

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

**28 JULY 2020**

**DAY 239**



**Gauteng Transcribers**  
Recording & Transcriptions

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**COMMISSION OF INQUIRY INTO STATE CAPTURE**

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 28 JULY 2020**

**CHAIRPERSON:** Good morning Mr Hulley, good morning everybody.

**ADV HULLEY SC:** Good morning Mr Chair.

**CHAIRPERSON:** Are we ready?

**ADV HULLEY SC:** We are.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** Mr Chair we had previous had one matter that was set down for today.

10 **CHAIRPERSON:** Yes.

**ADV HULLEY SC:** That was the matter of Brigadier Xaba. Brigadier Xaba unfortunately has currently gone for testing in respect of Covid-19. He has got counsel present today who wish to address you on an application for the postponement of todays' proceedings.

**CHAIRPERSON:** Yes okay.

**ADV HULLEY SC:** The commission does not oppose – the evidence leaders do not oppose the application.

**CHAIRPERSON:** Yes. Thank you.

20 Good morning Chairperson.

**CHAIRPERSON:** Good morning. You can just start off by placing yourself on record.

**ADV MANARA ME:** Chairperson I am Manara ME.

**CHAIRPERSON:** Yes.

**ADV MANARA ME:** I am instructed by Maringa Attorneys.

**CHAIRPERSON:** Yes.

**ADV MANARA ME:** And we both then appear for Brigadier Nyameka Xaba.

**CHAIRPERSON:** Yes.

**ADV MANARA ME:** Chairperson should have had – there is an application that has been prepared requesting that the matter be postponed.

**CHAIRPERSON:** Yes.

**ADV MANARA ME:** In order to allow some time for him to  
10 get better.

**CHAIRPERSON:** Yes. I – I saw correspondence but I have not seen the – the substantive application. If I could have that

**ADV MANARA ME:** Yes Chairperson I am just ...

**CHAIRPERSON:** Even – I understand there is a substantive application?

**ADV MANARA ME:** Indeed, there is Chairperson and.

**CHAIRPERSON:** Ja okay.

**ADV MANARA ME:** And you will be addressed in that  
20 regard.

**CHAIRPERSON:** Okay. Thank you.

**ADV HULLEY SC:** Thank you Mr Chair. Mr Chair the substantive application has only just been deposed. The affidavit has only just been deposed to and handed to me and that is the copy I have handed up to you.

**CHAIRPERSON:** Oh okay.

**ADV HULLEY SC:** It has been deposed to as I understand it by Mr – Brigadier Xaba’s attorney because he was not able to go and make contact with him in order to take the oath.

**CHAIRPERSON:** Okay.

**ADV HULLEY SC:** Or to administer the oath.

**CHAIRPERSON:** Okay. That is fine. Where is this person who is supposed to sanitise before – let him sanitise before you – you go there.

10 **ADV MANARA ME:** Chairperson if I were to then briefly take you through the application.

**CHAIRPERSON:** Yes.

**ADV MANARA ME:** What is stated there Chairperson is that he is aware that he was to testify here however on Sunday that is Sunday the 26<sup>th</sup> he experienced some pains which were later confirmed as to be symptoms related to Covid-19. He approached a doctor who then confirmed the symptoms to be as such and then directed that he should undergo testing and in the meanwhile isolate himself. There is also then an  
20 indication of an outbreak in the offices where he works and there has been a couple of cases confirmed in that regard. And it seems then that the suspicion is that he might have contracted it from that set of facts.

**CHAIRPERSON:** Yes.

**ADV MANARA ME:** And on those basis Chairperson we

request a postponement.

**CHAIRPERSON:** Yes.

**ADV MANARA ME:** And we had discussed the possibility of a matter standing down to enable the results to come out which we estimate to be by no later than Friday.

**CHAIRPERSON:** Yes.

**ADV MANARA ME:** And then after you should then be in a position to decide how to deal with the matter going forward.

**CHAIRPERSON:** Yes.

10 **ADV MANARA ME:** Thank you Chairperson.

**CHAIRPERSON:** No that is fine. It does sound like a genuine case and that there is a need for him to isolate himself of course. Even the building where he works, I think there is a notice to close it down.

**ADV MANARA ME:** That is indeed the position.

**CHAIRPERSON:** Or something for the time being.

**ADV MANARA ME:** Yes it has been closed.

**CHAIRPERSON:** Yes. Yes. No that is fine. I think what we – I will postpone the hearing of his evidence to a date still to  
20 be determined and as soon as possible let the commission know what his position is so that a date can then be arranged. Or it may be that we will arrange the date anyway and if – I mean it will not be too close so it will allow him enough time to recover in case the results are positive. And then if for some reason there is still a problem with the next

date then we will take it from there.

**ADV MANARA ME:** Thank you Chair.

**CHAIRPERSON:** Yes. The hearing of – is it Brigadier or Major General?

**ADV MANARA ME:** It is Brigadier.

**CHAIRPERSON:** Ja. The hearing of the evidence of Brigadier Nyameka Xaba is postponed to a date that will be determined in due course in the light of his situation as described in his affidavit.

10 **ADV MANARA ME:** Thank you Chairperson.

**CHAIRPERSON:** Thank you. And you are excused.

**ADV MANARA ME:** Thank you.

**CHAIRPERSON:** Thank you. Sorry. I saw Mr Nhleko's hand being up earlier on. Has the need fallen away?

**MR NHLEKO:** No Chair good morning.

**CHAIRPERSON:** Ja good morning. Yes.

**MR NHLEKO:** I may as well declare Chair that I am still on the good side of the law. But indeed, the need has not fallen away Sir. Yes I would still like to address the Chair in  
20 respect of two particular matters.

**CHAIRPERSON:** Oh okay.

**MR NHLEKO:** Yes.

**CHAIRPERSON:** Okay alright. Okay.

**MR NHLEKO:** Yes I would like that opportunity Sir.

**CHAIRPERSON:** Okay no that is fine.

**MR NHLEKO:** Thank you very much.

**CHAIRPERSON:** Mr – let me hear Mr Hulley are you ready that we start with what Mr Nhleko wishes to raise or would you like to...

**ADV HULLEY SC:** I was not aware of any...

**CHAIRPERSON:** Deal with something.

**ADV HULLEY SC:** Pardon me Mr Chair. I was not aware something specific but he is at liberty to proceed.

**CHAIRPERSON:** Ja okay. Go ahead Mr Nhleko.

10 **MR NHLEKO:** No thank you very much Mr Chairman. I do so precisely Chair because I am here to present my evidence but largely with my commitment and a view that I also by all means need to try and assist the commission to arrive at a better understanding of the matters at hand and so on.

Now the – yesterday – it should have been yesterday's proceedings

**CHAIRPERSON:** Well maybe before we proceed.

**MR NHLEKO:** Yes.

20 **CHAIRPERSON:** I just confirm that the oath you took yesterday continues to apply today.

**MR NHLEKO:** Yes it does.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** Thanks very much.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** Yesterday during the proceedings we got to a



point where we – and I think at some point the Chair also asked very pointedly the whole question of what – where the reporting lines and I think it is during the time when we trying to figure out you know the issues of sequencing relating to the correspondence and the interaction between myself then as Minister and the former Executive Director of IPID Mr McBride.

Now the starting point then of course I have had to try and think and recall some of the issues. And I still stand  
10 by the view that says given the number of years in between the role that I had played and now it is almost impossible to recall everything – every piece – bits and pieces of the happenings then.

However, I have no basis for instance in regard to the correspondence of the 24<sup>th</sup> and the 26<sup>th</sup> November. I have no basis to then say I do not either identify nor trust that those pieces of correspondence indeed all it does it establishes that there was an interaction on my side for an example requesting IPID to surrender the docket and certain  
20 information relating to the renditions case.

I think it is important to stress that that point has been articulated as the eagerness of the Minister to interfere with the independence of IPID. And that is incorrect. Precisely as I had answered to the Honourable Chair when he posed this question. What were the reporting lines? The

reporting lines were direct either IPID Executive Director reports to the Minister of Police.

But also, there are provisions in the IPID Act I think it is Section 7(12) as you know also Section 28(1) which entitles the Minister to, he ask for any information pertaining to the work of IPID or the Executive Director and so on. So I think at that point you know it is important because then it has got to relate to this question that the Chair wanted to be clarified by in terms of the – the reporting lines.

10           And I think sequentially there was a need for that in the light of the allegations of the two reports. And also, what had been alleged as the withdrawal of the docket from the National Prosecuting Authority. So it became important because it was in the context of the ongoing work that I had on the one hand assigned to the Reference Group and they had produced a particular report at some point and of course there was a need also for further investigation to clarify ourselves about you know what happened, how it happened and why it happened and so on. And then decide in terms of  
20 what it is that institutionally from an accountability point of view we therefore needed to do an undertaking.

So that is in respect of that issue. I think the – the second one that I would also like to address the Chair about relates to – there are two reports. In fact, I – I battled to sleep you know when I reflected on the articulations of the

Chair last night. Wherein the Chair posed – poses this. Of course, I think there is a question not necessarily is a statement and say, but what is the problem with the signing of the two reports? Then I thought maybe there is a need to try and clarify this issue and I hope I would assist in this – in that regard.

Now IPID by law is to investigate the conduct of the police. But that investigation can also split into two ways. It could be relating to investigating the police for acts of  
10 misconduct. Okay. But it could also be police in relation to criminal crime and criminal investigation and so on. In this instance we are talking about a criminal investigation undertaken by IPID signed off in January the 22<sup>nd</sup> of 2012 if I am not mistaken. No 2014 it should be.

Now – and it is not just any other report – it is not just any other report it is a report that was a product of investigating by – investigation – sorry by a chief investigator who then signs it off and then refers it to the National Prosecuting Authority for a decision to prosecute  
20 and that is in January.

Now there is no provision either by law or even convention for that matter that you would then have a so called second report which in itself does not nullify the first report nor the withdrawal of that report for an example.

Having an equal or a similar status with the National

Prosecuting Authority in other words you have the report of the 22<sup>nd</sup> and the report of the 18<sup>th</sup> March with similar more or less similar content and so on but at a closer look you can clearly see that there has been tampering with evidence contained therein.

Now - so it is not a report that corrects the cosmetics and grammar and language and so on. The second report. It is not a report that does that. All it did it blacked out material evidence with the view to influence the  
10 recommendations that they had. And I think that is where the fundamental problem is.

Now I am raising this thing precisely because I think we should appreciate that you have a legislative arrangement on the one hand between IPID and the National Prosecuting Authority in terms of the referral of such reports. On the other hand, there is administrative responsibility and that administrative responsibility lies with the Chief Investigator to sign off that report and recommend it to the NPA. The small thing that I am probably – forgetting to  
20 mention is that insofar as the criminal investigations it is usual practice that the National Prosecuting Authority would assign a prosecutor and or prosecutors to assist IPID in an investigation.

Okay but at some point, they have got to step off from that particular exercise. In this instance it was

Advocate Mosing an Advocate Moletse I think of the NPA who were assigned to this particular investigation to assist IPID in the production of the investigative report of January 22<sup>nd</sup>.

Now the anomaly is this then. Is that when you – when we engaged with the National Prosecuting Authority particularly these respective Advocates, they did not know anything about the second report.

Now if indeed the second report was a valid one as it  
10 has been claimed for an example then these – the National Prosecuting Authority and particularly Mr Mosing and Moletse would have been in the know of the production of that report. Okay. So – and that is where the disjuncture in a sense lies in. So – and that it – it should be understood in that context because I think the misunderstanding is that when we talk about the second report visa vie the first report it is you know I think there is a – there is a view that wants to say, no those were just grammatical sort or changes and so on it is not true. But the fact of the matter is that and I  
20 will show it here that you distinctively in the body of the two reports have deletions – you know have deletions.

So if – if anyone of us institutions of state on matters such as this we will want to perpetuate that kind of narrative then I think we must accept that the South African society is not secured. Because if you are going to have agencies of

state that can willy nilly interfere with the investigative reports and processes and so on and alter and tamper there with a view to change recommendations at the end of such reports then you are not – that is not going to be a public benefit insofar as matters of finance, justice and humaneness for an example.

So that is largely the problem. So I thought let me just clarify with this particular matter because I think there has been a lot of misunderstanding around it and I think it  
10 would be of benefit to the proceedings of the commission that we begin to also delve into the issue of the two reports. Because even in the public mind the question is, what are these two reports that we keep on speaking about and what is the difference between the two of them? And how come when we came across a situation such as that? I sincerely do thank the Honourable Chair to grant me this opportunity to try and clarify these particular matters.

Thank you – thank you very much Chairperson.

**CHAIRPERSON:** No that is fine. Indeed that is a very  
20 important part of what the commission wants to look at in relation to what Mr Khuba or Mr McBride and Mr Khuba may have said in relation to your involvement in regard to the reports. I think that Mr Hulley is moving towards that issue so I will allow him to do that. I think that we must deal with that issue quite properly because is if you – if you did watch

when Mr McBride and Mr Khuba gave evidence you would have seen that I have certain things that I did not understand which I would like to be dealt with with regard to every witness including you who comes here who was involved. Give that witness an opportunity to enlighten me and make me understand whatever I might not understand because when you are not involved in the situation you might not see things in the same way as somebody who is involved. But it is important for me to articulate what my areas of concern

10 are when I have areas of concern. Because that gives the witness – that gives you the opportunity to address those concerns head on so that if after you have addressed them, I still do not understand it should not be because you did not get a chance to address them. It should simply be because you did your best and for whatever reason maybe I still do not understand. So it is important. But I just want to mention that with regard to one of the issues you have raised I connected with a question I asked yesterday where I also referred to the Independence of the – of the IPID. The

20 idea was simply to say to the extent that there is some independence on the part of IPID one needs to understand the extent of that independence *vis-a-vie* the Minister. So that is why I was saying what are the reporting lines so that one can see to what extent – how the relationship is supposed to work? So – but as I say I think Mr Hulley is

moving towards a point where we can engage with that area of the – of the reports quite in-depth then we can deal with it. But if there is something you think should not wait until that point you can deal with it now.

**MR NHLEKO**: No thank you very much. You know I really do beg your indulgence also in this regard. I forgot one small thing.

**CHAIRPERSON**: Ja.

**MR NHLEKO**: But you also you know are mentioning a  
10 critical part around the issue of independence and I think we will get to a point also to take into account the reflections as well as the subsequent sort of order by the Constitutional Court in regard to the issue of independence. Because I think it is a crucial point.

**CHAIRPERSON**: Yes.

**MR NHLEKO**: Now the – the one thing I forgot to deal with when dealing with this thing and apologies for forgetfulness is that we should be alive all of us to the fact that people died and died through allegedly agencies of state that were  
20 supposed to uphold the law. And if – I think if we fail whether it is institutions or state and South Africans in general to be alive to that fact then that would mean we are losing our humanity in a sense. And I think we should when we deal with the question of the two reports we should know that between the question of the – of the two – of the so



called two reports they are human lives – people that really died regardless of whether they were guilty of any other whatever and so – but they died in the hands of state agencies and so forth.

Now I am raising this point Honourable Chair because I have heard a disturbing articulation and in fact this articulation I also even picked up – picked it up not only in Mr McBride’s affidavit but also even in the correspondence of the commission when they wanted me to forward reports  
10 that were produced by – by the Reference Group there is a reference to something called the so called Rendition Case.

Now I have a problem with that articulation because rendition took place it is not so called. There was an investigation. The NPA was involved and so on at some point so it is established, it is a fact – it is factual it took place. There are statements too in that regard sworn to by different individuals who also played a role in such an exercise and so on. So it is not so called it is factual.

But if we were to continue with the view that says it  
20 is so called so we must also accept that we shall develop a concept called so called deaths because there were people that died. So we will then say you know this so called deaths and so forth and I do not think we can get to that point. For me it bothers me from a conscious point of view that we cannot begin to develop concepts and notions of that

nature particularly when we are dealing with human lives.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** And that is a point that I forgot to also include in the question of the two reports.

