CHAIRPERSON: Well, I am sorry.

MR NHLEKO: Yes, Chair.

CHAIRPERSON: Mr Hulley, you have been offered water?

10 **ADV HULLEY SC:** I do have water.

CHAIRPERSON: Oh, you have got water? Oh, okay. Alright.

ADV HULLEY SC: I think it is the water that caused the problem in the first place Mr Chair.

CHAIRPERSON: [laughs]

MR NHLEKO: I think he...[intervenes]

ADV HULLEY SC: It took my voice away. It was cold.

MR NHLEKO: No, it is my eagerness to capture the Commission ...[indistinct] [laughs]

20 **CHAIRPERSON:** [laughs]

MR NHLEKO: And that is why I am offering water.

ADV HULLEY SC: [laughs]

CHAIRPERSON: [laughs] Well, I see he resisted your offer for water. [laughs] Okay, yes. Let us continue.

MR NHLEKO: So am I satisfying your...?

ADV HULLEY SC: Yes. No, continue. You have answered the question.

MR NHLEKO: Okay, okay.

ADV HULLEY SC: You... at this stage, you ...[intervenes]

MR NHLEKO: I will just continue. The legal instruments empowering the minister, you know.

ADV HULLEY SC: Sure.

MR NHLEKO: Of course, me then as a ...[intervenes]

CHAIRPERSON: Basically, part of the point you are making
10 is ...[intervenes]

MR NHLEKO: Yes.

CHAIRPERSON: ...you had a need for certain assistance.

MR NHLEKO: Yes.

CHAIRPERSON: You looked at legislation. You found that legislation did permit you to access certain types... type of assistance.

MR NHLEKO: Yes.

CHAIRPERSON: And you sought to put together a group of people with certain knowledge and expertise in order to
20 assist you in performing your duties as minister.

MR NHLEKO: Yes, correct Chair. But it goes further.

CHAIRPERSON: Yes.

MR NHLEKO: That that kind of assistance, it cannot be located anywhere else.

CHAIRPERSON: Yes.

MR NHLEKO: It has to be located and housed ...[intervenes]

CHAIRPERSON: Yes.

MR NHLEKO: ...with the civilian's totality in the police.

CHAIRPERSON: Yes, yes.

MR NHLEKO: And that is why it is important to quote Section 3.

CHAIRPERSON: Ja. Ja, do that.

MR NHLEKO: Okay.

CHAIRPERSON: Alright.

10 **MR NHLEKO**: No, thank you very much. Section 9(b), the Civilian Secretariat for Police Act 2011 states that the secretary... now, that is the Secretary of the Civilian Secretariat for Police.

CHAIRPERSON: Ja, do not be too far from your mic.

MR NHLEKO: Okay. No, sorry.

CHAIRPERSON: You can bring it a bit closer if necessary.
Ja.

MR NHLEKO: I will try and kiss it Chair.

CHAIRPERSON: [laughs]

20 **MR NHLEKO**: Okay. And it says:

“The secretary may do all that is necessary to perform the functions of the secretary ...[intervenes]

CHAIRPERSON: Actually, I hear you better when you have got it closer now.

MR NHLEKO: Okay.

CHAIRPERSON: Ja.

MR NHLEKO: No, thank you very much Chair.

“...including requesting and obtaining information and documents relating to any matter under the control of the police service...”

So, in other words, it is this particular institution called the Civilian Secretariat for Police that is allowed and enabled in law to obtain... to request and obtain information and documents relating to any matter under the control of
10 the police service, okay?

So that is one particular instrument. The other instrument we looked into was Section 12A of the Public Services Act which in essence states that:

“Executing authorities as the Cabinet may appoint more or more persons under a contract whether in a full-time or part-time capacity:

a) to advise the executive authority on the exercise or the performance of the executive authorities’ powers and duties...”

20 Now Chair, I have identified the need in terms of what were the topical issues within the police portfolio but I needed to get correct advice around issues that pertained to my performance and duties then as minister.

CHAIRPERSON: On the legal framework?

MR NHLEKO: On... yes, on the legal framework.

CHAIRPERSON: H'm.

MR NHLEKO:

“b) to advise the executive authority on the development of police that will promote the relevant department’s objectives...”

Suppose for an example, you had a situation where some of these human resources management issues that were there, were because of a gab in policing of whatever nature.

10 So any person that would then advise, because the minister would then say but there is this gab here, policy-wise and therefore it needs to be rectified so that these problems should not occur in future. I am just an example. It is a rough example.

Lastly, the 12A(c) says:

“c) to perform such other tasks as may be appropriate in respect of the exercise or performance of the executive authorities’ powers and duties...”

20 So that is what 12A of the Public Services Act says. The last area is an instrument called Part iii(g) of the Public Services Regulation of 2001, which states that:

“An executive authority may, within the relevant budget, employ person additionally to the approved establishment where:

b) a temporary increase in work occurs; or

c) it is necessary for any other reason to temporarily increase the staff of the department...”

So in totality of all these particular instruments where enabling instruments, for me then as minister, to set up what is commonly referred to the Reference Group. You could have called it any other thing I suppose.

But we called it the Reference Group and it was under the auspices of the Civilian Secretariat for Police because that was the correct sort of area for them to be housed.

10 Now... [throat clearing] Sorry, Chair. I think I do need to elude to the composition of the Reference Group because one thing that disturbed me Chair is that it has been said, and I think this issue also comes out of Mr McBride’s affidavit, and I think when we began the Commission... [throat clearing] Sorry.

When we began the proceedings here, there is a formulation that the leader of... sorry, what do ...[intervenes]

CHAIRPERSON: Mr Hulley.

ADV HULLEY SC: Mr Hulley.

20 **MR NHLEKO:** Mr Hulley. Okay. Ja, Mr Hulley.

CHAIRPERSON: H’m?

MR NHLEKO: The evidence leader. Yes, I think that is the correct... the evidence leader. You referred to a phrase, you know, of the Reference Group being a “hit squad”. Something like that. Whether that arises out of Mr McBride’s

articulations or whatever but there was that.

And I think it is important to deal with that ...[intervenes]

CHAIRPERSON: Yes, I think he.... Mr Hulley ...[intervenes]

ADV HULLEY SC: I was para-phrasing.

MR NHLEKO: Yes, you were para-phrasing.

CHAIRPERSON: Ja.

MR NHLEKO: Yes, I think that is the correct word. Ja, para-phrasing. Now... and I am not suggesting that there is anything wrong with your para-phrasing but I do need to
10 clarify ...[intervenes]

CHAIRPERSON: Just as a suggestion. As I understood it was that as Mr Hulley understood there was a suggestion that you were using the Reference Group for certain agendas to get rid of certain people. Ja.

MR NHLEKO: Yes, exactly. So that is why... with your permission Chair, I am getting to this area about, who are these individuals that we... that are referring to constituting the Reference Group.

The five human individuals that we are referring to,
20 possessed a variety of skills that we indeed required for the task at hand and that would be identifying these areas of need.

They possessed legal strategy planning of National Development of Intelligence and Security Work, as well as, the Institution of Former Skills.

Now, before I deal with the question of what is that they were, you know, basically required to do, in other words, the Terms of Reference as is constituted there.

Let me deal with the preference of these human individuals. The coordinator of the Reference Group was an advocate, Margaret Kruger.

Now in terms of her academic qualifications. She has an LLB with the University of Natal. Insofar as the professional experience is concerned, she has an experience in
10 conducting, leading and managing commissions, foreign investigations and public and private sectors in South Africa and international donor organisations.

Reviewing... she also has experience in reviewing and graph drafting organisational structures, financial management, systems, policies and procedures, codes of conduct ...[intervenes]

ADV HULLEY SC: Sorry, Mr Nhleko.

MR NHLEKO: ...and physical ...[intervenes]

ADV HULLEY SC: For the benefit of the Chairperson.

20 **MR NHLEKO:** Oh ...[intervenes]

ADV HULLEY SC: ...if you can identify the document... Mr Chair, I believe the witness is referring to Exhibit Y8 in... on page 3442. It looks like Y8. It is SS.

CHAIRPERSON: Okay what is the page?

ADV HULLEY SC: Three, four, four, two.

CHAIRPERSON: Three, four, four, two. Yes? Okay continue.

MR NHLEKO: So I was on the point just citing that her... in the second area of her work experience is in reviewing and drafting organisation structures, financial management systems, policies and procedures, codes of conduct ...[intervenes]

CHAIRPERSON: Well, before you proceed further. I have got Margaret Kruger, the one you are dealing with now.
10 Under academic qualifications, it is written LLB and then a Baccas, 1979, University of Natal.

If she got her LLB in 1979, there must be a prior degree, a junior degree too before that because in South Africa before even that time, as far as I know, you could not have LLB without a junior degree.

So she probably has another degree. I am just mentioning. So she would have a junior degree, maybe BA, maybe BCom, maybe BProc or B Juris. She might have been modest and not written it here.

20 **MR NHLEKO:** Yes, probably. Probably. But also taking into account Chair, this is just a summary basically.

CHAIRPERSON: No, no, no. That is fine.

MR NHLEKO: Yes.

CHAIRPERSON: The... what I am doing is that... you see, from a certain year after... I do not know which year, in

South Africa we have an LLB which is a junior degree.

MR NHLEKO: Alright.

CHAIRPERSON: Whereas as before, it was a post-grad degree. So if you... if it is written LLB, it might be that it is the only degree, whereas with her it probably is not.

MR NHLEKO: Okay.

CHAIRPERSON: Ja, it is to accredited it.

MR NHLEKO: Okay.

CHAIRPERSON: No. It is... ja.

10 **MR NHLEKO**: No, no, no. I note that point Chair. Thanks very much. She also has experience in the physical site inspections to ensure adequate control measures to management identifying risks.

Now, Advocate Kruger, Margaret worked with the South African Police Services from 1982 to 1988 as an Investigating Officer, Senior Legal Official and Advisor to the Office of the MEC of Safety and Security in 1994 to 1996.

20 But if I may also just mention that it is this last part from which she... because she was quite involved with the issue of... the transformation of the South African Police Service from a legal point of view and a policy point of view in terms of changing its outlook and so forth.

I think she has quite... she was quite extensively during that period, 1994 to 1996 and so on. But also, the forensic experience, quite critical in terms of what we had identified.

Now, **Mr Besiso(?) Richard Harding** [01:03:50], possesses a Diploma in Military Science a Zimbabwe Technical Services from the Intelligence Academy, Basic Intelligence, National Occupation and Safety, Middle-management Course, Project Management Course, Public Finance Management Course and Security Training Course.

Now, she ideally would have been an instrumented person or... not instrumented, maybe critical insofar as, what were these things at Crime Intelligence? For an example.
10 Why were we experiencing whatever we were experiencing there?

So here is an extensive experience in Institution Security and Risk Management, as well as, Counterintelligence.

Major projects include the investigation of corruption in Eastern Cape, 2002/2003, the integration of Intelligence Service between the year 1998 to 2000, including the establishment of the Provincial Intelligence and Committee and investigating violence and killings, including the
20 **Gumbo(?) Zola(?) Violence** [01:05:02] and also working for the Moerane Commission.

The third person was **Advocate Simon Molefe** [01:05:12] who also LLB, Chair. I made sure that ...[intervenes]

CHAIRPERSON: No, it is fine. [laughs]

MR NHLEKO: [laughs] With reference to my earlier quote,

yes.

CHAIRPERSON: Well, he has given evidence in this Commission.

MR NHLEKO: Yes.

CHAIRPERSON: And I think he said he obtained his LLB in 2010 or thereabouts.

MR NHLEKO: Okay.

CHAIRPERSON: So he did not say he did a prior... I think this is the new LLB if I am not mistaken.

10 **MR NHLEKO:** Okay.

CHAIRPERSON: Ja.

MR NHLEKO: No, that is fine. Thanks very much. I am safe there Chair. He has an extensive experience at progressive institutions including the ...[indistinct 01:05:51] and associate attorneys, 1979 to 1981. Then at church, 1981 to 1983, Methodist Church of South Africa, 1988 to 1989, Centre for Black Economic Development, 1989 to 1994.

20 He also worked as CEO and Chairman of FK Investment Holdings, 1994 to 2003 and by then he was current... he was... by then he was... sorry.

Because I do not know what his situation now is. He was the Parliamentary Liaison Officer and Spokesperson for the Deputy Minister Ramathlodi.

The fourth person is Mr Zule Zulu [01:06:31] who

possesses a Master's in Business Administration, a post-grad Diploma in Business Management, Bachelor's Degree in Business Technology.

He himself has an extensive experience in Organisational Development, Strategy Planning and Performance Management and Auditing, primarily in the public sector.

He was quite active at some point, I am not sure now but with the various sort of government departments in the province self. He was not at the time when I asked him to also come here.

The last person is Advocate Kulelane(?) Raymond Natenzu [01:07:15] who also has been mentioned somewhere. He has an LL.M... an LL.M. Sorry. A 2006 Criminal Law in Criminal Procedure, 2009 Labour Law, LLB 1996.

Ja, I think it is written by two words or maybe twice LL.M. I suspect... no, I suspect so.

CHAIRPERSON: Criminal Law. Ja, Criminal Procedure. I do not know.