**CHAIRPERSON:** Ja no I will – I do not want us to – to spend more time – a lot of time on it. I hear what you say but I remember – I remember that some people say when somebody has been arrested by the police and it is said that the person is a suspect and they saw that he or she killed  
10 somebody they say they do not understand why he is called a suspect because we know he killed so and so. He killed so and so why is he called a suspect. So – but I do not want us to spend time on it. Let us move on. I understand where you come from and ja okay alright. Mr Hulley.

**ADV HULLEY SC:** Thank you Mr Chair. But without going into too much in relation to the so called Rendition Case there was a docket opened in that matter which was ultimately handed over to IPID you aware of that?

**MR NHLEKO:** Which was ultimately handed over to NPA.

20 **ADV HULLEY SC:** To IPID. There was a docket in respect of the Rendition Matter.

**MR NHLEKO:** Hm.

**ADV HULLEY SC:** That docket was ultimately handed over to IPID for further investigation and IPID then ran with that docket in other words continued to investigate the

allegations that had been made in respect of the Rendition Matter.

**MR NHLEKO:** Hm. Chair I am aware of an investigation undertaken by IPID and subsequently that investigation referred to the National Prosecuting Authority.

**ADV HULLEY SC:** So the case that that relates to. That the case has a case number and it is got investigators in that. That case is the official case number that is assigned to it but in addition, the reference to the so-called Rendition Case  
10 Mr Nhleko is to the fact that the media had referred to it as the Rendition Matter or the Rendition Case.

**MR NHLEKO:** I hear you. I do not seem to get you Mr Hulley. Are you saying we called it so-called because the media referred to it as Rendition?

**ADV HULLEY SC:** The official type or the official... the official reference to it is the reference to the case number in respect of that being opened. That is the official.

**MR NHLEKO:** Okay.

**ADV HULLEY SC:** So other... everything else is to the so-  
20 called Rendition Matter because everybody understands what that is referring to there. Do you understand that?

**MR NHLEKO:** No, I do not.

**ADV HULLEY SC:** Okay. Well, ...[indistinct] ...[intervenes]

**MR NHLEKO:** ...[indistinct]

**ADV HULLEY SC:** ...let us move on.

**MR NHLEKO:** Ja, okay.

**ADV HULLEY SC:** Now you have referred to two issues that you would like to raise. The first issue was in respect of Section 7(12) of the IPID Act.

**MR MOKHARI SC:** No, Chairman just to correct the ...[intervenes]

**CHAIRPERSON:** Sorry?

**MR MOKHARI SC:** Yes, if you check-in so that the witness is not... so that an incorrect proposition is not put to the  
10 witness.

**CHAIRPERSON:** H'm.

**MR MOKHARI SC:** The matter has been referred to official as Rendition Matter and we can take it from the report. So I am looking at official documents. The first report is the report of 25 June 2012 of the... the then secretariat.

**CHAIRPERSON:** I am trying to make sure that we do not spend time on whether it should Rendition Matter or so-called Rendition Matter, but I accept Mr Mokhari, if the document or report or docket referred to as the Rendition  
20 Matter, no impression should be created that the document or report said so-called if it did not say so-called.

**MR MOKHARI SC:** Yes, indeed. I was just correcting that ...[intervenes]

**CHAIRPERSON:** Just correcting that. Yes.

**MR MOKHARI SC:** ...that the official documents

...[intervenes]

**CHAIRPERSON**: Ja, ja.

**MR MOKHARI SC**: ...referred to it as Rendition.

**CHAIRPERSON**: Yes. [laughs]

**MR MOKHARI SC**: Yes, yes. And I have a report of 25 June 2012.

**CHAIRPERSON**: Yes.

**MR MOKHARI SC**: ...of the Civilian Secretariat and the report of the Reference Group of 22 November.

10 **CHAIRPERSON**: Okay I simple say for present purposes, I do not have any problem with somebody who refers to it as the so-called Rendition Matter because they might not be sure whether it falls within... what happened falls within what is referred to as Rendition or they might not even know what Rendition means. So I do not have a problem with that. Anyone who calls it a Rendition Matter, that is fine as well.

**MR MOKHARI SC**: Thank you, Mr Chair.

**CHAIRPERSON**: Okay let us move on.

20 **ADV HULLEY SC**: Now Mr Nhleko, you referred to Section 7(12) of the IPID Act to make the point, as I understand it, that there is in fact a report in the line between the... between IPID or the Executive Director of IPID and the minister's office. Do I understand that correctly?

**MR NHLEKO**: Yes, you do.

**ADV HULLEY SC**: So let us consider Section 7(12). Section

7(12) says... and Mr Chair it should be in the legislation bundle. We have marked it Exhibit Y Legislation and Authorities Bundle.

**CHAIRPERSON:** Will the witness... I think the witness should have the benefit ...[intervenes]

**ADV HULLEY SC:** He should have a copy.

**CHAIRPERSON:** ...of being given the same thing. They will then give it ...[intervenes]

**MR NHLEKO:** No, it is fine. I will listen.

10 **CHAIRPERSON:** You know? You will follow?

**MR NHLEKO:** I will follow, yes.

**CHAIRPERSON:** Okay. Alright. Continue... just read it Mr Hulley. You will ...[intervenes]

**ADV HULLEY SC:** Thank you, Mr Chair. It says the following:

“The executive director must at any time when requested to do so by the minister or parliament report on the activities of the directed(?) to the minister or parliament...”

20 Is that the provision that you are relying upon?

**MR NHLEKO:** Yes, that is what the... I pointed(?) out.

**ADV HULLEY SC:** Now of course, he is required under this section to report to you on the activities that have been conducted. It might be even an activity related to a specific matter as in the... in respect of the Rendition Matter.

Now, it certainly does not... unless you... unless you tell me otherwise, Section 7(12) does not require you or require the executive director to hand over a docket to the minister or to parliament. Would that be fair to say?

**MR NHLEKO:** No, I think that is a matter of your interpretation versus my interpretation really. We may decide Chair whether we want to spend the whole day trying to unpack the conceptual understanding if... what that section is.

10 **CHAIRPERSON:** It depends on the point that Mr Hulley wishes to explore. Mr Hulley?

**ADV HULLEY SC:** Thank you, Mr Chair.

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:** The minister as an executive function relative to the SAPS, relative to IPID. Would that be fair to say?

**MR NHLEKO:** The Minister of Police in that ministerial portfolio a ...[indistinct] has got institutions that report directly within that particular portfolio to the executive  
20 authority there, who then is termed as the Minister of Police.

**ADV HULLEY SC:** So I am not sure if I entirely follow. You are saying that the minister has different portfolios reporting to the minister?

**MR NHLEKO:** The Minister of Police is for, amongst other things, made up of the South African Police Service, DPCI,

IPID, the Private Security Industry Regulatory Authority, as well as, the Civilian Secretariat for Police which is basically housed within the administrative section of the ministry and so on. So that is my understanding of that institutional arrangement.

**ADV HULLEY SC:** No, no, no. That is fair enough. But the point is that it is an executive function. The ministry is a political appointing, correct?

**MR NHLEKO:** Correct.

10 **ADV HULLEY SC:** And the operational matters get done or the operational head of the SAPS ...[intervenes]

**MR NHLEKO:** Correct.

**ADV HULLEY SC:** ...would be the National Commission of Police.

**MR NHLEKO:** Correct.

**ADV HULLEY SC:** That be fair to say?

**MR NHLEKO:** No, that is fair.

**ADV HULLEY SC:** Then insofar as dockets are concerned, when a docket... as far as a docket is concerned, when an  
20 investigation needs to be conducted or if a docket needs to be given to any person at operational level, that docket must go to the... or can go to the National Commissioner.

**MR NHLEKO:** No, not insofar as IPID is concerned and I think we need to understand the mandate of IPID *visa vie* the police service. You would not emphasise a situation where



then the police are handed reports that are about them. It would not make sense from the side of IPID because IPID investigates the conduct of the police in respect of criminal matters and other areas of previous conduct.

**CHAIRPERSON:** They would investigate... they could investigate even the National Commissioner?

**MR NHLEKO:** They would.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** They would.

10 **CHAIRPERSON:** Yes.

**MR NHLEKO:** They... that is what the law establishes.

**CHAIRPERSON:** Ja. He falls within the jurisdiction in terms of the investigation as well.

**MR NHLEKO:** Exactly, exactly. Correct. Correct, yes.

**CHAIRPERSON:** Yes. Okay.

**ADV HULLEY SC:** Well, let us just go through the provisions of Section 7 and it actually would be useful ...[intervenes]

20 **CHAIRPERSON:** I am sorry. Just to complete the point which I think you seek to make. The point you seek to make is, IPID has jurisdiction to investigate conduct by all people who are police officers under SAPS or maybe it goes beyond that but ...[intervenes]

**MR NHLEKO:** No, it does goes beyond that.

**CHAIRPERSON:** Yes, okay.

**MR NHLEKO:** It is all police officers in the South African

Police Service and municipal police services.

**CHAIRPERSON:** Ja, no-no. No, no.

**MR NHLEKO:** Yes.

**CHAIRPERSON:** I know about the municipal.

**MR NHLEKO:** Okay.

**CHAIRPERSON:** But because you did not... you did not... you are not responsible for them, I am not talking about them.

**MR NHLEKO:** H'm.

10 **CHAIRPERSON:** I was talking in terms of SAPS that you say it is only police officers. Clerks and other people would not fall within that... within their jurisdiction. Is it not? Administrative staff who are not police officers.

**MR NHLEKO:** They are admin staff that are defined outside of the South African Police Act.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** In other words, they are part of the Public Service Act by definition.

**CHAIRPERSON:** Yes. Ja.

20 **MR NHLEKO:** But you could also find that when admin staff that are classified under the South African Police ...[intervenes]

**CHAIRPERSON:** Ja ...[intervenes]

**MR NHLEKO:** Exactly.

**CHAIRPERSON:** ...who... if you are police officer

...[intervenes]

**MR NHLEKO**: Yes.

**CHAIRPERSON**: ...but performing...[intervenes]

**MR NHLEKO**: Admin ...[intervenes]

**CHAIRPERSON**: ...admin stuff, you would still fall under them.

**MR NHLEKO**: Yes, you would.

**CHAIRPERSON**: Ja, but if you are not a police officer, then you would not fall under them even though you are within

10 SAPS.

**MR NHLEKO**: Yes.

**CHAIRPERSON**: Ja.

**MR NHLEKO**: That is correct Chair.

**CHAIRPERSON**: So the point you are making is that the IPID had jurisdiction to investigate even the National Commissioner.

**MR NHLEKO**: H'm.

**CHAIRPERSON**: And that there is a reason why the executive director reports to the minister.

20 **MR NHLEKO**: Correct.

**CHAIRPERSON**: And the reason is, if they were to report to the National Commissioner, there would be a serious risk that the National Commissioner would be the subject of investigation of people quite senior close to him.

**MR NHLEKO**: H'm.

**CHAIRPERSON:** And that is not an ideal situation and that is why the law says they must report to the minister.

**MR NHLEKO:** Yes, I think that is a correct understanding. Otherwise, their work will be severally polluted.

**CHAIRPERSON:** Because... yes.

**MR NHLEKO:** Yes.

**CHAIRPERSON:** Because the minister is not... does not fall under their jurisdiction. He ...[intervenes]

**MR NHLEKO:** H'n-'n.

10 **CHAIRPERSON:** He is not a police officer.

**MR NHLEKO:** Correct.

**CHAIRPERSON:** Yes, okay.

**MR NHLEKO:** That is correct.

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:** Thank you, Mr Chair. Mr Nhleko, thank you very much for that because in fact you are in part right as far as that is concerned. I would like you to consider Section 7(4) of the IPID Act.

**MR NHLEKO:** H'm. Okay. No, go ahead sir ...[indistinct]

20 **ADV HULLEY SC:** If you look at ... there is a file ...[intervenes]

**MR NHLEKO:** I make my attempt to listen.

**ADV HULLEY SC:** If you go to file Divider 8.

**CHAIRPERSON:** I think he is quite happy that you go ahead and put the question.

**MR NHLEKO:** H'm.

**CHAIRPERSON:** He will be able to understand.

**ADV HULLEY SC:** Thank you, Mr Chair.

**CHAIRPERSON:** And if he has to look at the act, he will feel free to do so.

**ADV HULLEY SC:** Section 7(4) says the following:

10           “The executive director must refer criminal offences, revealed as a result of an investigation, to the National Prosecuting Authority for criminal prosecution and notify the minister...”

          Have you got the provision sir?

**MR NHLEKO:** Ja-no, I am listening. I hear you very well.

**ADV HULLEY SC:**

          “...and notify the minister of such referral...”

**MR NHLEKO:** H'm?

20           **ADV HULLEY SC:** So what the minister must be informed of is the fact that IPID has conducted an investigation. IPID has come to the conclusion that the investigation has revealed the commission of an offence and IPID must then refer the matter the National Prosecution Authority for prosecution and must merely advise or notify the minister of such referral.

**CHAIRPERSON:** Sorry, Mr Hulley. I am still try to find where the ...[indistinct] ...[intervenes]

**ADV HULLEY SC:** It is page 152 of the bundle. It is file

Divider 8. It is part of the ...[intervenes]

**CHAIRPERSON:** One, five, two?

**ADV HULLEY SC:** The one, five, two of that bundle.

**CHAIRPERSON:** Legislation and Authorities?

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

**CHAIRPERSON:** Okay thank you.

**ADV HULLEY SC:** Thank you, Mr Chair.

**CHAIRPERSON:** And you are referring to section...?

10 **ADV HULLEY SC:** It is Section 7(4).

**CHAIRPERSON:** Okay.

**ADV HULLEY SC:** So what you as the minister have to be informed of is the fact that IPID has made a referral to the National Prosecution Authority or prosecution of a case that it has investigated and that it believes or that IPID has come to the conclusion that the case should be prosecuted.

**MR NHLEKO:** H'm.

**ADV HULLEY SC:** Not provide you with a docket but if you... that... would it be... would it be fair to say that Section  
20 7(4) does not suggest in any way that a docket has to be provided to you?

**MR NHLEKO:** No. The... generally speaking, in the application of institutional instruments, there are ideal situations, but in this instance Mr Hulley, you might be missing one particular point.

The one particular point is this. You already had allegations of misconduct levelled against the very same IPID. So, in other words, ...[indistinct] IPID was “somewhat tainted” because of the issue of tampering, right.

And that matter that is brought to your attention as the executive authority, to then say but there are these allegations of serious misconduct which deals with the question of tampering and/or deletion of material evidence from one report to constitute another report. What are you  
10 doing about that?

**ADV HULLEY SC:** Sure.

**MR NHLEKO:** But...[intervenes]

**ADV HULLEY SC:** Let us just... Sorry.

**MR NHLEKO:** So I am saying. Yes, indeed. In fact, this provision was applicable and it applied. You know, you would always get reports about, you know, as minister about, this is the amount of work that we are doing. This is about the case and so on and so on. So you will get such reports.

**CHAIRPERSON:** H’m.

20 **MR NHLEKO:** But there was a specific... a point... a specific problem and that is the question of the two reports.

**CHAIRPERSON:** H’m. Yes.

**ADV HULLEY SC:** I am really concerned... and I appreciate that explanation and we will get to that in a moment. I am very concerned with the question of Section 7(4). It grants

a... it places an obligation upon IPID to provide the minister with the docket.

**MR NHLEKO:** It makes a provision for submission of information.

**ADV HULLEY SC:** To notify you of the fact of the referral.

**MR NHLEKO:** No, I am talking about 7(12).

**ADV HULLEY SC:** [Indistinct]

**MR NHLEKO:** Information that the minister will require.

**ADV HULLEY SC:** Sure.

10 **MR NHLEKO:** H'm.

**ADV HULLEY SC:** No, what I am trying to suggest is. I have to take it step-by-step. And I certainly will not be unfair to you where I will try to compel you to answer a question in isolation but I just want to go through it step-by-step.

**MR NHLEKO:** Yes.

**ADV HULLEY SC:** And once we are finished with the section, I will give you an opportunity to tell me, where you find the provision that allows you or impose an obligation  
20 upon IPID to provide the minister with the docket. Would that... is that a fair way in which to deal with it?