MR NHLEKO: Yes. And then he has twenty years' experience in the National Prosecuting Services. Projects include SASSA Fraud and Corruption Project and the Department of Justice, Fraud and Corruption Projects and of course, the administration for that but essentially, those

were your members of the Reference Group. Now ...[intervenes]

ADV HULLEY SC: Sorry.

MR NHLEKO: Yes.

CHAIRPERSON: Ja, I am sorry.

ADV HULLEY SC: Just one question.

CHAIRPERSON: Is the reference to administrator to a secretary?

MR NHLEKO: Yes, a secretary.

10 **CHAIRPERSON:** Oh, okay.

ADV HULLEY SC: Okay. So this particular document was compiled by the Civilian Secretariat for Police. Is that correct?

MR NHLEKO: Yes, that is correct sir.

ADV HULLEY SC:

CHAIRPERSON: And the people who are identified over here, each of them, did they come from outside the public service or were they already in the public service?

20 **MR NHLEKO:** No, they are a mix in a sense. Let me just give you an example. Advocate Margaret Kruger, if I am not mistaken, I can be corrected on this one. He was with Treasury in KZN. Ja, I think he was working with the MEC for Finance if I am not mistaken. That could be that.

Now, Mr Harding, at the time when I asked him and he was the Security Manager in the Premier's office. Of course,

Mr Simone Mulaudzi Nomfe [01:09:26] of course was with the Deputy Minister Ramathlodi.

Mr Zule Zulu [01:09:33], I think he was a private... what do.. I do not know what they call him. A private consultant of sorts. I think he... I maybe also wrong there.

And so... and of course Mr Kulelane [01:09:41, Advocate Kulelane Raymond Natenzu 01:09:47] were with the National Prosecutor Authority. So ...[intervenes]

CHAIRPERSON: Most of them were within the public
10 sector?

MR NHLEKO: Ja, within the public service really. With the exception... perhaps we can say, you know ...[intervenes]

CHAIRPERSON: Why not?

MR NHLEKO: ...to the point where some ...[indistinct] qualification. Mr Zulu, he was not in the public service.

CHAIRPERSON: Ja.

MR NHLEKO: But he was working with the public institutions.

CHAIRPERSON: Ja.

20 **MR NHLEKO:** You know.

ADV HULLEY SC: And was this part of a recruitment process? They... was it advertised to go through a recruitment process?

MR NHLEKO: No, it was not. We needed to constitute a different scope and I at the time needed to identify the

required skills. So, as part of that process, I had... we identified these individuals and said, "Look, please come and assist us with regards to the issues." That I had spoken to earlier.

ADV HULLEY SC: Sure.

MR NHLEKO: Yes. But ...[intervenes]

ADV HULLEY SC: How did you go about identifying those individuals?

MR NHLEKO: H'm. How can I put? It is... look, I cannot
10 remember exactly how I must have gone about it. I really cannot say, except that when you are head hunting, you go and asking people.

CHAIRPERSON: You talk to people?

MR NHLEKO: You talk to people. You say but who is the type of human character that can assist for instance around the issues such as the Human Resources if it is Intelligence or whatever and so on.

CHAIRPERSON: H'm.

MR NHLEKO: And then at time you will get to mix... it is
20 almost like a head hunting exercise in Human Resources Management.

CHAIRPERSON: Of the people who made up the Reference Group as you have identified them, were there any of them that you knew before they came onto the... you knew at a personal level before they came onto... they came onboard?

MR NHLEKO: Well, I... for instance I knew Mr Harding, you know, the historical background, sort of.

CHAIRPERSON: Yes.

MR NHLEKO: Yes. I did not know the advocate, Kruger.

CHAIRPERSON: Ja.

MR NHLEKO: Then you get people, they will tell you: “Oh, ja I know but you know this Advocate Kruger was involved with this and that and he is quite clued up around issues of transformation”. As and when the South African Police
10 Service began with the democratic government in 1994 and so on.

So I knew... I also briefly knew Mr Zule Zulu. I knew him before 1994 as... we were involved in some particular structure particularly when I stepped down as ...[indistinct
01:12:50] secretary from this end and went back to KZN and so on. So ja, I knew some of them.

CHAIRPERSON: H’m.

MR NHLEKO: H’m. Similarly, also with regards to Advocate
Natenzu [01:13:05]. He is a person that I have discovered
20 through this head-hunting. And so otherwise, I had not ...[indistinct] I had not known him before.

CHAIRPERSON: H’m.

MR NHLEKO: So, yes.

CHAIRPERSON: Mr Hulley?

ADV HULLEY SC: [No audible reply]

MR NHLEKO: Now, I think I have spoken to the issue of how ...[intervenes]

CHAIRPERSON: Referring to the need.

MR NHLEKO: Yes.

CHAIRPERSON: Spoken to the legal framework.

MR NHLEKO: Yes, yes.

CHAIRPERSON: And you identified people through whatever process.

MR NHLEKO: Yes.

10 **CHAIRPERSON**: ...you used.

MR NHLEKO: No, we then did... when I say we. Chair, by the way, you know, it is just ...[intervenes]

CHAIRPERSON: You mean ...[intervenes]

MR NHLEKO: ...it is a cultural issue that [laughs]

CHAIRPERSON: You mean I?

MR NHLEKO: I mean I, yes.

CHAIRPERSON: Ja.

MR NHLEKO: Yes. I must be careful because I am surrounded by lawyers.

20 **CHAIRPERSON**: [laughs]

MR NHLEKO: And there is a different meaning to almost everything you say. Now, we then... I put together... let me try to get back to the individualistic language. I then put together the question of the terms of reference.

Firstly, the reference would gather all necessary

background information and material in relation to each of the identified areas. Now, the five areas that I had spoken to earlier on Chair.

Secondly, that they were to invite inputs on the specific issues from police management and directly or indirectly from affected all involved individuals from within the service.

This line is quite important because in the police and generally in the public service there is a regiment that is sort of approach to things but we wanted people to be free.

10 So, in other words, for you, if you had an issue, you know, you necessarily... you did not have to go to a supervisor to go and then say I am seeking for permission to go and talk to the Reference Group about the grievance that I have or whatever. I am just making an example.

So that is why we then broadened it out and said it is from police management directly or indirectly from affected all involved individuals from within the service.

20 The third area. They also needed to interview any relevant person and/or persons who may provide any information in connection with identified matters.

The fourth area. They needed to conduct research, examine and analyse any vital material, document or media article relevant to each identified matter.

The fifth area. They were to conduct research and analyse the implications of the legal regulatory or

government environment pertaining to the identified matters.

Now, I think I made this example earlier on where we could delve into a particular matter area ...[indistinct] prevent so, dispute or whatever the case is but then you would end up identifying legislative gaps or policy gaps or procedural gaps of sorts.

So this term of reference, it was actually to deal with it. The last area is that they were to compile reports in each... of each identified area.

10 **CHAIRPERSON**: H'm.

MR NHLEKO: So per each specific sort of the area they were... they needed to produce their points. Now, the timeframe ...[intervenes]

CHAIRPERSON: Hang on. Just one second Mr Nhleko.

MR NHLEKO: Yes, Chair.

CHAIRPERSON: We are taking too long on this.

ADV HULLEY SC: I think so.

CHAIRPERSON: I am not aware that much was placed before the Commission in support of any allegation that Mr
20 Nhleko was using the Reference Group or for to get rid of people.

My own recollection as we speak is that it might have been a one sentence or just very limited allegations somewhere but my recollection might not be good.

Is there must that was said in support of the allegation?

I just do not want us to spend too much time on something that ...[intervenes]

ADV HULLEY SC: What I had hoped is that we will not go through the entire... read... what Mr Nhleko was doing at the moment is to read ...[intervenes]

CHAIRPERSON: Yes.

ADV HULLEY SC: ...basically verbatim every aspect of the ...[intervenes]

CHAIRPERSON: Yes, I think what we should do Mr Nhleko.

10 We let Mr Hulley lead you in regard to ...[intervenes]

ADV HULLEY SC: [Indistinct]

CHAIRPERSON: The important things because for example, he would tell you that... if it is, for example, Mr McBride who made this allegation, he will tell you what he... what Mr McBride put up in support of the allegation what did he say because that might give you an indication of what answer is enough to deal with that.

If there is a lot that was said, you might have a lot to say. If there was very little that was said, you might be able
20 to summarise your response in regard to that.

ADV HULLEY SC: Yes.

CHAIRPERSON: So I am just... I do not have a clear recollection that much was placed before me in support of the allegation. Mr Nhleko wants to say something?

MR NHLEKO: Ja-no, thanks very much Chair. I accept the

point and I appreciate the standpoint by yourself as the Chair of the Commission.

CHAIRPERSON: Ja. H'm.

MR NHLEKO: The only problem though is two levels. The first one. If you say by any other form, you know, even if you say half a sentence and then you say I constituted a group which is a... which should be perceived as a “hit squad” for an example, that talks to usage of an illegitimate institution of government for nefarious reasons.

10 **CHAIRPERSON:** No, I understand, ja.

MR NHLEKO: So I'm saying that those are the implications.

CHAIRPERSON: Ja.

MR NHLEKO: But the second point, Chair, I am sorry to [speaking in Zulu] it is – the second point here is that ...[intervenes]

CHAIRPERSON: You are doing like Ms Mokonyane as well.

MR NHLEKO: Oh, I am sorry.

20 **CHAIRPERSON:** On Monday she would through in these Zulu words.

MR NHLEKO: My apologies, Chair.

CHAIRPERSON: Ja.

MR NHLEKO: Now the second area, I think there has got to be an appreciation that these matters as we deal with

them before the Commission, they have also been ventilated at a public level and all sorts of misunderstanding about them there and so on. So we also do need ourselves as members of the Commission, you know, perhaps excluding myself because I am not a member but we need also to be alive to the issue of the exercise as being conducted here, it serves there in the interest of the public to clarify some of these particular matters and that is no fault of the Commission but I am

10 saying the reason why I would go to town about this, to try and clarify this thing, is because you absolutely have no idea, Chairperson of the Commission, how many wrong things have been said about this particular matter and many others at a public level and so on.

So it is that kind of balance so I am trying to also explain the dilemma ...[intervenes]

CHAIRPERSON: Yes, no, no, I understand.

MR NHLEKO: Yes.

CHAIRPERSON: The point I am making is, it is not to say

20 you should not respond because you were asked a question, even if you are not asked a question there was this suggestion that was – that Mr Hulley referred to that there was a suggestion that the reference scope that you used, that reference scope for some agenda. So all I am simply saying is, there might be no need for us to take too

much time on it, it may be that – it is the kind of thing where you say one, I deny that I used the reference group for any such agenda, the reference group was a legitimate group, here was the need for it, the law permitted me to do it and this was their function. Five minutes, they are done.

So my concern was that we had taken quite long but I am not blaming you for that, I just want to make sure as we move forward, this is how we can deal with matters.

ADV HULLEY SC: Mr Chair and of course important

10 ...[intervenes]

ADV MOKHARI SC: If I may ...[intervenes]

CHAIRPERSON: Sorry?

ADV MOKHARI SC: If I may then, I...

CHAIRPERSON: Yes.

ADV MOKHARI SC: Then I agree with Chair that we should focus on specific issues.

CHAIRPERSON: Yes.

ADV MOKHARI SC: And then maybe also for Mr Nhleko to be brief, if Mr Hulley can maybe when he puts a question
20 also make aware of what is it that was alleged.

CHAIRPERSON: Yes, yes.

ADV MOKHARI SC: So that he able to answer that
...[intervenes]

CHAIRPERSON: Yes, yes, no, no.

ADV MOKHARI SC: But on this one I agree with the Chair

that really then all what was said then was that he using this but nothing was put in the question.

CHAIRPERSON: Yes, yes, yes.

ADV MOKHARI SC: So we can move forward.

CHAIRPERSON: Yes, yes, okay.

ADV MOKHARI SC: Thank you, Chair.

CHAIRPERSON: And keep in eye contact – most of the time when you respond to his questions you look at me but do keep an eye contact with him because he will also – you
10 will be able – you will see when he wants to move to the next question.

ADV HULLEY SC: Very well. Thank you, Mr Chair. So, if I understand correctly, the process followed in appointing this reference group and you have deal with the legislation, the legislative framework and so forth, the process that was followed in appointing the reference group, if I understand correctly, started off initially out of a need that had been identified or certain matters that were prominent or what you referred to as burning issues within the SAPS
20 at the time.

CHAIRPERSON: Your mic is off, you can keep it on, Mr Nhleko.

MR NHLEKO: Oh, thank you, yes.

ADV HULLEY SC: Now just briefly, that process, how long had it taken to conduct the process where you

identified the burning issues within the SAPS?

MR NHLEKO: I cannot recall how long it took but it was quite a packed kind of problem because it did not, even although it dealt with the question of provincial visits and visits to various institutions and so on. It could have been, I mean, two months or below two months or something like that, I do not know.

ADV HULLEY SC: Sure.

MR NHLEKO: But I cannot recall exactly the period.

10 **ADV HULLEY SC:** No, fair enough. And out of that process came a need to establish a reference group.

MR NHLEKO: Correct.

ADV HULLEY SC: That you thought might be able to address some of those issues.

MR NHLEKO: Yes, sir.

ADV HULLEY SC: And the process to appoint that reference group, in other words, to identify the relevant people, with the requisite skill set to go onto that reference group to meet the needs or to address the burning issues,
20 how long did that process last?