**MR NHLEKO:** No, I am listening sir. Yes, go ahead.

**ADV HULLEY SC:** Pardon me?

**MR NHLEKO:** No, I am saying I am listening.

**ADV HULLEY SC:** Okay.



**MR NHLEKO:** Go ahead.

**ADV HULLEY SC:** So you will be satisfied that Section 7(4) is not that provision that I am... that imposes an obligation upon IPID to provide the minister with a docket?

**MR NHLEKO:** It is a matter of interpretation, sir.

**ADV HULLEY SC:** Okay. So let us go to section ...[intervenes]

**CHAIRPERSON:** But maybe let us put it this way. It is your understanding of it Mr Nhleko, that it includes a docket as  
10 part of what the executive director must or may send to the minister?

Is that how you understand it? Is it how you understood it at the time? Or you do not have a specific understanding of it but you are not sure whether you would agree with the interpretation that Mr Hulley puts forward?

**MR NHLEKO:** No, Chairperson as I have eluded earlier to this point, earlier on. You had a specific problem and a very prudent problem.

You, therefore, require all the necessary information to  
20 enable you to as an executive authority to delve into the identified issues and deal with the allegations.

Now, I am just making an example. If you, for an example, you needed to evaluate and establish whether there are two reports and is it the 22<sup>nd</sup> versus the 18<sup>th</sup> of March and so forth, you... the issue of the docket

would also enable you to be able to look into that, okay.

And how... and what are the issues that constitute the issue at hand, you know. Because that is what the issue of the ...[indistinct]. That is how it would be useful to yourself as a person who is trying to look into what the facts are in relation to that.

But if you choose to be narrowly administrative, you talk of the docket as the docket and the file that moves from one place to another and that is it.

10 But if it is in relation to establishing the facts and the happenings about the whole question of what happened in this particular matter, you will definitely need to look into the content and statements and everything else that constitutes that particular document.

**CHAIRPERSON:** Ja, you see. I understand what you are saying but I think the problem is that Mr Hulley is not there yet.

**MR NHLEKO:** Okay.

20 **CHAIRPERSON:** He is at a prior stage of simple seeking to establish what your own understanding is of Section 7(4). Of course, you might have an understanding of Section 7(4) and you might say, "This is my understanding of Section 7(4). This is how I understood it. Whether my understanding is right or wrong but this is how I understood it at the time. I am not a lawyer. I was a minister. This is how I understood

it”.

And then Mr Hulley can say what he wants to say. If he says, “No, it is wrong. It is not... You are not a lawyer”. Okay. But you may have had an understanding of it.

But it is also possible that you did not necessarily have an understanding of it. In which case, all you say is: “Look, I am not sure if I had an understanding of it. Or I am not sure that I applied my mind to what it means or I knew what it meant. But if you ask me for why I asked for certain  
10 information, I can explain to you why I asked for that information”.

So at this stage, he is just seeks to establish ...[intervenes]

**MR NHLEKO:** Okay.

**CHAIRPERSON:** ...whether you do have a certain understanding of what it means. And then, once he knows that, he can move forward and then maybe go to the stage that you have dealt with already.

**MR NHLEKO:** H’m. No, thanks very much Chair. But I  
20 really do believe that I have responded to that question.

**CHAIRPERSON:** Yes, yes.

**MR NHLEKO:** Of course, it may not be the legalistic kind of ...[indistinct] ...[intervenes]

**CHAIRPERSON:** Ja. No, no, no. That ...[intervenes]

**MR NHLEKO:** You know. Because, I think as you just say,

you know.

**CHAIRPERSON:** Mr Hulley.

**ADV HULLEY SC:** Thank you, Mr Chair.

**MR NHLEKO:** [Indistinct] a friend of the...

**ADV HULLEY SC:** The... you obviously had an understanding of Section 7(12) and what sections... what powers Section 7(12) ...[intervenes]

**MR NHLEKO:** Right.

**ADV HULLEY SC:** ...invested in you or what obligations  
10 based on IPID. The question I would like to peruse is, whether that was the understanding you had at the time i.e. in 2014? Or is this an understanding that you... that has come to you subsequent to 2014?

**MR NHLEKO:** No, I also do think I have responded to that question Chair. I have cited the... that relevant provision, as well as, Section 28 of the same act. The one thing that I may not necessarily had at my disposal is also the IPID Regulations because they also do talk to that matter.

**ADV HULLEY SC:** You know, I think my question was a  
20 relatively simple one. If you are unable to recall, you are welcome to say that. If you if you did not... if you had a specific understanding at that point in time but of course, then you would say that.

If you had an understanding that it only became apparent to you later on, as you have gotten involved more

and more court cases around these issues then, of course, you are welcome to say that as well.

The only question I am asking you is, was that your understanding in 2014 when you were having interaction with IPID on the matter of the Rendition docket?

**MR NHLEKO**: I have responded to that question sir.

**ADV HULLEY SC**: Okay.

**CHAIRPERSON**: You must respond again Mr Nhleko so we can make progress

10 **MR NHLEKO**: No, I responded to that question Chair.

**CHAIRPERSON**: Ja, what was your response?

**MR NHLEKO**: That the issue of asking for information on the side of IPID is and was informed by the relevant section in the IPID Act and I cited section ...[intervenes]

**CHAIRPERSON**: One second Mr Nhleko. There was a time yesterday where I could hear you very clearly. I do not know whether you were coming closer to the mic or not.

**MR NHLEKO**: Oh.

20 **CHAIRPERSON**: I see the aircon is also making some noise. Ja, if you come closer to the mic, I think I can hear you clearly. Will you just start ...[intervenes]

**MR NHLEKO**: Apologies Chair and ...[indistinct]

**CHAIRPERSON**: It is not your fault.

**MR NHLEKO**: Yes.

**CHAIRPERSON**: Just start... just answer again. What was

your response?

**MR NHLEKO**: And may I also be congratulated by its Chair for looking at him most of the time, this time around.

**CHAIRPERSON**: [laughs]

**MR NHLEKO**: [laughs]

**CHAIRPERSON**: I think the record will reflect that you are looking at the Chair today ...[intervenes]

**MR NHLEKO**: Yes. [laughs]

**CHAIRPERSON**: ...unlike yesterday. [laughs]

10 **MR NHLEKO**: Yes ...[indistinct] [laughs]

**CHAIRPERSON**: Yesterday you were looking away from the Chair.

**MR NHLEKO**: Ja, now I know. And I had difficulty to swing(?) around the seating and so on. Thanks, ja.

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

**MR NHLEKO**: No, I was saying. Look, I responded to this question Chair. That this very same act was in existence at the time and Section 7(12) and 28(1) of the IPID Act, as well as, regulation... I think it must be Regulation 15, deals with  
20 the issue of information from the side of IPID as requested by the minister as an executive authority. So I think that clarifies that particular ...[intervenes]

**CHAIRPERSON**: Yes. Effectively, if your response that those sections to which you have referred in the IPID Act and the regulation that you have referred to ...[intervenes]

**MR NHLEKO:** Regulation 15, yes.

**CHAIRPERSON:** ...entitles the minister to request certain information from the ...[intervenes]

**MR NHLEKO:** The executive ...[intervenes]

**CHAIRPERSON:** ...executive director?

**MR NHLEKO:** Yes.

**CHAIRPERSON:** And that information, you say, would include a docket or you are not going that far?

**MR NHLEKO:** I could not get your last part.

10 **CHAIRPERSON:** Ja, I am saying, are you saying that those sections of the IPID Act to which you have just referred and the regulation, entitled you as Minister of Police to request that information from the Executive Director of IPID and the information you could request could include in a specific case a docket?

**MR NHLEKO:** Yes.

**CHAIRPERSON:** Okay.

**MR NHLEKO:** Yes, it would.

**CHAIRPERSON:** Okay.

20 **ADV HULLEY SC:** If I can enquiry from you the view that you held, and we understand you held that view at that point in time i.e. in 2014, was that a view that you had come to on your own or had you sought legal guidance before arriving at that conclusion? In other words, did you seek an opinion from any advocate, attorney or a lawyer?

**MR NHLEKO:** So, how is this relevant Chair?

**CHAIRPERSON:** Sorry, I did not hear that?

**MR NHLEKO:** No, I am saying, how is this question relevant, whether I got an opinion from ...[intervenes]

**CHAIRPERSON:** Well ...[intervenes]

**MR NHLEKO:** ...a particular lawyer or somebody and so on? How is it relevant?

**CHAIRPERSON:** It may be relevant in the sense that if you relied on legal advice you might not be criticised for it.

10 **MR NHLEKO:** [laughs]

**CHAIRPERSON:** [laughs] So those who advised you, may be criticised, you know. But if you it is your own understanding, then you can be asked to explain your understanding.

**MR NHLEKO:** H'm. No, I... it is a nice explanation and interpretation of... of that Chair.

**CHAIRPERSON:** H'm.

**MR NHLEKO:** I am just wondering whether, at the level of political management, those things are ever applicable.

20 [laughs]

**CHAIRPERSON:** Ja.

**MR NHLEKO:** Well ...[intervenes]

**CHAIRPERSON:** Well, you see ...[intervenes]

**MR NHLEKO:** Ja, but ...[intervenes] ‘

**CHAIRPERSON:** Actually, the question might help you Mr



Nhleko. [laughs]

**MR NHLEKO:** [laughs]

**CHAIRPERSON:** The question might help you because ...[intervenes]

**MR NHLEKO:** Yes, yes. Ja.

**CHAIRPERSON:** No, no, no. Well, let me now say because of what. [laughs]

**MR NHLEKO:** [laughs]

**CHAIRPERSON:** Mr Mokhari is laughing.

10 **MR NHLEKO:** Yes, yes.

**CHAIRPERSON:** So I am afraid I am going to ask you to answer the question.

**MR NHLEKO:** Ja. No, no. I will answer the question. It is just that it sounds like the Chair is trying to save me some future troubles.

**CHAIRPERSON:** [laughs]

**MR NHLEKO:** But nevertheless, Chair, in the ministry of which I was, you know, the head, we had – firstly, you had a legal function attached to it, we also had the – I know  
20 that I had legal advisers and so on, I think also the Deputy Minister and so on. So, you know, you would certainly rely on advice when it comes to matters such as this. In other words, legal matters, broadly speaking.

**CHAIRPERSON:** Buy the question would be in regard to this undertaking, was your understanding based on advice?

**MR NHLEKO:** Yes.

**CHAIRPERSON:** Okay, that is the answer, okay.

**ADV HULLEY SC:** So you had actually taken the trouble to seek legal counsel on whether you had the power to do that which you ultimately did do, i.e. to call for the docket from IPID?

**MR NHLEKO:** Yes, sir.

**ADV HULLEY SC:** And the opinion said that you could do exactly what you ultimately did do?

10 **MR NHLEKO:** Yes, I did, sir.

**ADV HULLEY SC:** Okay. And was that internal or external counsel that you sought the opinion from, there is that internal?

**MR NHLEKO:** Yes, it is an internal function.

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:** Okay. Now you then called for the docket and we are talking now about in the year 2014. You called for the docket from IPID, correct? Referred you to the letter of 24 November 2014. I did so yesterday, do you  
20 recall that?

**MR NHLEKO:** Yes, I do.

**ADV HULLEY SC:** And the docket was provided to you.

**MR NHLEKO:** I think it was.

**ADV HULLEY SC:** That is the – it has been the evidence that the docket that had been provided to you, it was the

evidence certainly of Mr McBride that the docket that was provided to you contained the 22 January report but unsigned and the 18 March report signed and I am talking now about the report of IPID into the rendition investigation.

**MR NHLEKO:** No, that is incorrect, the signed report is the report of the 19<sup>th</sup> – no, it is the report of the 22<sup>nd</sup> which was then referred and filed with the National Prosecuting Authority long before Mr McBride assumed the role as  
10 Executive Director of IPID.

Now I accept that also the so-called report was also signed and countersigned by two other individuals as well which, in itself, also maybe at some point talk about it but the report of the 22<sup>nd</sup> was already with the NPA for a decision to prosecute or not to prosecute.

**ADV HULLEY SC:** Sorry, I am not sure if I am following you, I am making a specific proposition. The proposition that I am making to you is this but ...[intervenes]

**CHAIRPERSON:** Yes, I am also not sure if I follow the  
20 point you are making, Mr Nhleko. As I understand the question from Mr Hulley, sought to confirm that what the Executive Director of IPID said to you included the two reports. One - but the one of 22 January was unsigned, the copy he sent to you but the one for 18 March was signed.

**ADV HULLEY SC:** Correct.

**CHAIRPERSON:** So he sought to establish just that, whether you have a recollection that what the executive director gave you included those two reports but the one for 22 January being unsigned. Is that something you remember, is that something you are not sure about?

**MR NHLEKO:** No, I have always had a signed copy [inaudible – speaking simultaneously]

**CHAIRPERSON:** Okay, you have never had an unsigned  
10 copy.

**MR NHLEKO:** The 22 January.

**CHAIRPERSON:** Yes. And the copy that you had, is it one that came to you from the Executive Director, it is not one that came from the NPA or anything like that. In other words, your source was it only the Executive Director?

**MR NHLEKO:** No, that was not the source. It was not the source.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** Remember that I made my own enquiries.

20 **CHAIRPERSON:** Yes, ja.

**MR NHLEKO:** Yes, Chair, on this particular issue and it is a matter that was there before I came in as Minister, and so on, so it was a matter that was also part of the institution then because I am not sure, for an example, at the time when the issue of the report of the 22<sup>nd</sup> was

spoken about is the report that is being altered and so on.

I had no idea about the work that was done before by the Civilian Secretariat, for an example, which led to IPID conducting that investigation which then was concluded on the 22 January. So I am saying it is – you know, through my own enquiries, that is a report that I found.

**CHAIRPERSON:** So there is a report that you found when you came or that you got through your own enquiries.

10 **MR NHLEKO:** Right.

**CHAIRPERSON:** And that report of 22 January was signed, was a signed report.

**MR NHLEKO:** Is a signed report.

**CHAIRPERSON:** Yes. But do you have a recollection whether the Executive Director did provide you with the two reports or it is something you cannot remember?

**MR NHLEKO:** It was only one report and that was the report of the 18<sup>th</sup>.

**CHAIRPERSON:** Of the 18 March?

20 **MR NHLEKO:** Yes, of March.

**CHAIRPERSON:** It did not give you...[intervenes]

**MR NHLEKO:** No, not the ...[intervenes]

**CHAIRPERSON:** Not the 22 January one.

**MR NHLEKO:** Not the 22 January one.

**CHAIRPERSON:** Okay, alright.

**ADV HULLEY SC:** So the 22 January report signed was given to you by – from other sources but the 18 March report was given to you by the Executive Director of IPID. Do I understand that correctly? Okay, let us take it one step at a time.

22 January report, the signed 22 January report was given to you by some source other than the Executive Director of IPID.

**MR NHLEKO:** Okay.

10 **ADV HULLEY SC:** Is that right?

**MR NHLEKO:** Yes, that is correct.

**ADV HULLEY SC:** And can we be specific as to who gave you the signed 22 January report?

**MR NHLEKO:** Look, I instructed members of staff in the ministry to establish the issue of this report, whether we had it in the ministry and so on. Now the ministry, Chair, is made up of various individuals and functions in there, okay? So if you instruct people in the office, they will go different whatever ways to try and establish whether is that  
20 the kind of a thing that can be obtainable within the ministry and so it goes. So that is how it came about.

**CHAIRPERSON:** In other words, does that mean you cannot remember who exactly gave you that report?

**MR NHLEKO:** Yes, I cannot, I mean, there is no way that I would. I mean, you give an instruction for people to try

and find this report. At some point you come back, it is on your desk, you know? It is that kind of thing.

**CHAIRPERSON:** Okay.

**ADV HULLEY SC:** And we are speaking here now because we know that the Executive Director of IPID provided you with the docket and with the signed 18 March report on the 26 November of 2014. So what I am asking, what I would like to know, is when he provided you with that docket and the signed 26 – sorry, the signed 18 March  
10 report, did you already have the first report which was the 22 January report that had been signed?

**MR NHLEKO:** Yes, I did. I did.

**ADV HULLEY SC:** Okay.

**CHAIRPERSON:** And did you – when he gave you, that is the Executive Director of IPID, gave you – furnished you with the 18 March report, was that the first time you laid your hands on the 18 March report or did you have it from other sources already, the 18 March one?