MR NHLEKO: Again, I would not really recall the specific period because there was work that the civilians iterate here for policy also needed to do in terms of just formal work for the actual appointments and so on. There was a question of if myself then as minister having got to write

letters to the principals of these - where the people worked.

ADV HULLEY SC: Yes.

MR NHLEKO: Yes, for them to be released for this kind of work.

ADV HULLEY SC: And this reference group, was it a full time reference group or were they – those were within the civil service, were they required to attend to the normal job and attend to this?

10 **MR NHLEKO:** No, we – if I can remember, I think even in the letters that I must have sent out I specified, you know, a particular time period, you know, in other words if I wanted you to come in and help whether it was for three months or four months, whatever the case was. But I suspect it could have been – I must have said in those letters maybe three months. I think so, yes.

ADV HULLEY SC: Sure.

MR NHLEKO: So they were fulltime for a particular duration.

20 **ADV HULLEY SC:** I see. And this reference group ultimately produced, if I understand correctly, produced three reports, is that correct?

MR NHLEKO: Yes, it did.

ADV HULLEY SC: And that was the sum total of what they did.

MR NHLEKO: That was the sum total about it of – yes, of the three reports that it produced.

ADV HULLEY SC: Now you say that the first report that the – or one of the reports that they produced was the fitness of the National Commission to hold office, the National Commissioner of Police to hold office.

The second was the secure in comfort report and the third was the illegal rendition of the Zimbabwean nationals.

10 **MR NHLEKO:** Right.

ADV HULLEY SC: Now that was, if I understand correctly, that was produced over a six month period, is that correct?

MR NHLEKO: No, I cannot recall the period really, whether it was six months or so but one of the points I wanted to mentioned earlier, before you came in ...[intervenes]

CHAIRPERSON: Yes, look this side, Mr Nhleko. Although he is asking you questions you are telling me. You are telling me your story and your answers.

20 **MR NHLEKO:** Okay.

CHAIRPERSON: So the advantage if you look this side is that I can hear you and understand you better. When you are looking that side sometimes I do not understand you.

MR NHLEKO: I thought the Chair was suggesting in must look at his beauty all the time.

CHAIRPERSON: No, no, no, I was saying keep an eye on him but otherwise you look at me.

MR NHLEKO: Thank you.

CHAIRPERSON: You keep an eye so from time to time you have a look because he might be wanting to move to the next question.

MR NHLEKO: No, that is already, thanks very much, Chair. The point I wanted to talk to earlier on. These were five individuals and the scope of work was broad so one of
10 the qualifications I gave in their appointment and in respect of the terms of reference was that they were also at liberty to co-opt other people in different sort of fields of the areas that they were responsible for.

So they broke up into different sort of focus areas, for an example, and then, of course, we co-opted a number of different individuals to conduct different areas of – so you will find that for instance the report dealing with the fitness of the National Commissioner is not produced at the same time with the report on the renditions or even the
20 secure in comfort kind of a report pertaining to the four aspects in effect to the minister by parliament and so on. So there is that kind of variance really, so I just wanted to clarify that point. Thanks very much.

CHAIRPERSON: Can I take you back to the composition of the reference group? You can keep your mic on, it does

not disturb anything. The one member of the group that I find strange to be included there is Mr Matengwa because I understand him to have been from the NPA. It seems to be a little awkward but maybe it should not be like that that a member of the NPA, prosecutor, should be involved in advising the Minister of Police. Was there a specific reason to get somebody from the NPA or you were looking for somebody who may have had prosecutorial experience and you found somebody within the NPA even though you
10 could have found somebody who had been a prosecutor sometime but was now practicing as an independent lawyer?

MR NHLEKO: No, Chair, the consideration was not the question of whether a person works for the NPA. So in the same way that when I say I asked Adv Kruger (?) to come in, the consideration is not that he was ...[intervenes]

CHAIRPERSON: Institution.

MR NHLEKO: Ja, he is working for a particular institution somewhere and so on.

20 **CHAIRPERSON:** Yes.

MR NHLEKO: I went to these individuals on the basis of their skill set and so that was basically the consideration.

CHAIRPERSON: But in the case of Mr Matengwa, was the skill that you were looking for a prosecuting skill or some other skill?

MR NHLEKO: A dynamic legal skill was ...[intervenes]

CHAIRPERSON: Leadership?

MR NHLEKO: No, legal.

CHAIRPERSON: Legal?

MR NHLEKO: Yes.

CHAIRPERSON: Yes. So it could have been a legal practitioner, is that right?

MR NHLEKO: It could have been a legal practitioner, a progressive one, progressive thinking.

10 **CHAIRPERSON:** Ja.

MR NHLEKO: If we came across one.

CHAIRPERSON: Okay.

MR NHLEKO: Yes.

ADV HULLEY SC: Now it is a point I want to come back to at a later stage but for present purposes we know that of all the burning issues that you dealt with and you identified them earlier in your testimony and in your affidavit, the concern relating to Mr Richard Nduli and why he was being suspended and on suspension for such a long period of
20 time, that was never addressed by this reference group, is that correct?

MR NHLEKO: That is correct.

ADV HULLEY SC: And was it ever addressed during your tenure?

MR NHLEKO: Look, there was a – let me put it to you this

way, there were a lot of happenings at the time and some of the developments overtook others. So I will give you an example. At some point whilst we – the reference group was working they were also pressure points also relating to the individuals that constituted the reference group, so to cite one particular example, I think Adv Kruger, for an example, was also required for some work by her principal at some point.

CHAIRPERSON: Work by?

10 **MR NHLEKO:** You know, by her principal.

CHAIRPERSON: Ja.

MR NHLEKO: You know, so in other words, there were also work issues that she also needed to attend to at some point, so – and I think that also affected her time with us as part of the reference group and so on. So ...[intervenes]

CHAIRPERSON: What did you say, what institution was that, was she attached to?

MR NHLEKO: She was with the Treasury in KZN.

20 **CHAIRPERSON:** Treasury?

MR NHLEKO: Yes.

CHAIRPERSON: Oh, okay.

MR NHLEKO: Yes, the Treasury.

CHAIRPERSON: Oh, you say she had some issues that took her time ...[intervenes]

MR NHLEKO: That needed her attention back from her area of work.

CHAIRPERSON: Ja.

MR NHLEKO: So I am making an example about how her availability was getting affected also by those particular pressures and so on. Now, that is one particular development but, on the other hand, the development around the question of the secure in comfort report, I think there were further developments, so may developments
10 around that and so on and we therefore – the availability of this group to be able to go through to, you know, around through the whole set of issues as identified and complete them got affected to some extent. Save to say that, for instance, in the area of some human resources issues, they were able to advise in terms of how to deal with some of those particular matters, for an example.

But the issue of the matters at Crime Intelligence and the perpetual suspension of Mr Nduli, they never got around to dealing with it.

20 **ADV HULLEY SC:** Now, if understand correctly, you would have been the person responsible for directing which issues they should investigate and which issues not of the burning issues.

MR NHLEKO: Yes, I had identified them.

ADV HULLEY SC: So the issues that they did get around

to, they got around to because you had instructed them to do it, is that correct?

MR NHLEKO: No, not necessarily.

ADV HULLEY SC: No, I'm asking.

MR NHLEKO: Okay, when I am saying not necessarily, I think your formulation may not be correct there. These people are assembled, we having identified the issues, that giving the terms of reference to look into those particular matters and so on and they started their work.

10 **CHAIRPERSON**: Maybe let us put the question this way. Out of the issues that you had identified as issues that they should attempt to – or did you list them according to priority to say this is the most urgent one, this is the second most urgent one or you just identified the issues and left it to them, how they dealt with them?

MR NHLEKO: In respect of, for an example, the secure in comfort, yes, because there were timelines also in terms of the resolution of parliament. Yes, I did say, you know, this matter is quite urgent we need to respond to these
20 particular issues and satisfy the resolution by parliament.

But it is also possible that I – and I think it is possible that I also spoke to them around the issue of the renditions particularly because they were queries that were thrown at me at a public level around the question of the renditions report and why, as Minister, I was not acting.

So they also did it to focus on that.

CHAIRPERSON: So, as you can recall, it is those two issues that you might have said were urgent?

MR NHLEKO: Yes, I think so. I think so.

CHAIRPERSON: Okay.

ADV HULLEY SC: If I understand you correctly are you saying that there were issues that they were required to deal with but never ultimately got around to dealing with?

MR NHLEKO: Of course.

10 **ADV HULLEY SC:** And in respect of Mr Richard Nduli, one of the Crime Intelligence concerns, was that one of the issues that they were required to address but never got around to addressing?

MR NHLEKO: Certainly.

ADV HULLEY SC: And did they conduct any investigations and the investigation ultimately fizzled out or did they not get into it at all?

20 **MR NHLEKO:** There were some collection of documents here and there and so on but it was not a complete exercise.

ADV HULLEY SC: Yes. But ultimately, they did not complete their work.

MR NHLEKO: Ja, they did not.

ADV HULLEY SC: And what I was asking earlier on is whether the perpetual suspension of Mr Richard Nduli was

ever addressed during your tenure either by you personally – when I say you personally, I mean under your watch or, alternatively, that had been given to the reference group. Now we know the reference group did not deal with it so then the question is whether you addressed it at all?

MR NHLEKO: No, it was never addressed. For me to address it, the reference group needed to do some in-depth kind of work in that area so that I could have a complete set of issues to deal with at my disposal.

10 **ADV HULLEY SC:** I see. And, if I recall correctly, Mr Nduli, he had been on suspension at the time when you entered into office in May of 2014, is that correct?

MR NHLEKO: I do not think so. When I got there he had already been on suspension.

ADV HULLEY SC: Sorry, had already been on ...[intervenes]

MR NHLEKO: No, I am saying when I got there in May 2014 he was already on suspension.

20 **ADV HULLEY SC:** I see. And the reference group did not get around to it and you did not manage to get around to it yourself. How did Mr Nduli, as far as you were aware, how did he end up leaving the service?

MR NHLEKO: I do not know, I mean, he must have left the service when I was no longer there.

ADV HULLEY SC: I see. So throughout the period of

your tenure Mr Nduli was not disciplined or subjected to a disciplinary enquiry?

MR NHLEKO: No.

ADV HULLEY SC: Now let us get to the ...[intervenes]

CHAIRPERSON: Well, as far as you can remember, was Mr Nduli on suspension from work throughout your term of Minister of Police from 2014 to whatever time you left that portfolio?

MR NHLEKO: Yes, I think throughout, Chair.

10 **CHAIRPERSON:** Yes. Would you not have – or who would have been the right authority to deal with these suspensions or deal with the charges because you did say earlier on that, if I understood you correctly, the idea that somebody in the public services or anywhere actually should be on suspension for too long is just not on. Who would have been the right person to deal with the question, was it you, of if a suspension is taking too long, what are the decisions to be made or what is it that needs to be – what decisions need to be made in order to bring finality to
20 a suspension?

MR NHLEKO: I think it would have been the National Commissioner at the time around those issues but it is just that I also cannot recall in full detail in terms of what essentially were the fuller some of happening around, you know, and pertaining to Mr Nduli, except that for me, I was

– I never had clarity in terms of okay, so he is on suspension, why is he on suspension, what are the issues that are being dealt with there and how they are being dealt with and so on. So it was something that, you know, we really never got around to deal with.

CHAIRPERSON: Well, Mr Hulley and Mr Nhleko and of course, Mr Mokhari, if it's not an area in regard to which we were going to look at, we may have not – we might not have to deal with it but, I mean, Mr Nduli's suspension was
10 in the public domain for a long time and we have got the former Minister of Police here who could deal with that, but that is if, in terms of the arrangement, it falls within what he would be asked about if it does not – it may be that he might have to be asked to come when he is prepared to deal with it, if necessary.

ADV HULLEY SC: Sure.

CHAIRPERSON: But I would have liked to know why somebody like that, you know, was suspended for such a long time but I think Mr Mokhari has got his mic on. Do
20 you want to say something, Mr Mokhari?

ADV MOKHARI SC: Yes, indeed, Chair, I wanted to say exactly what you are saying that issues pertaining to Nduli are not issues that Mr Nhleko has been implicated by anybody.

CHAIRPERSON: Ja.

ADV MOKHARI SC: In respect of that.

CHAIRPERSON: Yes.

ADV MOKHARI SC: So it was just really coming as a surprise, that is why he is trying to rely on his memory.

CHAIRPERSON: Yes, no, no, that is fine.

ADV MOKHARI SC: It is not something that he prepared himself for.

CHAIRPERSON: Yes.

ADV MOKHARI SC: Nor to even visit the documentation
10 to refresh his memory.

CHAIRPERSON: Yes.

ADV MOKHARI SC: Ja.

CHAIRPERSON: No, no, that is fine, ja.

ADV MOKHARI SC: Thank you.

CHAIRPERSON: No, it is not ...[intervenes]

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: Ja.

ADV HULLEY SC: No, I just wanted to get clarity. Mr
Nhleko raised it in his affidavit and It was something that I
20 thought I should deal with.

CHAIRPERSON: Okay.

ADV HULLEY SC: But I want to get onto the – some of
the topics that ...[intervenes]

CHAIRPERSON: Of course, it also arises he said it was
one of the issues he had asked the reference group to look

at.

ADV HULLEY SC: Indeed.