**MR NHLEKO:** Yes, it is possible, it is possible. But,  
20 remember, Chair, that the allegation, as it were, said there was this report which makes different recommendations from the report of the 22<sup>nd</sup> and so on and that needed – of course, needed to do some work around it. So it is very probable that, you know, that was the first time I saw it because I sat with the two reports then having got to look

at what were the said differences as alleged, for an example. Yes.

**CHAIRPERSON:** But are you saying it is very probable that by the time the Executive Director of IPID gave you the 18 March report you already had one or are saying it is very probable that it was the first time that you were laying your hands on the 18 March report when he gave you ...[intervenes]

**MR NHLEKO:** Ja, I am saying it is probable that it was  
10 the first time I laid ...[intervenes]

**CHAIRPERSON:** Your hands on it.

**MR NHLEKO:** My hands on ...[intervenes]

**CHAIRPERSON:** The 18 March report.

**MR NHLEKO:** Yes, the 18 March report.

**CHAIRPERSON:** Okay, no that is fine.

**MR NHLEKO:** Chair, could I – I think there is a famous thing these days that is called a comfort break.

**CHAIRPERSON:** Well, it is the right time.

**MR NHLEKO:** It is a code word for trying to do something  
20 else.

**CHAIRPERSON:** No, it is the right time, we normally take a break at quarter past eleven and it is quarter past eleven. We will take the tea adjournment and we will resume at half past eleven.

**MR NHLEKO:** Thank you, Chair.



**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Let us continue. Your mic, Mr Hulley?

**ADV HULLEY SC:** Thank you, Mr Chair.

**CHAIRPERSON:** Mr Nhleko...

**MR NHLEKO:** Yes, Chairperson.

**CHAIRPERSON:** There is a light next to you, in the event it is dark and you want to read something, I hope it is working, it is there specifically for the witness should you  
10 need it because I have seen in the past that sometimes it can be quite dark and sometimes the witness cannot see when they want to read. So I just want to mention that it is available to you.

**MR NHLEKO:** Thank you very much, Chair, but it is not working. As and when it works I will do what Moses said in Genesis of the Bible. I will inform the Chair accordingly.

**CHAIRPERSON:** Well, maybe during lunch break they will have a look and see why it is not working. Okay, thank you. Mr Hulley?

20 **ADV HULLEY SC:** Thank you, Mr Chair. So if I understand correctly, Mr Nhleko, on the 26 November of 2014 you would at that stage have had two reports, both signed. The first report dated 22 January 2014, the second report dated 18 March 2014. One supplied to you by your source that you are not sure of at the moment but within

your structures within the SAPS. The second supplied to you by IPID directly by Mr McBride. Do I understand that correctly?

**MR NHLEKO**: Yes, I think we – that is what we spoke to.

**ADV HULLEY SC**: Now on the 6 December of 2014 you gave Mr Dramat a notice of intention to suspend him and you ultimately ...[intervenes]

**ADV MOKHARI SC**: Can we correct the date, Chair, it is the 9 December.

10 **CHAIRPERSON**: Okay, thank you.

**ADV MOKHARI SC**: Yes. It is actually recorded in the judgment of Helen Suzman Foundation v The Minister of Police. We will hand it up and then it is very helpful..

**CHAIRPERSON**: Okay. Thank you, Mr Mokhari

**ADV HULLEY SC**: Thank you, Mr Mokhari. Thank you, Mr Chair. At any rate you ultimately suspended him on the 23 December of 2014, correct?

**MR NHLEKO**: I am not sure of the date but it was in December, yes.

20 **ADV HULLEY SC**: Now let us just go back because according to Mr Khuba, his testimony was – and he filed an affidavit to this effect, that on the 6 December of 2014 he was approached by General Berning Ntlemenza who informed him that he should watch the news because there was going to be a hit on Dramat.

Now if I understand your testimony correct, you are disputing the fact that you would have communicated that information to Mr Ntlemeza, is that correct?

**MR NHLEKO:** I just wander as to why would I do that, Chair. I supervised General Dramat directly and that is precisely it. So as to where this thing comes from about General Ntlemeza who then engages with Khuba and they talk about whatever they talk about, I just thought no, I will come into that really.

10 **CHAIRPERSON:** Well, you see, Mr Khuba gave evidence to the effect that he was told by General Ntlemeza exactly what Mr Hulley says, as I recall and that something then came up in - is it on television, Mr Hulley, or not yet?

**ADV HULLEY SC:** Sorry? He later found out that in fact – it was on television.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** That Mr Dramat – sorry, General Dramat, had been – in fact been suspended. That was the 23 December and that he has been placed with General  
20 Berning Ntlemeza.

**CHAIRPERSON:** Yes, I think the question arises from the fact that if the Minister of Police was the one vested with the power to suspend General Dramat...

**MR NHLEKO:** Alright.

**CHAIRPERSON:** ...certainly the Minister of Police is the

one who knows once he has made a decision that he is going to suspend General Dramat. Now if somebody else tells Mr Khuba that something is going to happen to General Dramat – I do not know whether I said we must watch on television or whatever – and something does happen and what happens is the suspension of Mr Dramat. It seems to me that it is legitimate for one to say but in all probability there are very few people who may have known that the Minister is going to make this decision or had  
10 made this decision until it was announced.

So if it not the Minister who told this person, who could it be? So I think that is the angle and I think Mr Hulley is seeking to get confirmation from you that your position is that you did not tell General Ntlemenza. Or, if there was a reason for you to tell him, yes, you did tell him and this was the reason. That is what he seeks to establish.

**ADV HULLEY SC:** Thank you, Mr Chair.

**MR NHLEKO:** No, look, Chair, I absolutely have no  
20 reason to speak to another employee about the fate of another employee, really I do not.

**CHAIRPERSON:** Yes. So you did not share that information with Ntlemenza.

**MR NHLEKO:** No, I did not. Yes.

**CHAIRPERSON:** Okay.

**ADV HULLEY SC:** Now can exclude the possibility that General Ntlemeza had simply guessed this because he was already communicating that to Mr Khuba on the 6 December and as it so happened, on the 23 December when General Dramat was removed, who was he replaced with?

**CHAIRPERSON:** I am sorry, just repeat that?

**ADV HULLEY SC:** When General Dramat was removed, who was his replacement, acting replacement?

10 **MR NHLEKO:** It was General Ntlemeza, sir.

**ADV HULLEY SC:** Very well. So the possibility of this being a pure coincidence seems highly unlikely that other than on the explanation that General Ntlemeza must have known that this was going to happen, would that be fair to say?

**MR NHLEKO:** No, it is not fair to say. In fact, I think it is unfair speculation.

**ADV HULLEY SC:** So at the time on the 6 December this apparently – and I thought I had understood that the notice  
20 calling upon General Dramat to give reasons why he should not be suspended, I understood that that happened on the 6<sup>th</sup> but apparently I am wrong about that and in fact it only happened on the 9<sup>th</sup>. But when you invited General Ntlemeza – sorry, General Dramat, to give reasons why he should not be suspended was it your intention to ignore

those reasons if he in fact made representations or provided you with reasons?

**MR NHLEKO:** Chair, I respect due processes and I am very particular about them to an extent that those who care to tell you will tell you that I have always in my professional function and duties wherever I have been assigned to, avoided to have preconceived ideas about what needs to happen to a person who allegedly has committed a wrongdoing and so on.

10           So when they say to you, as an employee, these are the allegations – in fact generally in the public service we call it a contemplation letter – that these things have been brought to my attention and because they have been brought to my attention, give me the reasons why I should not pursue this particular matter or matters particularly in relation to whatever the specific issues would be, okay?

          So I do not – in fact I am even much better than lawyers, I think, it is a – you would know this, Chair, because of your background as well in labour matters, that  
20 it is a common thing for lawyers to approach you and say yes, you are the employer and you want us to assist you in this particular matter but what do you want?

          And I always tell them look, all I want is the fair processing of the specific sort of matter, so do not ask me about whether my intentions are to get rid of this person or

any other thing about this particular individual because the issue is what wrongdoing has been committed and what is it that needs to be done to rectify that particular wrongdoing. That is it. And fair processes are critical, extremely critical.

**CHAIRPERSON:** So I guess the short answer is you would not have had any intention to ignore representations if representations were made by General Dramat.

**MR NHLEKO:** Exactly, exactly.

10 **CHAIRPERSON:** Okay.

**ADV HULLEY SC:** And do you recall whether General Dramat did in fact make representations to you?

**MR NHLEKO:** I think he must have because I think I eventually then wrote back to him in relation to an interaction that must have taken place. Of course, you would appreciate that I am no longer in government and therefore the question of pieces of correspondence and so on and documentation will be problematic but I think he must have.

20 **ADV HULLEY SC:** Now on the 23 December you in fact suspended General Dramat, you replaced him with General Ntlemeza but ...[intervenes]

**CHAIRPERSON:** Probably – I am sorry, Mr Hulley, probably in the judgment Helen Suzman Foundation, probably that is covered.

**ADV MOKHARI SC:** Actually, the judgment set out the entire history in terms of that.

**CHAIRPERSON:** Yes, yes, yes.

**ADV MOKHARI SC:** So maybe I can even make the copy available and maybe...

**ADV HULLEY SC:** It should be in the bundle.

**ADV MOKHARI SC:** No, I mean, of Helen Suzman Foundation. Oh, it is in the bundle. Okay.

**CHAIRPERSON:** I expected it to ...[intervenes]

10 **ADV MOKHARI SC:** But we made copies, anyway.

**CHAIRPERSON:** There is one at page 273 for Helen Suzman Foundation, by Prinsloo J.

**ADV MOKHARI SC:** Yes, that is the correct one.

**CHAIRPERSON:** Ja, okay.

**ADV MOKHARI SC:** So that judgment, it will, I mean ...[intervenes]

**CHAIRPERSON:** It has got the ...[intervenes]

**ADV MOKHARI SC:** Prinsloo J reproduced even the contents of the notice and all those thing, ja.

20 **CHAIRPERSON:** Yes. Yes, yes. Thank you, Mr Mokhari.

**ADV MOKHARI SC:** Thank you.

**ADV HULLEY SC:** Thank you, Mr Chair. I will look into it a bit later, Mr Chair. So, Mr Nhleko, obviously you would have had a discussion with Mr – or with General Ntlemenza before the date on which you suspended General Dramat,



correct?

**MR NHLEKO:** I would have had discussions with him?

**ADV HULLEY SC:** Yes.

**MR NHLEKO:** About what?

**ADV HULLEY SC:** About him taking over the acting role.

**MR NHLEKO:** But how would I talk to General Ntlembeza about taking over the acting role in a position where General Dramat is occupying? How do I do that? I would make a case even if it is yourself, how would you do it?

10 Somebody is occupying a position and you are talking to somebody about occupying that position.

**CHAIRPERSON:** Yes, let us – I think let us hear the short answer, Mr Nhleko, and I think the short answer might be yes, I did speak to him or no, I did not speak to him and I think from what you are saying you mean you did not speak to him, is that correct?

**MR NHLEKO:** It is correct but I am trying to establish the logical sense here, that you have somebody occupying a position and then it alleged or expected that you would  
20 speak to somebody else about occupying that position.

**CHAIRPERSON:** Yes, but, you know, so ...[intervenes]

**MR NHLEKO:** It defeats the whole of your procedural fairness as well.

**CHAIRPERSON:** It may but we will make better progress if you are able to just say I did or I did not, but for what it

is worth, if I can say this, subject to the question of the timeframes, I can imagine that somebody who contemplates suspending a certain person from his or her job, particularly a crucial job, may prior to actually making the decision to suspend that person start thinking about who will I put in if I do actually suspend this person and may begin to talk to possible candidates without necessarily him saying you will be replacing because no decision has been made but wanting to make sure that they

10 do not suspend somebody who may be in a crucial position and only after that start thinking who will replace them, so – but I am just saying I can imagine that kind of situation but I think your answer is you did not speak to him and in your view there would have been no justification to speak to him at that time because Mr Dramat was still in the position.

**MR NHLEKO:** But could I come into exactly just this example you just made, Honourable Chair? When you contemplate, it is exactly that, you are contemplating, you

20 would not have taken a decision to actually put this particular employee on suspension.

So what – the whole question of what ultimately happens hinges on the required submissions from the side of the employee about whatever the issues are so that that could also assist you to be able to weigh whether the

reasons are weighty enough and not so enough to therefore not put that person on suspension, okay? So there is no question of you therefore need to go to somebody else before, you know, before you are actually activated suspension and so on.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** Now – but also the second part of your example, and this is where I want to come in, the question of talking comes very late. Remember, these are your  
10 employees and all their personal records are with you.

So we are able to assess strengths, weaknesses and whatever it is that you are looking at based on what you have before you, okay? And then it is then that you would then decide that in fact employee x that can also fill the shoes in the meantime and so on, okay?

Now the – I think the advantage with an institution such as the police, it is an order-based institution. So I do not want to go any further but ...[intervenes]

**CHAIRPERSON:** Basically, what you mean, you know  
20 which employees you have, you can order them to say come tomorrow, you report there.

**MR NHLEKO:** Ja, I am making this distinction, Chair, because you would appreciate that in the ordinary sort of industrial life there could be a degree of variances opposed to an order-based kind of institution and so on,

you know?

**CHAIRPERSON:** Ja.

**MR NHLEKO:** I mean, at least my experience tells me that.

**CHAIRPERSON:** Okay.

**ADV HULLEY SC:** Very well. So then would it be fair to say, given your answer, would it be fair to say that prior to making the appointment of General – the acting appointment of General Ntlemeza you did not consult with  
10 him and you did not consult with anybody else that was part of the senior management at the SAPS?

**MR NHLEKO:** I would not be sure about the entire sort of processes and so on but, you know, I know that – put it this way, in my – the first time I saw him basically, General Ntlemeza, that is, was when I was doing provincial visits. I think he was the Deputy Provincial Commissioner in Limpopo, okay? That was the first time I came across him and it was, of course, you know, part of the ministerial programme as alluded to earlier on, for instance, in terms  
20 of when I came in and needed to understand the workings of the portfolio and so on and basically that was it at that time.

So I – the question or who else I must have spoken to, for an example during the whatever period, it is possible that I spoke to a number of individuals within the

police service themselves about maybe few individuals that I also wanted to consider, that is now at the point of the submissions having been received from General Dramat and it became clear that there was further work that needed to be done and therefore it was necessary to put him on suspension.

**CHAIRPERSON:** Would you say that that discussion that you say may have happened would have happened at a time when in your own mind you had made up your mind  
10 that you were going to suspend him, that is General Dramat, because you had studied his representations.

**MR NHLEKO:** Yes, when it became apparently clear as it would turn out, ja.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** But I am certain that given the fact that he was also Provincial Commissioner, Deputy Provincial Commissioner at that time, now the reporting lines are very clear there. It is the National Commissioner responsible for so and so, I would have had an engagement with the  
20 National Commissioner to then say...

**CHAIRPERSON:** Yes.

**MR NHLEKO:** Ja.

**CHAIRPERSON:** Would you have shared the information that you were going to suspend General Dramat with the National Commissioner at that stage and if yes, who else

do you think you would have shared that information before General Dramat was told?

**MR NHLEKO:** Look, again, the sequence of events I may not necessarily be quite sharp on at this stage.

be quite sharp on at this stage.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** But institutional arrangement would have dictated that, you know, you speak with the National Administrator of the Police.

10 **CHAIRPERSON:** Ja, National Commissioner.

**MR NHLEKO:** The National Commissioner, yes. And, you know, in relation to – now what I would not know, I cannot recall whether I really spoke to her at the time of the contemplation or post-contemplation but – because we had regular sort of interactions and engagements and structured kind of meetings, it is very possible that I spoke to her about what had transpired and been brought to my attention and therefore, it necessitated that something needed to be done about the issues as identified at the  
20 time.

**CHAIRPERSON:** Apart from the National Commissioner would there have been somebody else within the SAPS with whom you would have shared the information that either you had decided to suspend General Dramat or you were looking at that possibility?