CHAIRPERSON: So I think that is where it comes from and then you then ask the questions which issues were they able to deal with and it looks like they did not deal with his to completion, at least. And that is what gave rise to the question. But, of course, the question which one can ask simply arising out of that and anything that you might not remember that you might not remember, you may
10 say so, is being the Minister of Police and having identified Mr Nduli's Richard Nduli's suspension as an issue that I do not know if Mr Hulley referred to as once for the burning issues, I do not know whether you used the term.

ADV HULLEY SC: Yes.

CHAIRPERSON: It just seems strange to me that for the whole term the suspension should continue and you do not know exactly what is going on about why is this suspension taking so long. I am just mentioning that you had identified it as an issue which needed to be attended and
20 one – and I do not know if your term as Minister of Police took five years, which would be quite some time. You may be able to say something, you might not, but I am just saying one would expect that as Minister, just as you had identified the issue as an important issue to be attended to, if this group was not able to attend to it you would find

a way to make sure you are informed as to why is this suspension of this man taking so long, why is he not facing a disciplinary hearing so that there is finality, what is going on?

MR NHLEKO: No, I accept that view, Chair.

CHAIRPERSON: Yes, yes.

MR NHLEKO: Save to say that I really on my part wanted an area where such issues could be properly processed before they could come over to me to then activate and so
10 forth.

CHAIRPERSON: Yes, yes, no, no, that is fair – yes, that is quite fair enough.

MR NHLEKO: Ja, so that is basically what ...[intervenes]

CHAIRPERSON: Okay, that can be dealt with properly. Okay, alright. Mr Hulley?

ADV HULLEY SC: Thank you, Mr Chairman. So just to move on in terms of the chronology in your affidavit, you deal next with the Werksmans' report and I want to get some context to that but to do so, we need to go slightly
20 back in time because the Werksmans' report is 2015 and if we can just go back to 2014, you come into office in May of 2014. You appoint the reference group by the 1 October, if I recall correctly, you call a meeting with Ms Phiyega who is the National Commissioner and you inform her of your decision to appoint the reference group. The impression

reading your affidavit, the impression that I get from your affidavit is that you took the decision to appoint that reference group, is that correct?

MR NHLEKO: Yes, that's correct.

ADV HULLEY SC: And the further impression I get from reading her affidavit is that that decision to appoint the reference group was not taken in consultation with the National Commissioner or the top management, is that correct?

10 **MR NHLEKO**: Yes, it was not.

ADV HULLEY SC: So by the time they learnt of the appointment of this reference group, that was a decision that you had already taken previously and you then informed them, you say on the 1 October of the decision that had taken, is that correct?

MR NHLEKO: That is very correct.

ADV HULLEY SC: Now the – so when the decision was taken to establish this reference group, that decision was obviously taken sometime before the recruitment drive took
20 place, is that correct?

MR NHLEKO: Yes, that's correct.

ADV HULLEY SC: And whoever you – and you cannot recall now who you had spoken to, to identify the specific people that you thought would have the relevant skills but you would have spoken to certain people that you thought

could identify the people with the requisite skills.

MR NHLEKO: I am sure I spoke to the different people out there.

ADV HULLEY SC: And, but as you sit here right now, you cannot say who those people or person was?

MR NHLEKO: No, I cannot recall, you know, whose those people were and what the discussions were in relation to some of the individuals as contained in the profile for the reference group.

10 **ADV HULLEY SC:** Sure. So they then set about - the reference group was appointed first – one of the first tasks that they performed, in fact almost immediately, was to go about interviewing the members of IPID in respect of the work that they had one in relation to the rendition matter.

MR NHLEKO: Look, I would not say that was the first thing, you know, there are a number of other things that they did at more or less the same time and so on. As I said that they had broken up into different sort of focus, areas as well in relation to the work that I had assigned to
20 them. So indeed they also dealt with the question of the renditions.

ADV HULLEY SC: Yes. Now they went to meet, if I understand correctly from the evidence of Mr McBride and Mr Sesoko and Mr Kuba. They went to go and meet with the – the reference group went to meet with Mr McBride at

the IPID offices to make enquiries into the rendition matter.

MR NHLEKO: Right, no, that is what I hear was the case.

ADV HULLEY SC: Okay. Now at that point in time before we get into the background related to their old investigation, at that point in time what was your understanding of what the rendition issue was about because when you came into office in May of 2014, according to Mr McBride and Mr Sesoko and Mr Kuba, there was a report that had been compiled by them. Sorry,
10 that had been compiled by IPID signed by Mr Kuba which was dated the 18 March 2014. In that report they came to the conclusion or the authors of the report came to the conclusion that there was nothing to implicate General Dramat and General Sibiya.

MR NHLEKO: Look, the sequence is such that – I think I was dealing with the question of the crime statistics, Chair, in September, we had just released them and the fellow who was an anchor there, I think it is an SABC station, then through this issue of the – of why, as Minister, I was
20 not taking steps against General Dramat, General Sibiya and others and so on as per the IPID report, you know, because it was a just a sudden thing that got thrown in, so I then said to the anchor that look, I was going to follow up on these issues to check what the situation was and so on and indeed ...[intervenes]

CHAIRPERSON: Did you say this was now in September?

MR NHLEKO: Ja, I think it was around about September.

CHAIRPERSON: 2014?

MR NHLEKO: Ja, 2014, when I have just – after releasing the crime statistics. But remember that, of course, there was public awareness on the issue, okay? The only thing that I had – that when O’Sullivan cited is this question of the report of the 22 January 2010 or 2011, I cannot remember, it is somewhere there. Now – so it became –

10 when the reference group started their work it became an area of focus to then say but there are two reports and these two reports is one of General – is one of the 18th, they come to different conclusions but in the main the body is either the same or more or less the same and in fact the first report by the reference group identified that. And then, of course, alluded to the transgressions that were committed in the process of the legal rendition of the Zimbabwean Nationals.

And on the basis of that I then said look, I hear

20 what is contained in the reference group report, you know, I appreciated that they had done some work there but I also felt, Honourable Chair, that there was a need for further work, what actually happened and how what happened happened.

So it was important to establish that and for me, the

point to be established was why you had two reports, okay? And therefore, if you deal with that question or why you had two reports, you must then take a step back and the step back is, who are the authors of the report and therefore, they needed to be engaged, they themselves, on the discrepancies as identified, and so on.

And therefore, for me, that is how the issue of appointing Werksmans comes in, arising out of this report by the reference group to then say no, there is further work
10 that needs to be done here. So ...[intervenes]

ADV HULLEY SC: Do you mind if I just take a step back before we get to the Werksmans – we are working way up chronologically to the Werksmans' report.

So the reference group had identified that there were two reports and when we talk about the two reports we are talking about the two IPID reports, one which was dated the 22 January of 2014 and the second which was dated the 18 March of 2014. You may not know that but you know that there were two reports.

20 **MR NHLEKO:** Right.

ADV HULLEY SC: Now the first question is, where did the reference group find out about these two reports? That is the first question.

MR NHLEKO: Where did they ...[intervenes]

CHAIRPERSON: Maybe let me ask what may be a prior

question. You have said that when you were asked by an SABC anchor in an interview it was somewhere around September 2014, but the one report was dated 22 January 2014, the other one was March. At what stage did you yourself become aware of the two reports? Was it only after the reference group raised the issue with you or you were aware that there were two reports. Maybe you might have read them or you might not have read them but might not have made – picked up anything of serious concern.

10 **MR NHLEKO**: I cannot remember the sequence, Chair.

CHAIRPERSON: Yes.

MR NHLEKO: Ja, in terms of ...[intervenes]

CHAIRPERSON: Whether what went before or after the reference group.

MR NHLEKO: Yes, Chair. I really cannot remember the sequence.

CHAIRPERSON: Okay, alright, no that is fine, I just thought it might be important to know first how soon after these reports were released you may have become aware
20 of their existence.

MR NHLEKO: H'm h'm.

CHAIRPERSON: Okay.

ADV HULLEY SC: Thank you, Mr Chair. So just going back a little bit, we know as a fact that there were these two reports. Like I say, one dated 22 January, one dated

18 March 2014. You had been on the SABC show where somebody, one of the talk show – the host had asked you a question about the rendition, is that correct?

MR NHLEKO: H'm.

ADV HULLEY SC: The host did not suggest that there was a question of two reports or anything like that, did he? I am asking.

MR NHLEKO: No, he did not except that he alluded to an IPID report with the recommendations that General Dramat,
10 General Sibiya and others were to be criminally prosecuted.

ADV HULLEY SC: Now when you then appointed – and I am trying to understand the sequence, you appointed the reference group to raise this issue with IPID, is that correct, to investigate the issue and to go to IPID.

MR NHLEKO: To investigate, yes.

ADV HULLEY SC: And to deal with it through IPID.

MR NHLEKO: To investigate as to how come we had two reports there.

20 **ADV HULLEY SC:** Okay. What I am trying to ...[intervenes]

MR NHLEKO: And how they investigated, you left it to them. No – yes, insofar as the reference group...

CHAIRPERSON: Ja, the reference group, ja.

MR NHLEKO: Yes, yes, I left it ...[intervenes]

CHAIRPERSON: How they went about investigating.

MR NHLEKO: Yes, how they went about it, really it was really up to them. It is only with regards to when having gone through the reference group report that then Werksmans had to be guided by a particular set of terms of reference to then look into this specific issues as arising out of the reference group report.

CHAIRPERSON: Yes, okay, I think Mr Hulley at this stage is interested in knowing what you asked the reference
10 group to do about it, ja. You said they must investigate it, is that right?

MR NHLEKO: Yes.

CHAIRPERSON: But you didn't go into details as to whether they speak to IPID or not or how they investigate this?

MR NHLEKO: No it was really up to them in terms of you know the investigative work there.

CHAIRPERSON: Oh, okay. Mr Hulley?

ADV HULLEY SC: Thank you Mr Chair. Just to
20 understand at that stage where the reference group had been given the instruction or the go ahead to investigate how these two reports had arisen you had not called upon IPID, or had you called upon IPID to give you an explanation as to [a] whether there were two reports, and [b] how that came about?

MR NHLEKO: I am not sure whether I did call IPID about the, about that, it is possible perhaps that I did, I don't know, it is also possible that I may not have done so.

CHAIRPERSON: Well I can say that for me when Mr McBride and the other IPID witnesses were giving evidence that was one of the things that I seemed to take note that none of them said the Minister asked us or asked the director or asked Mr McBride why are there two reports or that there was anybody that contacted them and said we
10 have been asked by the Minister to find out why are there two reports, so that was one of the things that I noticed they didn't say in their evidence, but you are saying that you also, you can't remember whether you conducted them or not?

MR NHLEKO: I really cannot.

CHAIRPERSON: Okay.

ADV HULLEY SC: Would it be fair to say that you as the Minister you – given that this was one of the burning issues relating to the rendition itself of that had been
20 identified in your investigations before you got to the SABC house sometime in September of 2014, this issue of the rendition had already been identified when you were conducting your initial assessments and meetings with the top management of SAPS.

MR NHLEKO: Ja, I suppose it would be fair maybe to

assume that, I mean precisely because in respect of that and maybe other issues as well, they were already in the public domain that these are the things that happened.

Ja, I think it could have been the case.

ADV HULLEY SC: Now because the – if I understand your testimony correctly, you’re saying that it was only pursuant to the discussion with the Talk Show host from the SABC sometime in September that you decided to start investigating or looking into this issue? Or do I
10 misunderstand your testimony?

MR NHLEKO: I am not sure whether you do ...[intervenes]

CHAIRPERSON: Well as I – I am sorry, as I understand the position there are two issues Mr Hulley, one is the rendition issue, that’s the general one and then arising out of the rendition issue there are the two reports.

As I understand it the SABC anchor was aware of either both or one of the reports at least, and she or he said why are not doing anything about this rendition issue, is that right?

20 **MR NHLEKO:** Yes, yes, that is correct Chair.

CHAIRPERSON: Okay, I just wanted to make sure that I know whether we’re talking about the reports or the actual rendition.

ADV HULLEY SC: Thank you Mr Chair. Now would it – as the Minister of the police at that point in time there was a

concern obviously on your part about the rendition issue, and there may have been a concern on your part about the two reports.

MR NHLEKO: Correct.

ADV HULLEY SC: You are not sure about, at that stage you're not sure about whether there were two reports, the existence or so forth, that still needs to be – or that was still something that needed to be investigated, but as far as the rendition is concerned at that stage now in
10 September of 2014, when this issue arose it was your understanding that there – that General Dramat and General Sibiya had been implicated and this was a matter that had been in the public domain before then, do I understand that correctly?

MR NHLEKO: I don't think I had that much before September 2014, in terms of you know I know that in general there has been publications that wrote about the issue of renditions and statements that were issued then before I came in, in May and so on, I know that.

20 Now the question of the SABC anchor he spoke specifically to, and in fact he had a copy, which necessarily I did not take out of his hands and he read a specific sort of recommendation and that recommendation was about General Dramat, General Sibiya, I don't know who else, who had to be criminally charged and so on, and therefore

he posed this question and said but you are the Minister of Police and why are you not doing anything about these issues.

ADV HULLEY SC: And was a copy of the report made available to you and the report that I am imagining you're referring to before we continue, I am imagining that you are referring to the report that had been compiled by IPID?

MR NHLEKO: Yes it was an IPID report that he had.

ADV HULLEY SC: Very well, and did he make a copy of
10 the report available to you?

MR NHLEKO: No he didn't.

ADV HULLEY SC: Now did you – so you're not sure whether you called upon IPID to chat about the matter, to provide you with a copy of the report, or to give you an explanation as to what the current state of affairs was.

MR NHLEKO: No I am not sure whether I did that.

ADV HULLEY SC: Okay so then what we do know is from your affidavit and from the events that unfolded out of that is that this reference group then went in and started to
20 investigate the matter.

MR NHLEKO: Right.

ADV HULLEY SC: Now the reference group ultimately would have come back to you and reported to you on the question of the rendition matter and the two reports, is that correct?

MR NHLEKO: Yes they did.

ADV HULLEY SC: Now in relation to the – or let me ask you this, were these two issues dealt with in the same discussion or document with you or were they dealt with in separate documents or discussions. Do you follow? So we've got the issue about the reference group, sorry the issue about the rendition on the one hand and the issue about the rendition on the one hand and the issue about the two reports. Now the reference group reported back to
10 you, let me ask you firstly was the report back in a written document or was the report back verbally or was it both?

MR NHLEKO: They issued the written report and I am not sure whether in your bundles they do have this report. They issued a report on – dated the 22nd of November 2014, and that is the reference group, okay, in which they deal with the whole set of matters in terms of what they had discovered in relation to the IPID investigation report. It goes into some little bit of detail and so it goes now, up until they conducted interviews with people that were
20 somewhat cited in those particular reports and so on.

Now the – they then came to – I am trying to figure out, in terms of where do they, because they do talk about the two reports, for an example, and then they also dealt with matters of law insofar as the issue of the renditions was concerned.

CHAIRPERSON: I am sorry, is that a report that is in the bundle or not?

ADV HULLEY SC: Mr Chair the report is in the bundle, and it will be – if we could consider it is part of the bundle of documents that was handed up by Mr Moshleko's representatives, it appears at page 3445.

CHAIRPERSON: 3445?

ADV HULLEY SC: I am just looking to see if it has got an exhibit number. I believe we just about missed it.

10 **CHAIRPERSON:** Yes, I've got it. We have not given it an exhibit number?

ADV HULLEY SC: The last one was Y8SS so this one Mr Chair should be Y8TT.

CHAIRPERSON: The ...[intervenes]

ADV HULLEY SC: But if you go back two pages ...[intervenes]

CHAIRPERSON: The report addressed to the Minister of Police from the reference group dated 22 November 2014 on the subject of Zimbabwean National Renditions
20 appearing at page 3445 will be admitted as exhibit Y8TT.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Yes okay.

ADV HULLEY SC: So this is the document Mr Nhleko that you are referring to?

MR NHLEKO: Yes that is the document I am referring to

and specifically the recommendations as contained on paragraph 53.

ADV HULLEY SC: Paragraph 53?

MR NHLEKO: Ja, of that very same report. I don't know whether you are finding it.

ADV HULLEY SC: Page 3460. Okay if you can – there's a bundle of documents which is Y8, and it's Bundle H, this would be in Bundle H.

CHAIRPERSON: I may have missed what you said Mr
10 Hulley, I was still looking at paragraph 53 at page 3460, is that where we are?

ADV HULLEY SC: That is where we are at the moment Mr Chair.

CHAIRPERSON: Ja, okay, yes Mr Nhleko?

MR NHLEKO: They made recommendations, okay, they made the following recommendations on paragraph 53.

CHAIRPERSON: Yes.

MR NHLEKO: It is recommended that the Minister of
20 Police should consider provisionally suspending Lt General Dramat as the National Head of the Directorate for Priority Crimes and investigation pending investigations on few outstanding aspects and the composition and constituting of an enquiry into his fitness to hold office on the following basis. That Lt General Dramat and DPCI Officers acting under his management and supervision and/or control

and/or guidance and on instructions undermined ...

1. Undermined the legislative authority of the Minister of Justice and the South African Judiciary to make a determination and adjudication on the extradition of the Zimbabwean Nationals who were suspected of murder and robbery committed in Zimbabwe by unlawfully deporting the Zimbabweans.
2. That DPCI failed to comply with the South African Mutual Legal Assistance Act and Extradition Act of 1962, Act 67 of 1962, sorry, read with such protocols and mutual legal assistance on criminal matters and extradition.
3. Bringing the international image of the Republic of South Africa into disrepute by contravening the sundry protocols on extradition, mutual and legal assistance and the United Nations Convention on torture by being co-perpetrators and accomplice on torture and murder of Zimbabwean nationals committed by DPCI officers and Zimbabwean Police.
4. Committing criminal law offences including kidnapping, defeating the ends of justice, forgery and fraud.
5. As a co-conspirator and accomplice in the commission of the said Common Law offences they misled the Minister of Police and Parliament by stating that the

Department of Home Affairs deported the Zimbabwean Nationals well knowing that it was the DPCI under his management, which rendition the Zimbabwean nationals for the alleged criminal offences.

6. Bringing the international image of the Republic into disrepute by executing unlawful deportations, disguised the extradition and enforced human disappearances.

The Minister of Police should consider issuing the directive
10 in terms of Section 207[2] of the Constitution to the DPCI head and/or National Commissioner that Major General Sibiya and Lt Colonel Malulege be suspended pending internal investigations on their involvement in the renditions, contraventions of certain protocols and National Legislation on Extraditions, mutual legal assistance and common law offences of kidnapping, defeating the ends of justice and fraud and forgery.

The source documents are as follows; IPID Progress Report, the CI Report to the Minister in response
20 to Parliamentary questions, protocols on extraditions and Mutual Legal Assistance Acts, national legislation on extradition and mutual legal assistance on criminal matters, as well as the UN Convention on torture.

So those in summary with the recommendations by the reference group, but somewhere in the body of this

very same report that they brought to my attention, they alluded to the question of the two reports.

ADV HULLEY SC: Okay.

MR NHLEKO: Here they specifically dealt with what it is that needed to be done according to them in relation to the involvement of DPCI in the rendition of the Zimbabweans.

ADV HULLEY SC: So if I understand you correctly what you're saying is that the reference group had the two reports, they had the two reports before they – when they
10 made this decision, is that what you're saying. The two IPID reports.

MR NHLEKO: Ja, they pointed out that there is the question of the two IPID reports.

ADV HULLEY SC: And we will go through that in a moment, but if I also understand you correctly you say that the – this particular document which had been produced by the Reference Group this document had been available to you – available for your consideration. Is that correct?

MR NHLEKO: Yes it was.

20 **ADV HULLEY SC:** Now what I am trying to understand is there's two reports and I have no doubt that you have seen the two reports, is that correct?

MR NHLEKO: Yes I have.

ADV HULLEY SC: The first report as you have said recommended that there should be a prosecution of Mr – or

General Dramat and General Sibiya whereas the second the report came to a different conclusion, and that different conclusion specifically was that there should be – that they were not – they could not be implicated in the various crimes that the first report had identified, is that correct?

MR NHLEKO: Yes.

ADV HULLEY SC: What – the first concern or issue that I want to discuss is was this confidential report that had been compiled by the reference group, they were
10 reviewing, effectively reviewing the work of IPID is that correct?

MR NHLEKO: In what respect, I don't think so.

ADV HULLEY SC: Well IPID had come, IPID was the body that was established in terms of the constitution and in terms of the legislation, to investigate criminal conduct which may have been committed by police officers, is that correct.

MR NHLEKO: Yes.

ADV HULLEY SC: Is that your understanding sir?

20 **MR NHLEKO:** Right.

ADV HULLEY SC: And IPID had in fact done so, is that correct?

MR NHLEKO: Yes, that is correct.

ADV HULLEY SC: And they produced two reports, is that right?

MR NHLEKO: They produced one report sir.

ADV HULLEY SC: They produced one report?

MR NHLEKO: They produced one report and that report is the report of the 22nd.

ADV HULLEY SC: But at this point in time the – you hadn't yet established whether there was one or two, your understanding based upon something you've read in this document was that there in fact two reports, do I understand that correctly?

10 **MR NHLEKO:** From this report yes, they then identified that, essentially, there were two reports that – of the investigation that were by the same institution with different conclusions.

ADV HULLEY SC: Okay, now, let's deal with the two different scenarios. Let's take scenario one which is, that there's one report. On scenario one, there's one report, what is the – what should now be done about the existence of this one report, that report recommends that General Sibiya and General Dramat, amongst others, should be
20 prosecuted, what should be done about that?

MR NHLEKO: Look at the conclusion of that report my understanding is that – and it's also something that transpired, is that they then reported or referred that report, the National Prosecuting Authority.

ADV HULLEY SC: Yes, and that is, of course, what ought

to have happened?

MR NHLEKO: Yes.

ADV HULLEY SC: Now, there's – if that ought to have happened and hasn't happened, for argument sake, hasn't happened what is it the reference group is doing in relation to the rendition issue because that issue, if I understand it correctly, has already been dealt with on scenario one by the – by IPID.

MR NHLEKO: Look I think the reference group, angled
10 into the issue in relation to the allegation of the two reports because they also then needed to advise the Minister in terms of, indeed, the two reports and if so, exactly what is the detail around there, the question of the two reports and so on but that had nothing to do with them or myself trying to review, for instance, the IPID report, it had everything to do with the question of, yes, there are two reports and indeed, rendition occurred and these were the circumstances under which, perhaps, allegedly it occurred.

20 **CHAIRPERSON:** Can I – don't forget your next question Mr Hulley can I – yes, I think I've given up Mr Nhleko you're like looking at that side. Well I know that it's because the questions come from that side.

MR NHLEKO: Sorry, Chair, my apologies.

CHAIRPERSON: Let's take a few steps back what are the

reporting, what were the reporting lines in relation to any work done by IPID, did the – we know that the top position at IPID would be the Executive Director, or if there is no Executive Director the Acting Executive Director, who did the Executive Director of IPID report to? Did he or she report to the Minister of Police or was there somebody else that they reported to?

MR NHLEKO: The Executive Director...[intervenes].

CHAIRPERSON: I know there is the question of their
10 independence as well, so that – I just want to establish the
– how come any report from them comes to you and I
guess the starting point is, do they report to you, would the
Executive Director submit reports to you, what exactly was
the position?

MR NHLEKO: No, the reporting lines were very clear, I'm
saying the reporting lines were very clear, Chair.

CHAIRPERSON: Ja.

MR NHLEKO: The reporting lines of an Executive Director
of IPID there's a direct line to the Minister of Police.

20 **CHAIRPERSON**: Okay, okay.

MR NHLEKO: Now, as a result of which, for instance
there are regular sort of reports and/or issues of approval
that get referred to the Minister to approve in terms of
investigative powers for IPID and SARS and so on.

CHAIRPERSON: So, would it, therefore, be correct to say

that from time to time as the Minister of Police you would get reports from IPID?

MR NHLEKO: Yes.

CHAIRPERSON: As to the work that they were doing?

MR NHLEKO: Exactly, including the summary of reports for an example referred for prosecution and so on.

CHAIRPERSON: Yes okay. So if there were matters that they were referring to the NPA for prosecution they would make sure that you know about those, in terms of reports?

10 **MR NHLEKO:** Yes, in terms of the – whether it was weekly or otherwise, but it was quite regular.

CHAIRPERSON: The reports?

MR NHLEKO: The reporting arrangement, yes.

CHAIRPERSON: Okay, alright and this kind of report that we're talking about would have been one of the normal reports that would come to you or not really?

MR NHLEKO: I suppose so, but I think that we should take into account, Chair, that when I came in there were a number of other processes that had taken place around
20 this, for instance, if you peruse briefly on documents, you'll see that long before I came in, round about 2012 or so, the Secretariat had compiled a report around this issue...[intervenes].

CHAIRPERSON: Of rendition?

MR NHLEKO: Yes, of rendition and referred it to the

Minister, then my predecessor and so forth.

CHAIRPERSON: Oh okay.

MR NHLEKO: And I think in that report it pointed to the – I think the Minister then, my predecessor needed to decide whether the report was to be referred to Police Agency such as DPCI or something or IPID. I think, he must have decided that the matter needed to be dealt with by IPID and that's how it landed there.

COMMISSIONER: So I'm saying – already there had been
10 that kind of work and interaction around the question of the renditions.

CHAIRPERSON: Yes okay.

MR NHLEKO: So, when I came in, you know, I'm almost mid-stream because there are other things that had taken place.

CHAIRPERSON: Okay, alright, Mr Hulley?

ADV HULLEY SC: Thank you Mr Chairman. So, the IPID had already conducted that investigation and they – it resulted, you say, in one report? They contend, of course,
20 Mr McBride, Mr Sesoko and Mr Kuba contend that there was an initial – well Mr McBride and Mr Sesoko say they know nothing about the first report, the 22 January report, they say they were aware of the subsequent report which was the 18 March report but Mr Kuba signed the first report, which was the 22 January report. Now, insofar as

that – like I say, insofar as the first report is concerned, the 22 January report, and we've used the language of the first report and perhaps let's operate on that basis for present purposes. That report, as you understood it, and as you testified a moment ago, that was the only report, it was the report, the second report you say was not – well I imagine you say it wasn't a genuine report?

MR NHLEKO: The general report...[intervenes].

ADV HULLEY SC: No genuine not January, genuine
10 report.