**MR NHLEKO:** No, I would not have done that.

**CHAIRPERSON:** You would not have done that?

**MR NHLEKO:** No, I would not have done that.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** As again it goes back to the point that I said you cannot engage with another employee about the fate of another one.

**CHAIRPERSON:** Yes, yes, yes.

**MR NHLEKO:** It is completely wrong.

10 **CHAIRPERSON:** Yes.

**MR NHLEKO:** In fact, it then constitutes your whole procedurally fairness kind of respect and so on.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** So it is wrong.

**CHAIRPERSON:** It would not have happened.

**MR NHLEKO:** H'm.

**CHAIRPERSON:** Now apart from the National Commissioner would you have shared that information with anybody else within the executive of cabinet, government,  
20 prior to informing General Dramat or not?

**MR NHLEKO:** Not at an executive level, if I am understanding you.

**CHAIRPERSON:** Well, I am talking about cabinet.

**MR NHLEKO:** You are talking about cabinet?

**CHAIRPERSON:** Ja.

**MR NHLEKO:** Then I would go to cabinet and say  
...[intervenes]

**CHAIRPERSON:** Well, either cabinet as in the body of  
some individual or individuals in the cabinet including the  
President.

**MR NHLEKO:** Oh, okay, okay. So I think in a nutshell you  
want to know whether did I advise the head of state about  
the – okay.

**CHAIRPERSON:** Either the head of state or any other  
10 colleague within the cabinet.

**MR NHLEKO:** No, it would not have been any other  
colleague, it would have been the head of state.

**CHAIRPERSON:** The head of state?

**MR NHLEKO:** Yes and briefing him about these issues as  
they came up and so because it would not be fair, for  
instance, to a President to hear from the media about (a)  
the contemplation letter being dispatched to a high police  
official or even for that matter, eventually, suspension and  
so on. So it becomes important to then brief the head of  
20 state about this is what I have established and this is what  
the law says and therefore this is what I am required to do.

**CHAIRPERSON:** So would be fair to say the only people  
that you shared the information with in terms of the  
decision which you had either made but maybe not  
necessarily communicated yet to General Dramat or that



you were contemplating making with the National Commissioner and the head of state? Would it be fair that is the position?

**MR NHLEKO:** I just could not get the first part of – would it be fair to say what?

**CHAIRPERSON:** Or would it would be fair to say you are saying the only people with whom you shared the information, either that you had already made the decision to suspend General Dramat even though might not have  
10 communicated to him at that stage or that you were contemplating making a decision to suspend him, that the only people you shared this information with were the head of state and the National Commissioner? Would it be fair to say those were the people?

**MR NHLEKO:** I think that would be a fair assumption.

**CHAIRPERSON:** Ja, okay.

**ADV HULLEY SC:** Thank you, Mr Chair. Now, of course, having communicated that information to the National Commissioner and having communicated that information  
20 through to the head of state, one of the first questions that either one of those two would have asked you was, who are you going to replace the – who are you going to put into the acting position as the head of the DPCI? Would that be fair to say?

**MR NHLEKO:** No, I am not sure whether they did that. I

really cannot recall whether anybody asked me that question but with regards to the National Commissioner indeed I think I did share views with her about, you know – and she also made some suggestions of either individuals that we could consider. Now that is at a point when, you know, I have eventually had to make a decision about suspension, okay? Ja, it ...[intervenes]

**CHAIRPERSON:** So are you saying that with regard to the National Commissioner you did tell her who you were  
10 thinking of as a temporary replacement for General Dramat during the suspension and in your discussion the National Commissioner mentioned other possible names you could think of. Is that what you are saying?

**MR NHLEKO:** No, I did.

**CHAIRPERSON:** Yes, okay. But you are saying that the head of state did not ask you about who would replace General Dramat during the suspension?

**MR NHLEKO:** No, I do not recall him asking me as to ...[intervenes]

20 **CHAIRPERSON:** Yes.

**MR NHLEKO:** ...okay, so who are you going to place there for the replacement.

**CHAIRPERSON:** Okay, alright. Mr Hulley?

**ADV HULLEY SC:** Thank you, Mr Chair. So presumably when you approached the National Commissioner you

already had in mind one or more people. She proposed additional people and the two of you sat and discussed which was the best person to put into that position. Would that be fair?

**MR NHLEKO:** Maybe I think it happened that way, yes.

**ADV HULLEY SC:** Now you would obviously have come with a few suggestions yourself or was it only one suggestion?

**MR NHLEKO:** It could have been a few, I think. Could  
10 have been a few, yes. Probably two or three of those.

**ADV HULLEY SC:** And you say that as the Ministry was the employer, I think you said, of the members, you have got access to their personnel files. Do I understand that correctly?

**MR NHLEKO:** Yes, I could have access to personnel files through the National Commissioner, of course.

**ADV HULLEY SC:** So ...[intervenues]

**MR NHLEKO:** So I am saying I could have access to personnel files and profiles of individuals through the  
20 National Commissioner.

**ADV HULLEY SC:** I see. So what you are saying is that if you wished to have, to access a particular personnel file, you would – you could do it through the National Commissioner but you do not have direct access to it within your office or within your ministry?

**MR NHLEKO:** No, I do not. I do not.

**ADV HULLEY SC:** So you would have obviously have called for these personnel files in respect of the people that you had in mind, beforehand, in other words, before meeting with the National Commissioner?

**MR NHLEKO:** I'm not sure whether – I think in the meeting situation yes, because you'd have, I think, at initial stages you'd have an open meeting about – or discussion, sorry about a few individuals, names okay but  
10 a National Commissioner is an administrator who will then go back and look at the actual profiles and the skills, sort of levels and sets of people then take it on from there.

**ADV HULLEY SC:** Now, moving forward into January of 2015 because these events happened on the 23<sup>rd</sup>...[intervenes].

**MR NHLEKO:** Come again you said in 2000 and what?

**ADV HULLEY SC:** Into January of 2015 things that we've been speaking about thus far all took place in December of 2014, in other words the suspension of General Dramat  
20 and the acting appointment of General Ntlemeza, those took place in 2014. Now, in 2015 we know that you, from your testimony that you gave here – we know that you never approached Mr Robert McBride to discuss with him, the fact that he had provided you with a report of which he was one of the signatories, that being the 18<sup>th</sup> March

report and you had these two reports but you never discussed, with Mr Robert McBride why the second – how the second report came about, that was your testimony yesterday if I understood correctly.

**CHAIRPERSON:** Hang on a second, you were dealing with reports earlier and then I thought you moved to the issue of the suspension of General Dramat and that's why we were talking about what Mr Khuba said, he was told by Mr Ntlemeza, you now refer to the reports, is that because  
10 you're moving back to the reports or is it still under the issue of the suspension?

**ADV HULLEY SC:** I'm moving – I may come back to the suspension but I'm moving now, chronologically into January.

**CHAIRPERSON:** Yes, well you might be moving chronologically in terms of the dates and events but I was thinking you were following themes.

**ADV HULLEY SC:** Yes.

**CHAIRPERSON:** Are you going to come back to the  
20 suspension or are you done – to the suspension of General Dramat or are you done with it?

**ADV HULLEY SC:** We may come back to it at a later stage depending on how we deal with certain other issues.

**CHAIRPERSON:** Yes, okay, alright, proceed.

**ADV HULLEY SC:** Thanks, now – so you've got these

reports which you already had as far back as November – 26<sup>th</sup> of November 2014, you – we move not into January of 2015. What do you decide, you haven't consulted Robert McBride who was the head of IPID, in fact you haven't consulted IPID at all about the existence of the two reports? You start considering the possibility of an investigation and appointing a private firm to investigate the issue, is that correct, we're in January of 2015?

**MR NHLEKO:** Look, I think you may be incorrect in  
10 respect of two things. The first one you say – I think earlier on you alluded to yesterday and I think, even this morning, you alluded to pieces of correspondence and exchange between myself and Mr Robert McBride. Now – and of course – now I'm dealing precisely with that question because in your formulation you are then saying I did not speak to him or consult with him or something like that. Now, so what do you define, how do you define these pieces of correspondence between him and myself, that's one. The second thing is that you are faced with a  
20 situation here where allegations of the existence of the two reports are made and senior individuals in the institution are implicated in the alteration of the report of the 22<sup>nd</sup> to produce the report of the 18<sup>th</sup> of March. Now – and I think we need to be alive to this thing that we are then talking about an institution whose image then, is somewhat tainted

but also the issues of integrity become a focal point here, in a sense. So – and linking that, this issue that we have spoken to, linking that to an earlier decision that I had taken, Chair, to process exactly those issues, how come we have, on that situation – now the situation is twofold, do you have a report that recommends criminal prosecution for an example but do you have another allegation and/or report which, in a sense says, that report that you are referring to, has been altered and that also could be

10 divided into two when you talk about an employee misconduct around that because then you have your employee who is alleged to have tampered with evidence and so on or a report. So, you therefore, need to look into the institutional arrangements insofar as processing that particular matter is concerned. But also, by further extension is that you also have possible, sort of, criminally issues arising out of that employee misconduct you know and so it goes. So, I thought let me just respond in this particular way to try and clarify this particular point that Mr

20 Hulley has been pushing.

**CHAIRPERSON:** I don't know what your plan is, Mr Hulley, you may have a certain plan but I want us to get into the meat of this issue of the reports.

**ADV HULLEY SC:** I do.

**CHAIRPERSON:** Let's get to the meat of that report

because I've been waiting that we get to it, let's get there, let's deal with it and then move on to something else.

**ADV HULLEY SC:** Thank you Mr Chair. Now, the two reports...[intervenes].

**CHAIRPERSON:** Maybe let me just say this, and for me the meat of that issue encompasses, among other things, the question of what was the nature of the alterations, alleged alterations, were they alterations, can they properly be called alterations? Was IPID entitled to  
10 provide the report of the 18<sup>th</sup> of March, were they entitled to provide such a report, if so, under what circumstances? Were they entitled to say, well, there is something we are not happy with, with the earlier report, here is our latest report, this is the one we want you to look at, you know?

**ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** Were there – was there a proper basis for the Minister to seek an investigation of this issue by Werksmans and then of Course – and Mr July will come later this week, the question of the recommendations that  
20 Werksmans gave to the Minister whether there was a proper basis for it was there a proper basis for those recommendations, could it be that there was some other agenda because I think one or more of the IPID witnesses may have suggested that there was something more than just genuine investigation of issues and that the idea was



to get rid of some of them. So, I think, let's get to that.

**ADV HULLEY SC:** Thank you Chair. Now, when you decided, Mr Nhleko to hand the matter over for investigation to an external firm of attorneys, at that point in time you had the two reports, one dated 22 January 2014, one dated 18 March 2014. At that point in time you believed that there were alterations that had been done to the one report in – the alterations from the first report which rise to a final product which was the 18 March  
10 report, is that – do I understand that correctly?

**MR NHLEKO:** The starting point is at two levels, Chair. The starting point is why do you have two reports, so which is which between the two, that's your starting point. The second area of that starting point is why these two reports have got two sets of recommendations that are completely the opposite, sort of okay. So, you have the ...[intervenes].

**CHAIRPERSON:** Conflicting recommendation.

**MR NHLEKO:** Conflicting recommendations yes and it's  
20 from the one institute, one and the same institution and the common denominator is a Chief Investigator who also appears in the first report but also appears in this other report with a different set of recommendations and the question is why okay, so you'll start there first. Now, I think I'd spoken to, what I think I referred to as, allegedly

sort of, employee misconduct, sort of. Let me put it in simpler terms, maybe suspicions of, either an employee has, you know. Now – so you do need to get to the bottom of that issue but because, essentially the matter here – and I think that’s – it’s just there have been a number of misconceptions and misinterpretations of about this thing at many different levels but this issue of the two reports and the involvement of Mr McBride, Mr Khuba, Mr Sesoko and so on, it’s about employer, employee relations, that’s  
10 what it is and the employer, in this instance, the Minister of Police there had a duty to then try and ascertain what exactly transpired in this particular instance okay.

So even if you were to go outside and look for assistance you will need a specific, sort of – my English is running out, where there’s a dedicated sort of assistance. In other words, you’ll be looking for a particular and specific competency, if I may put it that way. So, for instance if you have a lawyer called Zondo somewhere okay and he’s a labour specialist and so forth, you are  
20 likely to go that route as opposed to a Mr Hulley who’s a criminal lawyer, I’m just making an example. So, you would have, in a sense, to also define, sort of, some scoping of sorts in terms of what kind of competency are you looking at to assist you in matters such as this and so forth. So – and remember, honourable Chair, we had said,

when we started on this issue because I think the issue of – let me try and – I suspect you nearly said something about my mic, Chair, so that’s why I’m drawing it closer. Now, I think when we started – you know the issue of Werksmans should not be seen only in the context of Werksmans as a stand-alone out there. You have to understand the process, processes as a reference group, producing a particular set of reports and then from there, you then evaluate, yes you have these reports but what  
10 else do you need in order to take an informed decision about this particular matters. So – and that exercise was entirely located within the civilian Secretariat of Police to then say look, there’s these issues and these matters institutionally look at how these matters are to be dealt with so that we have – we needed to have some absolute clarity about what was the actual state of things around this particular issue of the renditions.

So, it should then be understood in that context that even the issue of Werksmans itself cannot be separated  
20 from the initial work that started off with the appointment of the reference group and it then developed further in terms of, we wanted to have much more clarity on it. We then said, honourable Chair, that we needed to know who and under what circumstances was the original report of the 22<sup>nd</sup> of January altered and how the second report came

about, so that's the starting point. So, where did this thing come from and so on, now – and I think I've alluded to this thing, you also have, you know, the Chief Investigator appears in both reports. The second area is whether, by so doing, in other words, alterations does it constitute misconduct or any offence and if so by whom. Now, you'd also understand this, honourable Chair, even from a – the Labour Law, let me not say Labour Law but from sort of relations practice really, an employee – one of the  
10 considerations when you deal with disciplinary matters, that employee should be, one fundamental question should be whether he or she was in the know or is in the know of an existing policy for an example pertaining to a transgression or alleged transgression and so forth and that's why this issue became important. The question of whether any misconduct or offence would have been conducted by somebody and if so, who's that particular person.

The third area is whether there's *prime facie*  
20 evidence of misconduct and criminal liability by Lieutenant General Dramat for an example, Major General Sibiya and any other officers mentioned in the original report. Now, again, is the question of the original report which made specific recommendations with regards to these specific individuals. The fourth area, the circumstances under

which the report and the docket handed in the National Prosecuting Authority and what happened to the docket once – which was in the possession of the NPA. Now, the prosecutors in the form of, I think, Advocate Mosing and Moeletsi made statements in regard to how the issue of the docket was handled by them at the NPA and the reference is to a series of internal communication within the National Prosecuting Authority in trying to clarify this issue of the report of the 22<sup>nd</sup> and allegedly the second report which is  
10 the 18<sup>th</sup> – the report of the 18<sup>th</sup> of March, the last area.

We also needed to establish whether any other matter that would come to the attention of people assigned to the investigation would be relevant to conclusions and findings. Sometimes when you have a scope for an investigation you start somewhere but somewhere down the line you begin to discover other things that were not known at the time when scoping was being done and so on and so on. I think this point really talks to that issue and that's how the issue of the appointment of Werksmans comes in.  
20 So, I agree with you, honourable Chair, that between yesterday and today there's a lot of other things that we said and spoke about but we've really been skating on the periphery here. The issue, both before this Commission and the South African public is, is it true that there were two reports, if so what's the difference between these two

reports and thirdly what is it that was done about it and what it is that is to be done about that because it's a matter that remains hanging and outstanding, honourable Chair.

**CHAIRPERSON:** I would imagine that if somebody who reports to me gave me a report on a certain subject or made a report available to me on a certain subject, call it a first report if you want to and then later gave me another report on the same subject I would imagine that the first  
10 question that would arise with me is, does this second report replace the first report, in other words, can I throw the first one away, is this your report to me, the latest and if he says, yes, the latest is my report to you, throw away that other one then then I would throw it away and look at this one but if I have read the first one, I may say, let me not throw it away as yet let me read the second one and then take it from there and if there's a need for any clarification they would arise from there. Why didn't you regard the second report, and when I say second report, I  
20 refer to the one of the 18<sup>th</sup> of March, as the report that the IPID intended to be their report and no longer the first one, why did you not regard the second report as the report they intended as their final report to you or actual report to you because otherwise why would it be necessary to have two reports? So, wasn't the second one meant to replace

the first one?