MR NHLEKO: Oh okay, no I'm saying that precisely on the strength of the investigation that we conducted then through Werksmans. Now, the assertion is made for an example, that – and I think as and when we delve into the detail of the Werksmans reports and the interviews that were conducted we will clearly see that, you know, at some point there is admission to knowledge of the existence of the 22nd of January report by Mr McBride at some point, he did not know about that and so and so but there is that
20 element into that but also what has been advanced was that the, for instance of the latest sort of articulations that I've heard was that the 22nd January report was a draft report. Now – which in itself is also not true because Kuba who was lead investigator at that time, who started long before Mr McBride assumed this work and I coming in later

in 2014. In October 2013 he produced one draft report followed by another draft report in November and they were specifically referred to as such. Now,...[intervenes].

ADV HULLEY SC: Sorry if you don't mind, and we're getting back to this but I think maybe we're talking at cross-purposes. I understand the point you making but you're talking about what was discovered after the Werksmans report was produced, I'm going back before that, in other words I'm dealing with the time – at the time
10 that the reference group had been appointed, I'm dealing with that point in time.

MR NHLEKO: Okay.

ADV HULLEY SC: So my point is that when the reference group had been established and the reference group had started to investigate the issue, at that point in time there was certainly – it was understood at best, that there was, either, one report or that there were two reports. Your understanding, if I understand correctly was that there, in fact, were two reports that were available to the reference
20 group, do I understand that correctly?

MR NHLEKO: Yes.

ADV HULLEY SC: Now, with the two – given that there were two reports that were available, one of which would have conflicted with the other, as I understood you to say, in other words they came to different conclusions. We've

looked at the scenario of what would happen if there was one report in other words the first report and that first report had to go off to the NPA as you correctly pointed out. The first report had, in fact, been referred to the NPA as you understood it and yet nothing has happened as far as that's concerned because by September, you're still being questioned about this by the SABC, correct?

MR NHLEKO: Yes.

ADV HULLEY SC: Now on that scenario what is it, as the
10 Minister, what is it that you do in relation to – on the understanding that there's only the first report that recommends the prosecution of these two people?

CHAIRPERSON: I'm sorry Mr Hulley don't forget your question. Are you dealing with the stage after the reference group had raised some issue about there being two reports?

ADV HULLEY SC: Correct.

CHAIRPERSON: Okay can I just go a little bit back. When the reference group raised the issue of there being
20 two reports, what issue were they raising with you, precisely what was it that they were raising with you? There are two reports and so what?

ADV HULLEY SC: No, the issue raised by the reference group was how come you had one report with the body of it, you know, by and large, similar to the other one but with

a different set of recommendations, as opposed to the second one for example. So, for an example the first one referred to the implicated people as needed to be prosecuted but then the second one there's then a different recommendation that exonerates those particular people that are implicated in the first report. Now – and therefore, the critical question was how come you had such a situation, how did that situation come about.

CHAIRPERSON: But the two reports have different dates.

10 **MR NHLEKO:** Yes, they may have different dates...[intervenes].

CHAIRPERSON: So, at this stage I just want to – I want you to capture for me, what you understood the issue to be that the reference group was concerned about and what issue – what questions you posed to them, whether you shared their concern. I mean if you come to me, you say, here are two reports one is dated January the other one is dated 18 – but there is some difference between them, the first thing that comes to my mind is, they are different
20 reports, they have been signed on different dates, let's go deeper into the issue, what is the issue? Whereas if you give me two reports, signed on the same day, dealing with the same subject matter, then I might say what's going on. So I just want you to capture for me what was conveyed to me as the issue that they were concerned about, did you

share their concerns and why did you thing, whatever it was, was a concern and then move forward from there.

MR NHLEKO: No Chair I shared a similar concern by the way...[intervenes].

CHAIRPERSON: Let's finish with what they raised, the issue they raised and the basis for their concern.

MR NHLEKO: No their concern was you have two reports speaking to the same subject matter, one report is of the 20th – no 22nd January the other one is 18th of March. The
10 contents, they – look the same, but the recommendations they are not the same so – and the question was, so how would you – because I hear the point that the Chair is saying – is raising, I mean, your point is only applicable, for instance, in my view, one report on something and one report on another then two different subject matters and two different contents and so on but in this instance you have...[intervenes].

CHAIRPERSON: What I'm saying is, the moment the reports are signed on different days, that says to me, there
20 might be a reason for the difference because the one was on another date the one was on the other date, the one was on the one date, the other was on another date, therefore – that's why I go to the question, what was the issue they raised, what was the basis for that concern, then we take it from there?

MR NHLEKO: No, ja I think then in that regard, Chair, in terms of what you've just said I'm coming to exactly my position, that position is then clarified further in terms of the further investigative work that needed to then establish, is there a reason or reasons why you would have these two reports and what informed that, okay and that's where Werksmans comes in, you know and we were later shown the differences between the two reports. What was deleted in the first report to constitute what is now being
10 referred to as the second report.

CHAIRPERSON: But before you asked Werksmans to do an investigation on it, did you, yourself read the two reports to see whether you might understand why there are these differences even though the two reports relate to the same subject matter and most of what is contained in the reports is the same or did you read it or did you get someone to do an Executive summary for you to say, these are the important parts of the two reports?

MR NHLEKO: No the two reports, Chair, were brought to
20 my attention.

CHAIRPERSON: Yes. Let's take a comfort break.

ADV HULLEY SC: I think the witness needs a comfort break Chair.

CHAIRPERSON: Ja, well I was going to – I was aware that we have been going on for some time, I was going to

say let's take a comfort break but obviously I took longer than – we are at nine minutes to five, we will take the break now, a comfort break, after that I certainly can go until six, but maybe I should check whether – I know we have another witness tomorrow but the witness tomorrow is supposed to be short I think, let me check whether even proceeding tomorrow morning is a possibility with everybody or whether there is any problem. Mr Mukhari?

ADV MUKHARI: From our side we are available.

10 **CHAIRPERSON:** You are available, okay, Mr Hulley you are available I know that and I guess what your counsel is saying applies to Mr Nhleko? It does, it does, okay. Then we must – maybe we will take the short break the maybe we can go up to six if we haven't finished then we can continue tomorrow morning.

ADV HULLEY SC: Thank you Mr Chairman.

CHAIRPERSON: Okay, let's take a 15 minute break, we will resume at ten past five.

We adjourn.

20 **REGISTRAR:** All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

MR NHLEKO: Could I make a point before we continue Chair? On two things. In fact I have had a relook at the...

CHAIRPERSON: One second. Has somebody switched on the air conditioner? Oh is it a heater? I do not want to be unfair to anybody who might be feeling too cold if it does warm give us some warmth but just at sometimes it interferes with ..

ADV HULLEY SC: The recording.

CHAIRPERSON: Me hearing the witness properly. But if there is some [indistinct 00:00:54] I know the one time I said it is making me cold but somebody else was feeling that it
10 was making the place warm. Okay let us continue.

MR NHLEKO: Thank you very much Chairperson. You will recall that before the break I referred to one thing and that is that the report by Reference Group in the body when I read through the recommendations that in the body they do mention the question of the two reports and I think is incorrect. For the record I think we need to correct that. Because in the body now when I look at this within the body they do not say that. However what I can confirm is that because they briefed me about this report you know in the
20 one on one kind of sessions and so on but indeed they...

CHAIRPERSON: When you say about this report you mean their report?

MR NHLEKO: Their report.

CHAIRPERSON: Ja.

MR NHLEKO: This one. They briefed me about this report.

They took me through it and then they pointed out that there is an allegation of the question of the two reports that are in existence and so on. And I think it – there is a point that they share also earlier on in the – in their engagement. You – I think you wanted some clarity on and I think it does talk to that. Because with them the only thing I said to them was there is this question of the rendition that is alleged to have taken place please look into it. So it was broad. And they did this report starts off with the work by DPCI I think they
10 refer to that. They also refer to the work particularly of IPID and the Kuba Report – the Kuba Report and so on. So – the – I apologise for mentioning that in the body there is reference to the question of the two reports – no there is not.

CHAIRPERSON: There is not?

MR NHLEKO: Yes.

CHAIRPERSON: Okay. But what you are saying is that in their verbal briefing to you they did mention.

MR NHLEKO: Yes they did mention them.

CHAIRPERSON: Not in their written reports.

20 **MR NHLEKO:** Not in the written text yes.

CHAIRPERSON: Ja. Ja. And – and at that stage their concern was that there were two different recommendations.

MR NHLEKO: Yes.

CHAIRPERSON: In the verbal report they gave you.

MR NHLEKO: Yes.

CHAIRPERSON: Verbal briefing and then in the verbal briefing they said we are concerned about there being too – of there being different recommendations in regard to the two reports in the verbal briefing?

MR NHLEKO: They – they said that there is an allegation of two reports and specifically that the other report has got a different set of recommendations. Yes. Well – no that was a matter to be looked into.

CHAIRPERSON: But as you understood the position, they
10 had seen the two reports at the time they gave you a verbal briefing?

MR NHLEKO: I am not sure that they had.

CHAIRPERSON: They might not have [indistinct 00:04:19].

MR NHLEKO: I do not know because they – they – the matter to me was presented as an allegation of the two reports.

CHAIRPERSON: Yes. Yes.

ADV HULLEY SC: Yes.

CHAIRPERSON: Okay. So – so would it be correct then to
20 say Exhibit Y8[TT] which is the report they gave you on the rendition that the written report does not deal with the existence of two reports it just deals with the issue of a rendition that is all?

MR NHLEKO: No it does not. What it does it is more of an assessment report.

CHAIRPERSON: Okay.

MR NHLEKO: The way it – the way you look at it – around the rendition issue.

CHAIRPERSON: Okay alright.

MR NHLEKO: Yes.

CHAIRPERSON: Alright. So – so I get the impression from what you are saying that other than them saying to you in the verbal briefing that there was an allegation of there being two reports with one with recommendations that are
10 different from the other. Other than them saying that there was not much they told you about these two reports at that stage, is that right?

MR NHLEKO: No there was not.

CHAIRPERSON: There was not okay. Alright. You can take it from there Mr Hulley. I just want to see how the issue of the two reports moves from point A up to point whatever.

ADV HULLEY SC: Yes thank you Mr Chair. Now just to – you yourself had not seen either one of the two reports at the time of this – one of the two IPID reports at the time of
20 the Reference Group's Report?

MR NHLEKO: I am not sure whether I had.

ADV HULLEY SC: You – but you knew from what the Reference Group had told you that there may be two reports in existence.

MR NHLEKO: Right.

ADV HULLEY SC: One report which came to one conclusion and another report that came – appeared to come to the opposite conclusion.

MR NHLEKO: Hm.

ADV HULLEY SC: Now as far as the – as far as the Reference Group's report is concerned the Reference Group files a report which is dated the 22 November they provide you with that report.

MR NHLEKO: Hm.

10 **ADV HULLEY SC:** It would be important of course to locate the IPID reports to verify at that stage what the conclusion is that has been reached by – by IPID. Would that be correct to say?

MR NHLEKO: I think you are correct.

ADV HULLEY SC: Now ...

CHAIRPERSON: May I come in and say? Having been told what you were told by the Reference Group in the verbal briefing about an allegation of two reports.

MR NHLEKO: Hm.

20 **CHAIRPERSON:** What did you do about that?

MR NHLEKO: I think I must have done enquiries about the question of [indistinct 00:07:34] allegation and indeed eventually I saw two different reports.

CHAIRPERSON: Eventually you obtained them?

MR NHLEKO: Yes. Yes I did.

CHAIRPERSON: Okay and you read them.

MR NHLEKO: Yes.

CHAIRPERSON: Or executive summary where it was given to you.

MR NHLEKO: Hm.

CHAIRPERSON: You read them?

MR NHLEKO: Yes I did read them.

CHAIRPERSON: Yes okay. Take it from there.

ADV HULLEY SC: Thank you Mr Chair. So perhaps that last
10 part you did get the two reports?

MR NHLEKO: No eventually I did.

ADV HULLEY SC: Okay.

MR NHLEKO: Get the reports.

ADV HULLEY SC: And you considered both reports?

MR NHLEKO: I read them.

ADV HULLEY SC: May I ask where – where did you get the two reports from if I may ask?

MR NHLEKO: I have no recollection in terms of how I got them.

20 **ADV HULLEY SC:** But anyway, you get the two reports.

MR NHLEKO: Hm.

ADV HULLEY SC: And the two reports are they both signed?

MR NHLEKO: Yes they were – they were signed copies.

ADV HULLEY SC: Now the two reports come to two different

conclusions. The first report comes to the conclusion that there must be criminal proceedings instituted against General Dramat and General Sibiya and the second report comes to the conclusion effectively exonerating them.

MR NHLEKO: Right.

ADV HULLEY SC: You – what do you make – what do you do now? You have got two reports which come to different conclusions how do you decide at that stage now when – sorry – when – firstly when do you get the two reports as far
10 as you can recall? When do you get the two reports? You obviously need to get them.

MR NHLEKO: Right.

ADV HULLEY SC: And you do get them – when do you get them?

MR NHLEKO: When do I get them?

ADV HULLEY SC: The two reports that is right?

MR NHLEKO: Around about that period but I would not know specifically when.

ADV HULLEY SC: Okay.

20 **CHAIRPERSON:** So that would be – I mean we know that the – the – your interview with SABC where the [00:09:38] the issue was September.

MR NHLEKO: In September.