**MR NHLEKO:** Chair, I will answer that question, perhaps in two ways. Maybe let's start with the last area, with the why – the last question from the Chair...[intervenes].

**CHAIRPERSON:** The last part of the question ja.

**MR NHLEKO:** Yes, why I couldn't consider it as – the second report as the final and whatever. Now, the question is, what happens to the first one or what happened to it because this very same one – and by the way convention  
10 has it, Chair, that anywhere in the world, if you produce a report at some point and you feel there are things that I would have to do whatever about and so on, maybe change or alter and so it goes, the first point of reference is to also state that we are nullifying the first one, that's the first point. Now in this particular instance the legislative and institutional arrangement between IPID and the NPA says, if IPID is investigating – conducting a criminal investigation the NPA would assist them with prosecutors or a prosecutor okay. Now – so in other words, if you're  
20 then producing another report you must still pull in those particular prosecutors and say, there's something wrong with this report and whatever it is that you consider to be wrong or need updating or whatever the case is so that they, themselves, would also be part of a consulted sort of arrangement and so on. Now, that did not happen so we

keep – up until today we keep on referring to two reports precisely because within the possession of the National Prosecuting Authority, they have the report of the 22<sup>nd</sup> and then another report that then emerged later and so it goes. So, that's my response to the second part of your question and I think the first part of your question, Chair, I think I've alluded to this particular point you've already had allegations against this institution, now you therefore also needed to, as an employer, you also needed to embark on  
10 a particular exercise to establish the veracity of these particular allegations and precisely because you are not in as competent as you could be in terms of, you know, just the finer details around a particular issues of investigation...[intervenes].

**CHAIRPERSON:** Please don't forget exactly the point you want to make but I just want to make sure I follow it. Which allegations are you talking about?

**MR NHLEKO:** The allegations of the two reports.

**CHAIRPERSON:** Ja.

20 **MR NHLEKO:** And the different sets of recommendations, Chair.

**CHAIRPERSON:** Yes, okay, alright, continue.

**MR NHLEKO:** So, you already have that right, those are serious allegations.

**CHAIRPERSON:** Well – but remember that my question,



and I hope I don't confuse you about the first part of the question and the second part of the question but my concern is the second report deals with the same subject matter as the first report. Why are you not taking the second report as the report intended by IPID to be their report and not the first one because it's the same subject to the extent that there is some conflict between the two, they can't be intending both of them to be their reports at the time of submitting the second one?

10 **MR NHLEKO**: Could I suggest, Chair, that we come back to this question but maybe the starting point really...[intervenes].

**CHAIRPERSON**: That's fine.

**MR NHLEKO**: Should be an evaluated exercise of what are these two reports.

**CHAIRPERSON**: Yes.

**MR NHLEKO**: And then we begin – we will then need to come back exactly to the questions that the Chair is raising.

20 **CHAIRPERSON**: Yes, yes, Mr Hulley just make a note of the question please.

**ADV HULLEY SC**: I have no difficulty with the – with going into the reports but the question is, firstly, before we even get into a consideration of the report, we need to understand why it was considered necessary to refer the

matter to Werksmans in the first place. Now we know from the – we know from the evidence that's been given by Mr Nhleko that there were allegations. We understand now, that the allegations relate to the existence of the two reports. Now if I understood Mr Nhleko's testimony before, these are not allegations, it was a fact, he had the two reports. He had the signed report of the 22<sup>nd</sup> of January he had the signed report of the 18<sup>th</sup> of March, he had both reports before him. Now, against that backdrop, if I might

10 Mr Chair, you've got the two reports, it's not an allegation, you've got the two reports and you've got the second report, the signed report of the 18<sup>th</sup> of March you got that on the 26<sup>th</sup> of November of 2014, correct? That was your earlier testimony sir.

**MR NHLEKO:** No, I'm waiting to hear the question. Now against that backdrop are you suggesting that there are allegations that there is something untoward about those two reports because you've got the reports in front of you, you can look at them yourself?

20 **MR NHLEKO:** Look, I've responded to the question extensively, Chair I even outlined the – what areas needed to be considered in dealing with this particular question. So in all fairness Chair I think let us deal with the reports.

**CHAIRPERSON:** Well is – you see as we go along, we might not all have the same recollection of what you said an

hour earlier and yesterday. An evidence leader when he has a certain question may sometimes want to make sure that his premise is correct and therefore might ask you to confirm that this is what you said before. So from your side you might say, oh why is he asking me again. Now of course I do not want him to ask you the same question all the time because we need to make progress but sometimes an evidence leader does that just to make sure that his next question is not based on a misunderstanding of what you  
10 said earlier on. So I just thought I might clarify that.

**MR NHLEKO:** No I accept that Chair. I accept that very much.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** And in fact, I would also venture to say that some of these questions are still valuable [00:01:29] would have delved into the report. My misgiving that I suspect that between yesterday and today there has been a concerted effort not to deal with this. Now and I am not...

**CHAIRPERSON:** Well you...

20 **MR NHLEKO:** I am not talking about – of course I am talking about the evidence leader and I think for me it is critical that clarity is put right across and out there around these particular issues and that is why I am saying Honourable Chair that I think some of the questions that you are asking are valid. I may not agree with them but

they are valid. They – but it is possible that they will also become much more clearer as and when we deal with the investigation report and the two reports. Because it is a wide ranging amount of work that was done there. It includes issues of processing even within the whether IPID and some sections of the police service, the National Prosecuting Authority and so on. But fundamentally it then deals with the disjuncture between the two.

**CHAIRPERSON:** Yes but you see.

10 **MR NHLEKO:** So for me I think that is – that is one fundamental [indistinct 00:02:56].

**CHAIRPERSON:** Yes you heard me earlier on I said let us go straight into the issue of the reports.

**MR NHLEKO:** Yes.

**CHAIRPERSON:** And when I say – then we will go to the investigation and so on. So I have no doubt Mr Hulley is looking into dealing with that. He is dealing with that. But the shorter answers you give the more progress we will make. Now of course there may be situations where you  
20 feel you have to explain and so on but I also just need to tell you that your counsel is here, he is here to protect your interests. He is watching and when he thinks there is something unfair that is being done to you, he will – he is very experienced counsel he will look after your interest. I am not saying that you may not raise an issue when you

feel that there is an issue so – but let us try to the extent possible even when you think the question is being repeated if the answer is a simple one yes, yes I said so, I did not say so let us try and do that.

**MR NHLEKO:** Hm.

**ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** Okay.

**ADV HULLEY SC:** So Mr Nhleko what I am trying to ascertain is the very reason why it is that you had refer this  
10 matter to Werksmans in the first place. As I understand it you said that there had been allegations. The allegations that you were referring to were the allegations of the existence of the two reports. The two reports you had in front of you the – so I am trying to understand since you had the two reports in front of you surely you could simply look at the two reports yourself it might require further investigation after you have come to a conclusion but you could certainly look at the two reports yourself and ascertain whether quite apart because the conclusions are  
20 clearly different. But you can ascertain from the two reports what those differences are surely?

**MR NHLEKO:** Now I am trying to figure out Honourable Chair how do I give you a shorter answer to the [indistinct  
00:05:32] that was – I am not saying I will give you a prescription.

**CHAIRPERSON:** Well do your best.

**MR NHLEKO:** I am not - I am so vested.

**CHAIRPERSON:** Yes. Ja.

**MR NHLEKO:** How do I give you a short answer to this question and I think this question we have been toing and froing around it and so on. Remember that this very same question that is being posed by Mr Hulley talks to the issue of the need for the docket so that we are able to go through this issue of the two reports. Now – so in a way this very  
10 same question which had been attended to at an earlier point it is – is being brought back and ja that is my somewhat of a misgiving as you can have a look at reports. But you need much more further details than what is written in the reports. And that is where the question of investigation comes in.

**CHAIRPERSON:** Hm. Let me ask this question. What was your understanding at the time you were dealing with this issue as to whether IPID would be entitled to change their mind about recommendations that they may have made in  
20 an earlier report? Do you remember whether you had a view or you did not have a view about whether if they have submitted a report and later on they had a change of mind about any recommendation and they would be entitled to then say, you know we have realised that that recommendation is not sustainable and here is a report that

reflects what we consider to be our final view and recommendation on the matter.

**MR NHLEKO:** But Chair report does not stand from the recommendations. The recommendations is the final product of some work that would have been – that would have been done. Now – an correctly so you know we kept on going back to this question that says okay so you have this report it is filed there and it is not withdrawn with the National Prosecuting Authority but the recommendations of  
10 this very same report as opposed to the report which came later which is now the 18 March are different – why? Now remember that I had spoken to the question of an institutional arrangement here which says that the – the prosecutors that the NPA would give them as IPID for an example must also be part of the generation of I suppose any other report if there would be after that. Because why would they be involved in one report and they are not involved in another around the same issue?

**CHAIRPERSON:** Hm.

20 **MR NHLEKO:** That say – that is...

**CHAIRPERSON:** Ja. But my question is, are you able to say that at that time you had a view or you did not have a view on whether IPID was entitled to change its mind on parts of a report or on its recommendations if after they have submitted a report for certain reasons they realise that

their view or recommendation would not be sustainable or would not – is not justified? Is that something that you know that you did have a view that they could do that or is it something – or you do not know whether you had thought about it or you know that you thought they could not do that?

**MR NHLEKO**: I certainly do not know whether I really thought about it Chair.

**CHAIRPERSON**: Yes.

10 **MR NHLEKO**: Except that for me the critical question was resolving the issue of the two reports.

**CHAIRPERSON**: Yes. As you sit there now as a matter of principle do you see anything wrong if the position – if you were to be told that maybe the position is that IPID would or was entitled if they changed their view on a report that had been sent for whatever reason to change or to provide a report that reflected their revised view. What would you say about that proposition as you sit there?

**MR NHLEKO**: And I think that is very hypothetical.

20 **CHAIRPERSON**: Well we have [indistinct 00:11:03]

**MR NHLEKO**: Ja but the – maybe let me try...

**CHAIRPERSON**: Before you – before you try.

**MR NHLEKO**: Yes.

**CHAIRPERSON**: Let me say.

**MR NHLEKO**: Chair.



**CHAIRPERSON:** You see well for me and it may be that for Mr Hulley as well as for Mr Mokhari because we are in the legal profession but maybe not for you. You know for me when I – when I heard evidence last year about this report from the IPID witnesses my first or one of my first questions was are they entitled to change their view? Are they entitled if they discover for example that the report they have sent in has a flaw are they entitled to – to convey whether to the NPA or to the Minister to send a report that  
10 reflects their – their view after some intervening event has happened or after they have had a chance to reflect on it because if they are entitled it may be that that should be the end of the matter? If they are not entitled it may be that there should be further questions. Another question that I raised when the IPID witnesses were giving evidence was this issue of alteration they are said to have altered a report. So I said well maybe somebody will explain to me and maybe there is just something that is missing for me because you – you – for me if you have a certain report and  
20 maybe you – you cross out certain things maybe that is alteration if you – there is a report then you create a different document – another report that seems to me it is a different report which may have some differences with the first one but maybe that is technical but it is something that I want to understand but let us deal with that in due course.

So I come – I come back to simply the question first to say you as you sit there do you have a position on whether they were entitled to – they would have been entitled to give you another report if an earlier report that they had done they subsequent thought there was something wrong about it?

**ADV MOKHARI:** Sorry Chair I do not know.

**CHAIRPERSON:** Sorry.

**ADV MOKHARI:** I just wanted to come in maybe...

**CHAIRPERSON:** Yes.

10 **ADV MOKHARI:** What I say may be of assistance.

**CHAIRPERSON:** Yes.

**ADV MOKHARI:** The issue of whether IPID was an entitled to produce another report.

**CHAIRPERSON:** Hm.

**ADV MOKHARI:** My understanding is that it is a legal issue.

**CHAIRPERSON:** Hm.

**ADV MOKHARI:** So Mr Nhleko may give his view as I understand the law on the legal issue it does not matter  
20 what the witness say.

**CHAIRPERSON:** Hm.

**ADV MOKHARI:** So if the law says something else then the law says something else. So maybe if he can focus on the facts himself then the conclusion which is going to be a legal conclusion will then be debated by the commission

itself.

**CHAIRPERSON:** Hm.

**ADV MOKHARI:** But the commission is now going to ask itself a question. What does the law say in respect of reports which are produced by IPID?

**CHAIRPERSON:** Hm.

**ADV MOKHARI:** Is IPID entitled to produce another report which contradicts the first one and if so what is the authority for that? So that is going to be a debate among  
10 the lawyers.

**CHAIRPERSON:** No, no I understand what you are saying. You will have noticed that my question was not – was framed with a view to getting his own understanding which may be right or maybe wrong. The lawyers will debate whether it was right or wrong afterwards.

**ADV MOKHARI:** Okay now I understand it. Understand that.

**CHAIRPERSON:** But just his own understanding. Yes.

**ADV MOKHARI:** I think he must answer the question.

20 **CHAIRPERSON:** Yes.

**ADV MOKHARI:** Because clearly, he must have had a view.

**CHAIRPERSON:** Yes.

**ADV MOKHARI:** And either right or wrong he must have had a view.

**CHAIRPERSON:** That is right yes.

**ADV MOKHARI:** I think he must answer the question so that we can move on.

**CHAIRPERSON:** Yes. Yes. Thank you. Thank you Mr Mokhari.

**MR NHLEKO:** I am so happy I am not a lawyer.

**CHAIRPERSON:** Do not be sorry for not being a lawyer.

**MR NHLEKO:** I will answer this because I want to try and practicalise this thing and of course I am not going to be legalistic as you would know I am not.

10 **CHAIRPERSON:** Hm.

**MR NHLEKO:** I know nothing about law. A report of this nature is constituted by statements from people. Whether witnesses or whatever. So let me give you an example.

**CHAIRPERSON:** Hm.

**MR NHLEKO:** If you take – you are [indistinct 00:16:32] a report and there is a Colonel Madilonga who then says, no I witnessed the entry of the Zimbabwean police and I picked up the phone and I called this particular person.

20 **CHAIRPERSON:** I am sorry Mr Nhleko I know I am stopping you.

**MR NHLEKO:** Okay.

**CHAIRPERSON:** But I am trying to make sure we make progress.

**MR NHLEKO:** Okay.

**CHAIRPERSON:** My question is, whether at that time you

had an understanding of whether they were entitled or not?  
The answer could be yes I did have an understanding and  
my understanding is they were entitled under certain  
circumstances or my understanding was they were not  
entitled. So that is what I am asking?

**MR NHLEKO**: No I think the fair answer then to that if the  
Honourable Chair says...

**CHAIRPERSON**: Yes.

**MR NHLEKO**: I should not try and provide a practical  
10 example.

**CHAIRPERSON**: Yes.

**MR NHLEKO**: Is that I had no view.

**CHAIRPERSON**: Yes okay.

**MR NHLEKO**: Yes. I had no view.

**CHAIRPERSON**: Ja. Thank you.

**ADV HULLEY SC**: Thank you Mr Chair. Now ...

**MR NHLEKO**: And could I also suggest Chair?

**CHAIRPERSON**: Yes, yes.

**MR NHLEKO**: Another.

20 **CHAIRPERSON**: Oh another...

**MR NHLEKO**: Quick break Sir.

**CHAIRPERSON**: Well we are at seven minutes to or nine  
minutes to one so another – I wanted to say to you that  
some people call it a comfort break but a previous witness  
in this commission long before Corona virus and Covid-19

said could we have an opportunity to wash hands. He wanted an opportunity to wash hands.

**MR NHLEKO:** Sanitise.

**CHAIRPERSON:** So with Covid-19 there is a lot of need for washing hands. So – so I think – I think in that – there are two options depending on your situation. We can go up to one o'clock and then take the break or if the situation is such that let us stop now we can stop now. You prefer now?