CHAIRPERSON: And the report of your Reference Group on the rendition is dated 22 November 2014.

MR NHLEKO: Hm.

CHAIRPERSON: I take it that the verbal briefing that they gave you that you talked about would have been when this report was available. So it would be probably after this date – after the date of this report? After the date of the Reference Group’s report on rendition.

MR NHLEKO: Ja look as I said earlier on some of the issue I would not be able to sequence them.

CHAIRPERSON: Yes.

10 **MR NHLEKO:** And –which came first and so on.

CHAIRPERSON: Yes.

MR NHLEKO: Whether I had those reports before the 22 November.

CHAIRPERSON: Yes.

MR NHLEKO: Or beyond or something.

CHAIRPERSON: Ja.

MR NHLEKO: I would not be able to sequence that.

CHAIRPERSON: So...

20 **MR NHLEKO:** But the point is in the briefing this matter is mentioned about the question of the two reports.

CHAIRPERSON: Hm.

MR NHLEKO: And that it is a matter that needed to be looked into.

CHAIRPERSON: So is the position that you are not able to tell at this stage whether the verbal briefing at which they

told you about the allegation of their being two reports where they make that allegation you cannot tell whether that was before this report of theirs that is the Reference Group became ready or whether it was after?

MR NHLEKO: It is difficult to say Chair.

CHAIRPERSON: It is difficult to say no.

MR NHLEKO: Ja it is difficult to say.

CHAIRPERSON: So that is fine.

MR NHLEKO: Yes.

10 **CHAIRPERSON**: But would it be correct to say whatever date it must have been it is likely to have been somewhere towards – certainly after September maybe or towards end of September/October/November thereabout at some date that you cannot remember?

MR NHLEKO: Possibly.

CHAIRPERSON: Possibly ja.

MR NHLEKO: Yes.

CHAIRPERSON: Okay alright.

20 **ADV HULLEY SC**: Thank you Mr Chair. Now I am just trying to understand at this stage how the aid to the best of your knowledge how did the Reference Group compile their report? What did they have available to them to compile the report insofar as you are aware?

MR NHLEKO: I think in this report they do refer to issues that – they do refer to some issues and activities that they

undertook including the question of a speaking to certain individuals or interviewing them. I think there is reference to that effect that there are certain individuals that they also spoke to.

ADV HULLEY SC: Yes.

MR NHLEKO: Hm. And that they also did an analysis of an IPID report. I do not see it here.

ADV HULLEY SC: You are going to have to be assisted. Yes. At page ...

10 **CHAIRPERSON:** Yes Exhibit Y7.

ADV HULLEY SC: This is one of the historic bundles.

CHAIRPERSON: Ja I think this one was before...

ADV HULLEY SC: Which is page ...

CHAIRPERSON: Was before we said they must label the...

ADV HULLEY SC: Correct.

CHAIRPERSON: As bundle but okay Y7 what page?

ADV HULLEY SC: At page 141. This is a letter Mr Nhleko which is dated 4 November. It is signed there by Minister of Police. Is that your signature at the bottom of the page?

20 **MR NHLEKO:** Page 141?

ADV HULLEY SC: That is right.

CHAIRPERSON: Mr Nhleko do not speak too much away from the microphone. I think you might have to bend it towards you.

MR NHLEKO: Yes – no sorry Chair. Yes it is my signature

Sir.

ADV HULLEY SC: Now just I think maybe just read the content of this letter so that you can understand the relevance of where the report may have come in.

MR NHLEKO: It says:

“The Minister of Police has in his possession a report from Crime Intelligence and dated 27 September 2012. The allegations are those of murder, kidnapping and theft. The cases were reported under the Diepsloot police station case
10 number 390/27/2010 B I think it looks. The content of the report suggest that there are contraventions of international laws pertaining to how the above-mentioned matter was handled.

The said matter was referred to IPID in 2012 for investigation.

In this regard, the Executive Director of IPID is hereby requested to provide the Minister of Police with copies of the dockets in colour, exhibits thereto, progress reports, and the final report in this matter. The requested documents will
20 enable the Minister of Police to discharge its constitutional responsibilities in terms of Section 207(2) of Act 108 of 1996 and advise concerned constituencies accordingly.

They have requested documents should be delivered on or before the 28th of November ...[indistinct]_...[intervenens]

ADV HULLEY SC: Would it be fair to say, based upon this

document, that this document was sent to IPID pursuant to your discussion with the Reference Group?

MR NHLEKO: Maybe. It is possible. I do not know. It is possible, yes. H'm?

ADV HULLEY SC: Well, what I am asking you is that the... has the Reference Group approached you before this letter went off and asked you to send off the letter calling upon IPID to produce the docket and the different reports that they have produced?

10 **MR NHLEKO**: H'm. No, it is possible that it could be a matter that I was out of that briefing... engagement.

ADV HULLEY SC: Now ...[intervenes]

MR NHLEKO: [Indistinct]

ADV HULLEY SC: So at this point in time... this is now the 24th of November, you met with the... oh, sorry. You got a report from the Reference Group. According to the contents of this letter, you have also got a report from Crime Intelligence?

20 **MR NHLEKO**: Yes, but that is a report, the 2012 report that had been received by the minister there.

ADV HULLEY SC: Yes.

MR NHLEKO: So it was the in the ministry in a sense.

ADV HULLEY SC: Sure.

MR NHLEKO: Ja.

ADV HULLEY SC: Now... but at that point in time, you have

got the Crime Intelligence report and you have got the report from the Reference Group.

MR NHLEKO: Yes.

ADV HULLEY SC: You do not have the docket, correct?

MR NHLEKO: Alright.

ADV HULLEY SC: Is that right?

MR NHLEKO: Yes, I think that is correct.

ADV HULLEY SC: And would it... and I surmising now, but would it be fair to say that the Reference Group also does
10 not have the docket?

MR NHLEKO: Maybe. They did not, except that... I think in the... at that time when we worked and they gave me a preferential decision, I think there was reference to the fact that they had signed some documents at IPID itself.

ADV HULLEY SC: A sight of documents at IPID?

MR NHLEKO: H'm.

ADV HULLEY SC: Okay. Now, you then received pursuant to this letter, you received the letter on the 26th of November... a letter on the 26th of November
20 ...[intervenes]

MR NHLEKO: H'm?

ADV HULLEY SC: ...from IPID.

MR NHLEKO: Correct.

ADV HULLEY SC: That is two pages further on which is at page 143 of the same bundle, Mr Chair.

CHAIRPERSON: [No audible reply]

MR NHLEKO: Alright.

ADV HULLEY SC: Is that correct?

MR NHLEKO: Ja, that is correct.

ADV HULLEY SC: Now, they would have provided you, that is IPID, would have provided you with a complete copy of the docket at that stage.

MR NHLEKO: Yes, I can... sorry. I cannot recall whether they did, really. But I note this letter.

10 **ADV HULLEY SC:** If I understood your... or if I understand your evidence correctly, you had the 24 November letter.

MR NHLEKO: H'm.

ADV HULLEY SC: Sorry, report. Sorry, the 24 November letter. You had the 22 November report.

MR NHLEKO: Right.

ADV HULLEY SC: The 22 November report recommended that there should be a suspension of Dramat and Sibiya.

MR NHLEKO: H'm.

20 **ADV HULLEY SC:** But as far as IPID was concerned, you had... you might not have had the two reports at that stage but assuming that you did have the two reports... and it is possible that you had the two reports. Is that correct?

MR NHLEKO: Possible.

ADV HULLEY SC: Well, what... you know that the Reference Group had their discussion with you and had already

indicated to you that there were possible two reports?

MR NHLEKO: H'm.

ADV HULLEY SC: So what I am trying to understand is, when did the Reference Group ask you for all, at least informed you about the two reports, the two possible reports that there were?

MR NHLEKO: When did they do it? Sorry?

ADV HULLEY SC: When did the Reference Group... in other words, what time was that meeting where they gave you
10 feedback?

CHAIRPERSON: I think he could not remember earlier on what or when exactly when I asked him. Is that correct Mr Nhleko?

MR NHLEKO: Yes-no, that is very correct ...[indistinct]
...[intervenes]

CHAIRPERSON: You could not tell me whether it was before or after ...[intervenes]

MR NHLEKO: Yes.

CHAIRPERSON: ...the interview at SABC.

20 **ADV HULLEY SC:** Yes and I think, as I eluded to this point earlier on, that sequence in... I cannot remember which came first and whatever and so on.

CHAIRPERSON: Ja.

ADV HULLEY SC: Thank you, Mr Chair. So you have got this decision or this report from the IPID... sorry, from the

Reference Group.

MR NHLEKO: H'm.

ADV HULLEY SC: You may or you may not have the two reports from IPID.

MR NHLEKO: H'm.

ADV HULLEY SC: On the 6th of December, you give a notice to General Dramat of your intention to suspend him. What is that notice of intention to suspend based on?

MR NHLEKO: The contemplation to suspend was on the
10 basis of the recommendation of the Reference Group as well.

ADV HULLEY SC: So ...[intervenes]

MR NHLEKO: The first recommendation of the report by the Reference Group speaks specifically to that issue.

ADV HULLEY SC: Sure.

MR NHLEKO: H'm.

ADV HULLEY SC: But it is obviously important to have the two IPID reports because on the face of it, on the 24th of November, on your documentation that you got in your possession at that point time, you only have a Crime
20 Intelligence report at that point in time. Correct?

MR NHLEKO: Ja. Well ...[intervenes]

ADV HULLEY SC: You do not have a complete docket. Do I understand it correctly?

MR NHLEKO: H'm. Look, as I said Chair. Look, it is difficult for me to follow the sequence of the documentation

and the happenings at that time.

CHAIRPERSON: Yes.

MR NHLEKO: So...

CHAIRPERSON: Ja, well if you ...[intervenes]

MR NHLEKO: You know ...[intervenes]

CHAIRPERSON: ... you cannot remember, you ...[intervenes]

MR NHLEKO: Yes, in terms of what you locate a particular report in relation to the timeframe and so on, it is
10 ...[intervenes]

CHAIRPERSON: Ja, you do the best you can to remember.

MR NHLEKO: Ja, it is really difficult.

CHAIRPERSON: Or give an estimate of when it might be. That is fine. And if there is something that might remind you, then we can look at that.

MR NHLEKO: [No audible reply]

ADV HULLEY SC: The point I am making is, when the two... when IPID responds on the 26th of November 2014, IPID provides you with a further bundle of documents which is
20 part of the docket. In fact, they provide you with a complete docket. Is that correct?

MR NHLEKO: I am not sure whether it was complete but the ...[intervenes]

ADV HULLEY SC: Okay, let us ...[intervenes]

MR NHLEKO: ...I cannot even recall the amount of

documentation. That must have been provided there.

ADV HULLEY SC: Let us lead through this document. It says:

“With reference to your request, on the date of the 24th of November 2014, kindly note that the docket CAS390/07/2010 is incorrect as the docket CAS number investigated by IPID is 390/07/2012.

We assume that this is the docket referred to in your correspondence as the Reference Group requested same.

Indeed, the Reference Group indicated to Mr Kuba, (who was the investigating officer) that they will request the docket through your office...”

Do you see that?

MR NHLEKO: Right.

ADV HULLEY SC: Now let us just pause at this point in time. On this... did you ever respond to this letter to Mr McBride?

MR NHLEKO: I also do not know whether I did respond to the letter.

ADV HULLEY SC: He goes on to say in the following paragraph under the heading “background” that:

“The IPID started the investigation in this matter in November 2012.

In the course of the investigation, IPID cooperated

with members of Crime Intelligence and in particular Colonel Kongwe.

The same colonel started with the investigation and brought the docket to the IPID reportedly at the behest of the Minister of Police.

The investigation was also conducted in consultation with the two advocates from the office of the NDP, Advocate Anthony Rassie and Advocate Billie Moletse [00:26:28].

10 The two advocates were involved with the investigation before the investigation was handed to the IPID.

Indeed, they remained intimately involved with the investigation throughout.

This included direct investigation with certain aspect. Progress and preliminary reports were provided to them by the investigating officer.

20 As a result of the decision of the previous acting Executive Director, Ms K Mbeki, Mr Kuba was instructed that the investigation be conducted in collaboration with Colonel Kongwe since he had started the investigation.

The investigation of IPID included various statements already obtained by members of Crime Intelligence and following up on leads, some of which were

provided by Crime Intelligence.

During the course of the investigation, reports were made to the acting executive director and the office of the then minister was also appraised of the progress of the investigation.

During the course of the investigation it became apparent to the IPID investigators that the leaks to the media contained intimate knowledge of the investigation were made.

10 At the conclusion of the investigation, notwithstanding several other preliminary reports that were written on this matter, the IPID did a thorough analyses of all the available evidence and made recommendation to the executive director for his consideration.

It must be noted that IPID considered other charges against those involved but thought it prudent to wait for the decision of the NDPP.

20 They conclude (under the heading “conclusion”) the executive director after careful and thorough consideration of the report approved the report with recommendations to the National Director of Public Prosecutions and the SAPS National Commissioner. The recommendation with the entire docket and evidential material was forwarded to the office of the

NDPP on the 14th of April 2014 and on the same day a disciplinary recommendation was forwarded to the Office of the National Commissioner.

Your offices are hereby handed copies of the docket that was forwarded to the Office of NDPP.

It says IPID is still awaited the decision of the National Director of Public Prosecution in this matter. Similarly, we have not received the SAPS's report on the initiation of the disciplinary proceeding against

10 **Lieutenant Colonel Maluleka [00:28:44].**

The executive director and the investigation team will be available to brief the minister on this investigation at any time convenient to the minister..."

Did you call for that meeting with them for them to brief you?

MR NHLEKO: No, I cannot recall whether I called for a meeting. I have no... absolute recollection of that.

ADV HULLEY SC: Well, let me ask you a slightly different question.

20 **MR NHLEKO:** H'm?

ADV HULLEY SC: You cannot recall that you have called for the meeting. You recall whether you in fact met with them, with IPID?

MR NHLEKO: I do not recall the... calling a meeting with the investigating team.

ADV HULLEY SC: Now you have got two reports, one of which we know exonerates mister... sorry, General Sibiya and Dramat.

MR NHLEKO: H'm.

ADV HULLEY SC: And one of which implicates them. You have also got the report of the reference group. You have made a decision, if I understand your testimony correctly, you have made a decision to suspend General Dramat on the 6 December based up the report of the reference group
10 which, according to IPID, was not based upon the docket because they did not have the docket at that point in time.

Now the question is, if the reference – if IPID is correct and the reference group did not have the docket and the reference group could at best only have based its decision on a Crime Intelligence report that had been compiled in 2012, in other words long before the investigation had been completed, the investigation was completed or had come towards a conclusion in late 2013 entering into 2014.

20 **MR NHLEKO:** But remember that the report of the reference group also does touch upon the IPD investigation, it does make an assessment of that indirectly in terms of the report produced by [indistinct] 31.21 then. So it does refer to that and on the basis of that they then make specific recommendations in terms of what then the Minister should

...[intervenes]

CHAIRPERSON: Okay, Mr Nhleko, shall we do this. You look at him when he asks the question but you turn and look at me when you give the answer.

MR NHLEKO: Okay.

CHAIRPERSON: because I am struggling to hear and I must hear your answers.

MR NHLEKO: Okay.

CHAIRPERSON: Okay.

10 **MR NHLEKO:** No, I keep on apologizing for this, Chair, it is only that I just ...[intervenes]

CHAIRPERSON: Yes, no, no, that is fine, I can understand.

ADV HULLEY SC: If you look at the report of the reference group, the report talks about certain interviews, if you turn to page 3450, that is EXHIBIT Y8TT and it says that:

“On the 22 November 2014 Lieutenant Colonel Maluleke was interviewed by a member of the reference group. He was confronted with the following questions.”

20 And then they set out a list of questions.

MR NHLEKO: Okay.

ADV HULLEY SC: They say, paragraph 22, that:

“On the 10 November Mr Kuba the officer in charge of the investigation was interviewed. During the interview it became clear that he was supportive of

the conspiracy theory against Lieutenant General Dramat and despite the abundant evidence explaining his involvement. He has also accepted the police officials implicating General Sibiya of deliberately misdirecting the investigation officer.”

So those are the two interviews that have been conducted. One on the 22 November with Lieutenant Colonel Maluleke and one on the 10 November 2014 with Mr Kuba. Do you see that?

10 **MR NHLEKO**: Yes, I do see that.

ADV HULLEY SC: Now where else did they either interview or get further documentation from as far as you are aware, even if it is based on what you have seen in this report?

MR NHLEKO: I would not be able to respond to that question.

ADV HULLEY SC: Okay.

MR NHLEKO: Now, according to the evidence of Mr. Kuba and Mr. McBride, they testified to the fact – and it is contained in the affidavits as well, that when the reference
20 group left their offices which occurred sometime in October of 2014, the reference group indicated to them that they are going to go over to the Minister and ask the Minister to request the documents from IPID. So the reference group must in fact have done so, must have in fact have approached her and said we do not have the docket and IPID

has not made it available to us. Would that be correct?

MR NHLEKO: Maybe.

CHAIRPERSON: And then look this side when you give the answer.

MR NHLEKO: Oh, ja. I am saying maybe, I really would not have detail thereof.

CHAIRPERSON: Yes, okay.

ADV HULLEY SC: If you indeed had the two reports when you decided to suspend Lieutenant General Dramat and
10 Sibiya, would it be fair to say that you had decided to accept the reference group's report over their two reports or over the second of the two reports? In other words, the March 2014 report?

MR NHLEKO: Look, I had no reason to doubt the work of the reference group really. They will just – whatever they produced in terms of the assessment they made around the investigation report that was at their disposal and perhaps other documents that they have must have looked into and they made recommendations to me as the Minister and I had
20 to – I acted on those recommendations.

ADV HULLEY SC: Did you have reason to doubt the reports of IPID?

MR NHLEKO: Look, when the allegation came through about the question of the existence of the two reports, with same content but different sort of set of recommendations,

for an example, you are bound to begin to ask certain questions one of which is the question of why you have two reports.

ADV HULLEY SC: And what conclusion did you come to on the 6 December of 2014 insofar as those questions. Did you ask yourself the questions but what conclusion, what answer did you provide to those questions?

MR NHLEKO: I do not know about the 6 December but the fact is if you are asking in relation to the issue, I have just
10 posed about the allegation of the existence of the two reports it required further investigation.

ADV HULLEY SC: And that obviously had to take place ...[intervenes]

CHAIRPERSON: Well, maybe before you go further, Mr Hulley, I was going to want to talk to that and I have alluded to it before. Having read the two reports, because you do say you did read them, your concern you said, I think, was the same as that of the reference group.

MR NHLEKO: Correct..

20 **CHAIRPERSON:** Namely the different recommendations in regard to certain people I think but the body of the report to a very large extent, being the same, is that right?

MR NHLEKO: Yes, that is correct.

CHAIRPERSON: And was there anything – did you apply your mind to what it was that may have been different in the

second report that might have explained why the recommendation about, for example, I think General Dramat and General Sibiya, why they gave that recommendation? In other words, did you look at the report and apply your mind to the reasons they were – the second report was giving for saying or not recommending that they be charged as opposed to the first report which said that General Dramat must be charged and gave certain information about that.

MR NHLEKO: No, Chair, the issue for me is that I really
10 needed assistance in unpacking that particular issue, you know? And for that reason, then that is how I then commissioned further work for an investigation but with pointed sort of terms of reference as opposed to a, you know, a broad sort of general approach around the question of either the renditions and the allegation of the question of the two reports.

CHAIRPERSON: I understand what you are saying to be that you are saying that the fact that there were different recommendations in the two reports in regard to the same
20 subject is what was of concern to you but as to the basis, you did not go into that but the fact that there were these different recommendations was in your view enough for you to justify asking for an investigation. Is that what you are saying?

MR NHLEKO: Yes. No, it was enough for me, Chair, to

then say but how do you come to different recommendations?

CHAIRPERSON: Yes.

MR NHLEKO: On the same body of work conducted at some point.

CHAIRPERSON: Yes.

MR NHLEKO: And, of course, another report produced later on at a point and so on.

CHAIRPERSON: Yes.

MR NHLEKO: And I think it would become clearer in terms
10 of what then transpired in terms of that work in particular to
establish the question of the existence of the two reports but
how it came about, that particular situation.

CHAIRPERSON: Let me put to you what my expectation
would have been. My expectation would have been since the
Executive Director of IPID reported to you, my expectation
would be that you would pick up a phone or get somebody in
your staff to say call Mr. McBride, I would like to see him, I
would like to discuss, him to explain to me these different
recommendations, he might come alone, he might come with
20 his team, or write to him so that you hear what he has to say
or what they have to say because their explanation might
make it unnecessary for you to ask somebody to investigate
but if they give you an explanation that you have difficulty
with that maybe you could ask somebody to investigate, so
that would be what I would have expected you to do. Do you

want to comment on that?

Just pick up the phone and say Mr. McBride, I have become of these two reports, there is something strange about these two reports to me, this one recommends this, this one recommends that, it is the same subject matter, come and see me with or without your team, let me hear what the story is.

MR NHLEKO: No, I – perhaps that is another way of looking at it but in my opinion, the fact that we had to
10 respond to the issues that were already out there at a public level and that I had to constitute a body that needed to look into those particular issues and asked them, amongst other things, of course, the issue of the renditions that it needed to be looked into precisely because there was still a matter that was hanging out there in a way.

Now the mere fact that the reference group acted in the manner in which it did in terms of whether it wanted further information and/or documents and so on, by an extension, that was the Minister of Police requesting that
20 information.

CHAIRPERSON: But of course that ...[intervenes]

MR NHLEKO: So it boils down to more or less the same thing. I mean, I accept your view and your angling into that matter and so on but the fact is that we had asked that – I had asked all institutions, for instance, the following and

then the Minister of Police to cooperate with the work of the reference group because we needed to look into the range of these particular issues.

CHAIRPERSON: No, no, I accept that if the reference group asked for certain information in order to do their work and to advise you, whatever, whatever information they got, obviously would be of benefit to you in terms of understanding issues. But I understood you to – I understood the position to be that the reference group had
10 not asked IPID for an explanation of did I misunderstand that? I did not understand that the reference group asked.

MR NHLEKO: No, I was actually just making a general ...[intervenes]

CHAIRPERSON: Oh, ja, okay.

MR NHLEKO: To then say it is possible that in the work that they were doing, looking into this thing, there are things that they requested from the side of IPID, for instance, for them to be able to do their work and conclude in whatever manner that they needed to. My point though is that the
20 fact that the reference constituted by the Minister had to do that in response to the issues at a public level in which they had been ventilated. If the reference group came to you and said look there is this information that we are requiring and you haven't been informed for an example that there is this work that has been conducted and so

forth, either by extension and the interpretation is that it is the Minister of Police that is looking for that information.

CHAIRPERSON: No, no I understand that. I am saying what or rather let me put it this way, what I don't understand is why if there is – you have some query about these two reports you don't ask IPID to explain to you before you instruct a law firm to investigate I would have thought that the first thing to do is to say let me hear what they have to say, because they might satisfy you in which
10 case you don't have to incur the expenses of lawyers to investigate or if they don't satisfy you, you might have good grounds to say well let me get somebody else to investigate, so I am saying my expectation would be that you would first ask IPID for an explanation before you could get the matter to be investigated, but I think you were saying earlier on you understand that, but you considered that you should ask for an investigation.

MR NHLEKO: Yes.

CHAIRPERSON: There is nothing you are able to add
20 there?

MR NHLEKO: No there is nothing that I am able to add.

CHAIRPERSON: Okay.

MR NHLEKO: Thank you.

CHAIRPERSON: Mr Hulley?

ADV HULLEY SC: Thank you Mr Chair. So just going back

briefly to that, the reference group, if I understood correctly had made, or had told you when you met with them and they had given you a briefing on what happened and of their report, given you some feedback, they spoke about the fact that there might be two reports, correct?

MR NHLEKO: Correct.

ADV HULLEY SC: Now so even that, at that point in time when you met with the reference group it wasn't clear that there were in fact two reports, whether there was one
10 report, whether there was two reports, but it appeared that there were two reports but they might conflict with each other.

MR NHLEKO: Yes, in their briefing that's what they alluded to yes.

CHAIRPERSON: Well Mr Hulley we are at two minutes to six, if you want to wrap up you may, if ...[intervenes]

ADV HULLEY SC: Thank you, I will just wrap up on this particular point, thank you Mr Chairman.

CHAIRPERSON: Okay.

20 **ADV HULLEY SC:** And of course, if I understood you correctly Mr Chair your background was for many years in the trade union environment where you were accustomed to the concept of consultation.

MR NHLEKO: Yes.

ADV HULLEY SC: And if I recall correctly when you first

entered the ministry that is now in May of 2014 you had spent a lot of time doing exactly that, as you have said you spent time consulting with all the senior management to find out what the problems were, correct?

MR NHLEKO: Yes I did.

ADV HULLEY SC: And just on this particular issue you accept that it would be rather strange if you hadn't consulted with Mr McBride to find out what was the explanation for the two reports?

10 **MR NHLEKO:** Do I find it strange?

ADV HULLEY SC: I am suggesting to you do you accept that it would have been somewhat strange if having been told about the existence of two reports you hadn't consulted with him about it?

MR NHLEKO: I don't know, maybe under a different set of circumstances really but by then I think I had already commissioned the reference group to look into a range of these things and advise me accordingly.

ADV HULLEY SC: Thank you Mr Chairman.

20 **CHAIRPERSON:** Okay it is six o'clock, we are going to resume tomorrow. I think we can resume at ten because I don't know what your estimation of how much time you would need but I would imagine that we should not be than – what – one and a half hours, two hours or am I being too optimistic?

ADV HULLEY SC: I think that might be a bit optimistic, it may be preferable if we started at nine o'clock Mr Chairman, I know there's the issue of Mr Kuba has got to come in a little bit later on.

CHAIRPERSON: Yes, what is your estimate of how much time, I know we are now at what – dealing with one of the real issues, so ...

ADV HULLEY SC: My estimate of the time it will probably be about another two, two and a half hours.

10 **CHAIRPERSON:** Ja, I think let's start at ten because I may have some matters to attend to before ten, let's start at ten, let's resume at ten, we will do the best we can, all of us, to finish timeously without – to finish timeously and still do justice to all the issues that need to be dealt with.

Okay, we will adjourn now and we will resume at ten o'clock tomorrow morning.

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 28 JULY 2020