10 **MR NHLEKO:** Yes. Yes very much so.

**CHAIRPERSON:** Okay no that is fine. Let us take the lunch adjournment and then we will resume at two o'clock.

**ADV HULLEY SC:** Thank you Mr Chair.

**MR NHLEKO:** Thank you.

**CHAIRPERSON:** Okay we adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Let us continue and I will let you continue Mr Hulley just now but I just want to see if I can reach a  
20 certain understanding of Mr Nhleko's evidence on some of the issues we dealt with before lunch. Would you not agree with me Mr Nhleko that speaking at in general or in terms of principle that it would make sense if the position was that IPID was entitled to give you a second report if you want to call it that or another report if they had given you that – they

had sent out an earlier report on the same subject but subsequently they took the view that they have made a mistake in regard to some issues in the first report. So speaking at a general level would you not agree with me that it would make sense if the position was that they – they were able – they were entitled to – to give you another report reflecting what they considered their final report?

**MR NHLEKO:** Hm. No thank you very much Chairperson. I think I tried to deal with this question earlier on by trying to  
10 make an example.

**CHAIRPERSON:** Hm.

**MR NHLEKO:** And the Honourable Chair felt perhaps...

**CHAIRPERSON:** I stop you – did I stop you?

**MR NHLEKO:** Exactly. No, no he felt that I should not okay.

**CHAIRPERSON:** Oh okay. Okay.

**MR NHLEKO:** I am being diplomatic Chair.

**CHAIRPERSON:** Okay yes.

**MR NHLEKO:** I am trying the most impossible. Because I was trying illustrate this point to say if you talk of an  
20 investigation report an investigation report is made up of a number of components. You know it would be statements, it would be many other things and so on. But there could be a circumstance where somebody who has – who has made a statement turns around and says, no I told a lie. In fact, that thing is not true. So I am now withdrawing my statement.

You know. I said that Mr so and so stole a goat, right? But in actual fact I did not see him stealing a goat and therefore it is not true.

**CHAIRPERSON:** I thought it was him but I think it was somebody else now.

**MR NHLEKO:** You know it could be that. Now that is a material factor and that material factor is bound to influence your conclusion.

**CHAIRPERSON:** Hm.

10 **MR NHLEKO:** Right. So I am veering away from what Senior Counsel Mokhari referred to as the legal question.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** Entitlement versus not being entitled and so and so.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** I am staying away deliberately from that but I am providing this practical example because I am trying to say that if you were an investigator and certain statements change and people withdraw that is bound to influence your  
20 conclusion.

**CHAIRPERSON:** Hm.

**MR NHLEKO:** So from a practical point of view it does make sense to do so. Then you will have a different report which would then also refer to the first report as being changed or annulled for these particular reasons.



**CHAIRPERSON:** Okay no that is fine. Well that is in line with my own sense of what I would expect to be possible because otherwise if they were not as a matter of principle entitled to give you a revised report or another report reflecting their latest position you could have a situation where you as the Minister end up making a decision for example that somebody must be subjected to disciplinary hearing on something which is based on something that had already realised was flawed and actually I would suggest  
10 that if after you have made - if they did not bring this to your attention by way of saying, look we have – we made a mistake this is – this is our view now we have reflected bla, bla, bla and you made a decision and maybe that decision was challenged and so on and so on successfully and you got to know that they did realise that they had made a mistake but they did not bring this to your attention it appears to me you would have grounds to be angry with them. To say, why did you let me make a decision on the basis of something you had realised was a mistake? You  
20 understand?

**MR NHLEKO:** Yes I understand you Chair.

**CHAIRPERSON:** So – so it – I think therefore what this conversation between you and me reveals is that you and – you and I think that as a matter of common sense there would be nothing wrong in principle with changing a report or

updating it or whatever you call it if there are certain things that might have happened. It might be that it depends what it is that has happened.

**MR NHLEKO**: Exactly.

**CHAIRPERSON**: You know but in principle we find nothing wrong with the idea of being able to say, I have realised there is something wrong in the first report this is what I am now saying.

**MR NHLEKO**: I can perhaps try and elaborate on this point.

10 **CHAIRPERSON**: Ja.

**MR NHLEKO**: Chairperson. Just make a one formulation. Suppose I am writing a report to the United Nations about this commission.

**CHAIRPERSON**: Yes.

**MR NHLEKO**: There is a difference if in the formulation say indeed the commission said and they check him in wearing a red suit and white takkies.

**CHAIRPERSON**: Hm.

20 **MR NHLEKO**: That formulation is different from indeed the commission said but it no chairperson. Now you are likely to arrive at two different conclusions then. The one conclusion is that yes the commission had a chair. It is debatable whether the suit that he was wearing was indeed red and was he wearing takkies. That is something else. You know. But it is a material factor to then say the chair was not there

but the commission sat and functioned. He did then question the legitimacy of the structure itself. So it is – for me just to you know of course elaborating on this point and the engagement you know the Chair and the Honourable Chair is having and I think that would be distinctive kind of factor really. So I agree with that.

**CHAIRPERSON:** Ja. No I think we are on the same page because just to make another example. If you when you were Minister prepared a report and to submit to cabinet and  
10 after you have submitted it you realise that there was quite some flaw or serious flaws or something like that you ought to be entitled to replace it with one that you are happy with.

**MR NHLEKO:** Yes.

**CHAIRPERSON:** You know that is the principle. Then of course in the context of this and I think Mr Hulley can take it from there in the context of this we need to get to the actual alterations to say, let us go to the so called alterations and see

1. If there are alterations or
- 20 2. What was the basis for different alterations or different recommendations or whatever else was different?

And then deal with that. But before we do so Mr Hulley may I also put this and hear what you have to say Mr Nhleko. As far as recommendations are concerned insofar as they related to – they may have related to criminal conduct that

was for the NPA to decide, is that correct?

**MR NHLEKO**: Yes.

**CHAIRPERSON**: That had nothing to do with you in terms of how they decide but they had to decide that. But insofar as matters of a disciplinary nature were concerned that fell within your sphere of operation you had to decide whether somebody needed to be disciplined or not, is that right?

**MR NHLEKO**: No correctly so Chair.

**CHAIRPERSON**: But am I also correct that you were not  
10 bound by the recommendations of IPID in terms of those – in terms of their recommendations on disciplinary matters you would have been entitled to look at the material and make up your own mind, disagree with their recommendation if you did not think it was sound, arrive at your own decision? Or is the position that once they had made a recommendation you did not have an option you had to implement their recommendation?

**MR NHLEKO**: No I think it should be remembered Chair that  
20 as an employer you – you have both the administrative and institutional duty to uphold the image of the institution. So if for an example one of your employees is – is facing criminal charges out there let me make specific that example and so on. From an institutional point of view something has got to be done about that because there are issues of image, there are issues of reputé, there are other issues of course related

to that and so on. So as an employer you would also have to look into that without necessarily saying, you are pursuing criminal charges because criminal charges are things that happen out there and so on. And once those matters would have been sorted you will see how you then deal with that particular matter. So I am not sure whether that would satisfy for an example this issue because it is a very – some sort of a thing divide if I may put it that way? Because criminality is being pursued somewhere else by a reputable  
10 institution such as the NPA. But there are issues then about the nature of the employment and the institution that will be heading.

**CHAIRPERSON:** Yes but that was not my question. My question is, was your understanding at the time that you were bound by IPID's recommendations as far as disciplinary matters were concerned? Namely if they made a recommendation that somebody must be disciplined or they made a recommendation that somebody should not be disciplined was your understanding that you were bound to  
20 implement their recommendations or was your understanding that you were not bound this was simply a recommendation you are entitled to arrive at your own decision which could be that I disagree with this recommendation, this is what I am going to do?

**MR NHLEKO:** It – I suppose it would really depend on the

material factors involved but recommendations are to be taken seriously. That would be my point of emphasis and so on. And then take it on from there.

**CHAIRPERSON:** Well let me try this. Would your attitude have been that you would take IPID's recommendations on disciplinary matters seriously but you would feel free to depart from them or not to follow them where you felt that they were – they were wrong? I am trying to see to what extent – what was their place in your decision making?

10 **MR NHLEKO:** Yes but the...

**CHAIRPERSON:** Because from what you say we can exclude the possibility that you thought they meant nothing you could ignore them. That is not what you are saying? You are saying they need to be taken seriously.

**MR NHLEKO:** You could – you could not.

**CHAIRPERSON:** Yes but – but I am exploring the possibility whether taking them seriously meant that as far as you understood the position you must implement them all the time irrespective of your view of them or whether you are  
20 saying I would take – I would implement them unless I felt strongly that they were wrong.

**MR NHLEKO:** Look I would implement them. I would definitely implement them but you know earlier on I was just thinking about how the Honourable Chair was saying there is a contradiction between taking something seriously but being

free to do something else in the opposite you know. So – but nevertheless I would take them seriously and of course implement them. Now any other matter that will arise thereafter you know of material value for an example will arise out of the process. Ja for [indistinct 00:15:53] say you could have a situation where a particular ex-employee is being accused of XY and Z okay but then as and when the disciplinary process is unfolding it is then discovered that basically this particular human individual is not as guilty as  
10 suggested for lack of a better word really. So that is why I always stress – say Honourable Chair the question of the process. A disciplinary process extremely important and it has to be followed at all material times so that you know you give an opportunity to an accused person to clear himself or herself but also put matters out there in the open. If there is exoneration there is exoneration. If there is not there is not it is a different matter altogether.

**CHAIRPERSON:** Okay thank you. Mr Hulley.

**ADV HULLEY SC:** Thank you Mr Chair. The question of and  
20 we will return to some of the issues that have been raised by the Chairperson at some stage. But for present purposes I am trying to understand some of your earlier answers and I think I do but there is some disagreement or might be some disagreement between me and my – the rest of my team as to what your answer actually is. If I understand correctly

before you decided to refer the matter to Werksmans for their assessment you had not at that stage actually gone through a process of conducting an analysis between the first report, the second report and the docket. Now I am speaking about you personally.

**MR NHLEKO:** No but Chair we do not have to be individualistic about this. The fact of the matter is that as Minister of Police then I was heading an institution called Ministry. So you cannot have the emphasis on you personally. Did you do this and so? I mean the fact of the matter is this. Certain matters were brought to the fore. Identified you know ideally as they should have been. You put them to a process and you say establish the facts around this. You know. Now

**CHAIRPERSON:** Ja. Well you see Mr Nhleko I know – I know I am interrupting you while you are in the middle of your answer.

**MR NHLEKO:** No, no you did not.

**CHAIRPERSON:** Oh you actually done. Okay.

20 **MR NHLEKO:** I just stopped there. I just stopped.

**CHAIRPERSON:** No, no you see as I have said earlier, we will make better progress if you just answer the question. If the question is had you yourself personally conducted the analysis and the answer is you had not you just say I had not. And if you want to add but I had staff who had done so



for me they gave me executive summaries that is what I have looked at that is fine. Then we make progress. Okay.

**MR NHLEKO**: Okay.

**CHAIRPERSON**: From what you – from what you have said it seems to me that you might not have yourself done that analysis but there were staff in your Ministry who had done that and you had the benefit of that. Is that correct?

**MR NHLEKO**: Right.

**CHAIRPERSON**: Ja okay.

10 **ADV HULLEY SC**: Is that in fact correct Sir?

**MR NHLEKO**: It is correct Sir.

**ADV HULLEY SC**: Okay so you had staff who had conducted the analysis.

**MR NHLEKO**: Hm.

**ADV HULLEY SC**: Compared the first report to the second report and compared both of those against the docket?

**MR NHLEKO**: Right correctly so.

**ADV HULLEY SC**: And they came to the conclusion of that what had happened? Or let me ask you, what was their  
20 conclusion?

**MR NHLEKO**: No the conclusion was simple. There was further work that needed to be undertaken insofar as the issue of the two reports. And that is where the issue of – that is where the issue of the – I think about the six sort of areas of focus came in. To then say look these are the

matters that would have to be looked into to clarify this question.

**CHAIRPERSON:** No when you say areas of focus are you referring in fact to the ultimate questions that were put to Werksmans to say?

**MR NHLEKO:** Exactly.

**CHAIRPERSON:** Investigate these issues.

**MR NHLEKO:** Exactly.

**CHAIRPERSON:** Okay.

10 **ADV HULLEY SC:** Thank you Mr Chair. So a report had been – presumably report or an executive summary or something had been prepared which was given to you to consider as the Minister which dealt with the question of whether – of the comparison between the two reports and the docket and suggested to you that there was additional work that needed to be done and that should be – and that is one of the reasons why you decided to refer the matter to IPID – ag pardon me to Werksmans?

**MR NHLEKO:** Right.

20 **ADV HULLEY SC:** Now could you just bear with me. And the people that have conducted this assessment are we referring here to the Reference Group, are we referring to some legal advisors or are we referring to somebody other than either of those two?

**MR NHLEKO:** It is a combination really. The Reference

Group did whatever work it would do. It would bring the result of the work but of course you know that is then within the Ministry and we would also sit and go through I mean such reports.

**ADV HULLEY SC:** Sorry did you – the people who compiled the Executive Summary or a report which pointed out that they had conducted an analysis of the two IPID reports and they had conducted analysis of the docket and they felt that there was additional work to be done. I am looking for the  
10 identity of that person, persons or body? Now you say it is a combination I suggest to the Reference Group, I suggest with the legal advisor. You say it is a combination. A combination of what? The Reference Group and the legal advisor?

**CHAIRPERSON:** I think he is saying that people from different units in the Ministry did some work – well I do not know if there was a document that ultimately was supposed – was given to you. A single document or whether there may have been different documents from different people. Is that  
20 something you are able to remember or is that something you are not able to remember?

**MR NHLEKO:** It is possible that in certain instances there would be a document but by and large we would have a discussion and strategy sessions for an example.

**CHAIRPERSON:** Ja. Ja.

**MR NHLEKO**: To look into reports and various issues.

**CHAIRPERSON**: Ja. Ja.

**MR NHLEKO**: And so they then take it you know follow it on from there.

**CHAIRPERSON**: Yes. Ja. Okay.

**ADV HULLEY SC**: If I might take you to your affidavit which is to be found in LEA1 at page – this is Exhibit YA – Sorry Y8[A] Mr Chairperson. And the relevant portion.

**CHAIRPERSON**: Is that – that is his affidavit?

10 **ADV HULLEY SC**: That is correct. The relevant portion is at page 28.

**CHAIRPERSON**: Yes just...

**MR NHLEKO**: Is it 28 of my affidavit or your 28?

**ADV HULLEY SC**: Correct.

**CHAIRPERSON**: Is 28 the paragraph or the page?

**ADV HULLEY SC**: 28 is the page number Mr Chair.

**CHAIRPERSON**: That means it is the red numbers at the top.

**ADV HULLEY SC**: Top right hand corner.

20 **CHAIRPERSON**: Yes continue Mr Hulley.

**ADV HULLEY SC**: If we can start in fact Mr Chairperson on the preceding page at page 27 at the foot of that page at paragraph 75. You say that:

“The Reference Group in dealing with the unlawful rendition of Zimbabwean Nationals identified that there was an

investigation report by IPID conducted earlier and signed off on the 22 January 2012. It also identified that there was another report by IPID soon after Mr Robert McBride had assumed his – assumed function as Executive Director of IPID in March 2012. The predicament with this was that there were now two reports on the same subject matter of the rendition of the Zimbabwean Nationals each report with recommendations that were in contradiction with one another.”

- 10 Save the last recommendation on both reports the initial report by the Reference Group on page 7 – sorry on the following page paragraph 76 is:

“The initial report by the Reference Group and also pointed out to the seriousness of this matter the report pointed to the violation of the Extradition Act, the African Union Protocol and the United Nations Convention among others. It must also be remembered that the criminal justice cluster was also seized with the matter in 2012 as this matter attracted media and public interest after the expose by the Sunday

- 20 Times Publication. In 2014 when I appeared on SABC Talk Channels for the Presentation of Crime Statistics the show anchor with a sudden question on renditions and asked me to why disciplinary steps were not being instituted against senior police officials such as General Dramat and others as they were implicated in the said report. I undertook right

there and then that I was going to follow up on the said complaint. Given all these matters as they were brought to the fore you say I felt the need for more detailed investigation to clarify ourselves on these issues. I then proceeded to appoint Werksmans Attorneys to conduct the investigation.”

Now there is no mention is this then about the fact that you had received either an Executive Summary, a memorandum or even discussion from – from anybody not  
10 even from the Reference Group. The only reference to the Reference Group over here is about the fact that the Reference Group had spoken about the Dramat investigation.

**CHAIRPERSON:** Mr Hulley I am very keen for us to get to what the alterations were.

**ADV HULLEY SC:** I am too.

**CHAIRPERSON:** Yes. We must try and finish today. This witness we – we – was going to testify yesterday and after that there would have been cross-examination of Mr McBride.

20 **ADV HULLEY SC:** Yes.

**CHAIRPERSON:** And we took the whole of yesterday. We – I thought we would finish before lunch. We are now after lunch. We have got to get to the real issues.

**ADV HULLEY SC:** What I want to do with your – with the Chair’s leave. I want to obviously get into the report – the

two reports and I will produce the two reports. The thing that I am anxious about of course is that if the witness had not considered – done an assessment of the two reports then everything he tells after that is really based upon what the Werksmans Report has said as opposed to what he himself had done. So I am just anxious but I will get into the report Mr Chair.

**CHAIRPERSON:** I am sorry I think just bring your microphone closer I missed some of the things you are  
10 saying.

**ADV HULLEY SC:** Pardon me Mr Chair.

**CHAIRPERSON:** Yes. Yes.

**ADV HULLEY SC:** What I – the point I am making Mr Chair is that I am anxious to get into the reports provided that the witness is himself done an assessment of the reports prior to Werksmans otherwise if it is the – if his assessment is based upon what Werksmans has done or said then Werksmans are the people that I must speak to and Mr July is coming to testify about that. But for this witness and I understand that  
20 the witness has testified that he endorsed or accepted the report and we will deal with that in a moment. But at this stage I am just anxious to first ascertain the witness' response of whether he himself had done or even been advised on the assessment that had been conducted between the two reports before we get into the reports.

**CHAIRPERSON:** Well I can understand I understood earlier on when you asked him about whether he had personally done the analysis that you talked about but I am not sure how important that this issue is. He took the view that there was an alteration of a certain report, of the first report and he took the view that circumstances were such that there should be further investigation and it seems to me that we are taking long to get into ...[intervenes]

**ADV HULLEY SC:** Sure.

10 **CHAIRPERSON:** ...exactly what was different between the two reports. So I think let us get there as soon as possible.

**ADV HULLEY SC:** Thanks, Mr Chair.

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:** If you would not mind. We are just dealing with this one issue of ...[indistinct] ...[intervenes]

**CHAIRPERSON:** Ja, okay.

**ADV HULLEY SC:** So what I am getting at Mr Nhleko, is that in your explanation, in fact, quite a substantial explanation, you mentioned... you have made no mention at all of  
20 receiving input from the Reference Group or from any other body, made mention to the analyses that was done between the two reports, other than to identify that there were two different reports.

**MR NHLEKO:** A report is produced by the Reference Group. They bring it over to me in terms of, you know, in terms of



what it is that they have found. And the report is entitled ministry... no, it is a report to advise the ministry on good governance procedures and inter-governmental lay protocols. Excuse me. [throat clearing] I need some water. My apologies Chair for ...[intervenes]

**CHAIRPERSON:** There should always be water next to the witness. I think ...[intervenes]

**MR NHLEKO:** I meant pure water. [laughs]

**CHAIRPERSON:** [laughs]

10 **MR NHLEKO:** Probably Chair. [laughs] And so in the report ...[intervenes]

**CHAIRPERSON:** Mr Nhleko ...[intervenes]

**MR NHLEKO:** The report is titled the ...[intervenes]

**CHAIRPERSON:** We have got other water. [laughs]

**MR NHLEKO:** [laughs] My apologies there Chair.

**CHAIRPERSON:** Are you thinking of isiZulu? Because in isiZulu there is water that is described in a certain way. [laughs]

**MR NHLEKO:** [laughs] I know that Chair. I know.

20 **CHAIRPERSON:** You know what I am talking about?

**MR NHLEKO:** Yes.

**CHAIRPERSON:** That is not what you mean?

**MR NHLEKO:** No, that is not what I mean. [laughs]

**CHAIRPERSON:** [laughs] Okay I think somebody will bring you water.

**MR NHLEKO:** No, it is fine.

**CHAIRPERSON:** We can continue.

**MR NHLEKO:** We can proceed in the matter.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** Thank you very much, Chair. So the report by the Reference Group is entitled the... it is titled, sorry. It is a report to advise the minister on good governance procedures and inter-government and protocols, national legislation, and the legality of the deportation of the  
10 Zimbabwean nationals by DPCI. So... (Thank you very much, sir.) So in their report, they go into a number of issues.

**CHAIRPERSON:** Sorry, is there something for the witness to sanitise the bottle with there or not? I think somebody must just sanitise. I do not want the witness to later complain that he came to the Commission free of Covid and he left the Commission with Covid. [laughs]

**MR NHLEKO:** [laughs] No, thank you. I am blessed that my bottle has been sanitised by a reverend.

20 **CHAIRPERSON:** [laughs]

**MR NHLEKO:** Or a priest.

**CHAIRPERSON:** It is blessed water Mr Nhleko. [laughs]

**MR NHLEKO:** [laughs] Thank you very much.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** So that is what the report says. But in the

briefing, they then point and they said, “Look, there are these issues of the question of the two reports that needs to be looked into”.

And I think earlier on, we have spoken to the entire process in terms of what transpired then, the communication between myself and Mr McBride and so on around these particular matters.

Now... and by the way, as a matter of principle from the corporate governance point of view, I disagree with the  
10 position that Mr Hulley seems to be advancing.

There is no way that Werksmans would have commissioned themselves. There is no way. They did not activate themselves. The actual trigger is... was myself as the minister there.

Now they were doing that work on behalf of the Minister of Police as per the identified Terms of Reference. So we should not create an impression that when we refer to a Werksmans report is because I have talked about the Werksmans report out of their own volition. They just went  
20 into that ministry portfolio of police and just did this kind of... kind of work and so.

Now, I am referring to principles of corporate governance because I think in there, the factors that you then as the principle in the institution, you take ownership of that report and the recommendations and you, you know,

take it on from that point of view.

And so... correctly so Honourable Chair. I am of the view and I fully agree with this position that says, let us then look into what is this work that was done in relation to the question of the two reports.

**ADV HULLEY SC:** Thank you, Mr Chair.

**CHAIRPERSON:** Well, Mr Hulley. If you do not get into that, Mr Nhleko is going to start to believe in that you are running away from ...[intervenes]

10 **ADV HULLEY SC:** Yes.

**CHAIRPERSON:** ...in dealing with that.

**ADV HULLEY SC:** Indeed.

**CHAIRPERSON:** Because I think early in the morning, he made a suggestion that you want us to go into that report and you are not getting there. [laughs]

**ADV HULLEY SC:** I particularly get to... just to the Terms of Reference which appear ...[intervenes]

**CHAIRPERSON:** But before you get to the Terms of Reference Mr Hulley. Let me deal with this. Mr Nhleko  
20 ...[intervenes]

**MR NHLEKO:** I hear the Chairperson.

**CHAIRPERSON:** Now the one thing that we know is that in the second report with regard to General Dramat and is it... and General Sibiya? I am not sure.

**MR NHLEKO:** Yes.

**CHAIRPERSON:** Their recommendation was that there no criminal... there should be no criminal prosecution. There should be no disciplinary action. Is that right?

**MR NHLEKO:** Yes ...[intervenes]

**CHAIRPERSON:** [Indistinct]

**MR NHLEKO:** ...that is what was said.

**CHAIRPERSON:** Okay. Alright. But in the first report, the recommendation included that they should be charged criminally and there should be disciplinary action with regard  
10 to them ...[intervenes]

**MR NHLEKO:** Correct so.

**CHAIRPERSON:** ...as well.

**MR NHLEKO:** Yes.

**CHAIRPERSON:** And others.

**MR NHLEKO:** H'm.

**CHAIRPERSON:** Ja. Now, on its own, based on our previous... my previous interaction with you earlier on, I take it that, on its own, that should not be a problem in terms of a general principle.

20 **MR NHLEKO:** H'm.

**CHAIRPERSON:** So what may have made you think that there might be something untoward here. There is something that needs further investigation, might well be what else was changed. If you call it change. Is that right?

**ADV HULLEY SC:** Yes, that is correct.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** That is correct.

**CHAIRPERSON:** With us going into the report without us going into the report, are you able to say, “Look, for example, for me in regard to the first report, this is what they had said but in the second report that was no longer there”. That seems to be quite important to me. I am saying, you can deal with that without going to the report if you are able to but if you want to go into the report and say one, two,  
10 three and other things that worried me about this.

**MR NHLEKO:** H’m. Honourable Chair, I would venture to say that we would have to zoom straight into the table that we have provided.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** Because the table we have provided, then tell you ...[intervenes] ‘

**CHAIRPERSON:** Yes.

**MR NHLEKO:** ...this is what was said in this particular report.

20 **CHAIRPERSON:** Yes.

**MR NHLEKO:** And this is what appeared to be an alteration on this other end and so on.

**CHAIRPERSON:** Yes. Shall we go there Mr Hulley? And then please, do not forget the question you wanted to ask.

**ADV HULLEY SC:** Yes.

**CHAIRPERSON:** I just wanted us to cross this river at this stage. Which one?

**ADV HULLEY SC:** We have got to go to Bundle Y8A. Sorry. Pardon, Mr Chair. It is LEA now 1.

**CHAIRPERSON:** Bundle?

**ADV HULLEY SC:** LEA(1)

**MR MOKHARI SC:** Actually, we do have... it depends. We do in his own affidavit, he has put a table. Unless if you want to refer to something else?

10 **CHAIRPERSON:** In his own affidavit?

**MR MOKHARI SC:** In his own affidavit.

**CHAIRPERSON:** Ja, what page?

**MR MOKHARI SC:** It starts at page ...[intervenes]

**CHAIRPERSON:** Ja, I thought I have seen it in his affidavit too.

**MR MOKHARI SC:** Yes. It is page 50.

**CHAIRPERSON:** The red numbers?

**MR MOKHARI SC:** The red number at the top.

**CHAIRPERSON:** Five, zero. Okay. Yes. No.

20 **MR MOKHARI SC:** Yes, it is at zero, five, zero.

**CHAIRPERSON:** Thank you. Thank you, Mr Mokhari.

**MR MOKHARI SC:** Yes, that is where it starts, paragraph 150.

**CHAIRPERSON:** Yes.

**MR MOKHARI SC:** Yes.

**CHAIRPERSON:** Okay. At page 50, there it says “deletion of evidence from the first report”. And then on the left column it is IPID Report 1. On the second column it is IPID Report 2.

**MR NHLEKO:** In reference to that Chair, meaning IPID Report 1 is 22 January.

**CHAIRPERSON:** Yes, yes, yes.

**MR NHLEKO:** And IPID Report 2 ...[intervenes]

**CHAIRPERSON:** Is the ...[indistinct]

10 **MR NHLEKO:** ...is 18 March.

**CHAIRPERSON:** ...18 March. Yes.

**MR NHLEKO:** Yes.

**CHAIRPERSON:** Yes, that is my understanding of it. Mr Hulley, do you want to ...[intervenes]

**ADV HULLEY SC:** Thank you, Mr Chair.

**CHAIRPERSON:** ...take it and run with it.

**ADV HULLEY SC:** If I understand you correctly sir. What you have done over here is, you have basically cut from the report of Werksmans and you have paste into your affidavit.

20 Would that be correct?

**MR NHLEKO:** Yes, that is correct your Honourable Chair.

**ADV HULLEY SC:** And there has been no... you have not added or deleted from the Werksmans report or their assessment? In other words, you have accepted lock, stock and barrel?



**MR NHLEKO:** No, I have not deleted anything.

**ADV HULLEY SC:** Okay. So let us consider it at the top of page 51. On page 50, you start with the analyses but there is no analyses that appears on page 50. Page 51 is where the analyses begins. Would you like to take us through it.

**MR NHLEKO:** No, thank you very much Honourable Chairperson. What I would attempt to do. I would deal with the column on the first report and then take that letter then across to the second report.

10 **CHAIRPERSON:** Yes.

**MR NHLEKO:** The... on the first column, the first report, the report of the 22<sup>nd</sup> of January, on page 9 which is a statement by a... I think a colonel at the time, Ndanduleni Richard Madilonga.

**CHAIRPERSON:** H'm?

**MR NHLEKO:** That the law states as follows in the relevant paragraphs:

20 "Superintendent Ncube told him that he was going to Pretoria to meet General Dramat. He said to him that maybe he knew about the chief superintendent who had been murdered.

He said that the suspects who were in Gauteng and he had organised with General Dramat to assist them in tracing the suspects..."

That paragraph stays the same on the second report.

The second paragraph in the first report, then goes on and it says:

“He will state that he told Superintendent Ncube that he has to verify with his seniors about the arrangements.

He was given a number of General Dramat by Superintendent Ncube. He called Colonel

Ratsonani(?) [00:13:42] to verify the information and she requested that he should call Brigadier

10 Magushu(?) [00:13:50] who was the Provincial Head Protection and Security Services.

He then called him on the cell phone and explained to him that there are police from Zimbabwe who are intending to have a meeting with General Dramat.

Brigadier Magushu told him that he was not aware of the visit but if the people are saying that they are going to meet the general, he should call General Dramat directly.

20 He phoned General Dramat on his cell phone and he responded by saying that he is aware of the Zimbabwean Police and he must let them come...”

That is Colonel Ndanduleni Richard Madilonga ...[intervenes]

**CHAIRPERSON:** Yes.

**MR NHLEKO:** ...on report 1. Now on report 2 ...[intervenes]

**CHAIRPERSON:** Yes, yes.

**MR NHLEKO:** On report 2 Chairperson.

**CHAIRPERSON:** H'm?

**MR NHLEKO:** The paragraph that follows the above. In other words, the above is the first paragraph as stated, has been deleted. It is then replaced by the following words in there:

10           “For the period of two weeks, he never heard anything from Superintendent Ncube and his group. After two weeks, he received a call from Superintendent Ncube who told him that he was in town and he wanted to say goodbye.

          He went to town and met with them in front of Tops Bottle Store.

          They bought liquor and they left to the border. He did not escort them. They went to the border and crossed to Zimbabwe...”

20           So effectively, the paragraph in the statement by Colonel Madilonga which starts with “he will state”, that paragraph in its entirety is deleted and replaced by what I have just read out. Now at page 21, paragraph 5.2 which reads:

          “Success report dated the 4<sup>th</sup> of February 2011. This report is addressed ...[intervenes]

**CHAIRPERSON:** I am sorry. I am sorry. Are you now at page 53? What page are you on?

**MR NHLEKO:** It is the following page from where I have started off.

**CHAIRPERSON:** Ja, we started at page 51 and then...

**MR NHLEKO:** What is your...?

**ADV HULLEY SC:** It is 53 Mr Chairperson.

**CHAIRPERSON:** H'm?

**ADV HULLEY SC:** You have got to look at the top right at the corner.

**MR NHLEKO:** No, part of the problem Chair, it is my  
10 apologies. The file in question.... I think they are looking it  
up for me.

**CHAIRPERSON:** Oh.

**MR NHLEKO:** I am using my state.

**CHAIRPERSON:** Oh, okay. Okay.

**MR NHLEKO:** Yes. So it is... the statement is outside of  
your pagination. Let me put it that way.

**CHAIRPERSON:** Oh, okay.

**MR NHLEKO:** So maybe for purposes of clarifying that  
question ...[indistinct] ...[intervenes]

20 **CHAIRPERSON:** Ja, has somebody given the witness the  
file? The file... the witness must have the same file that we  
have. Each time I am given a file, he must be given a file.  
Oh, they will give it to you. They will ...[indistinct]  
...[intervenes]

**MR NHLEKO:** No, no, no. It is there.

**CHAIRPERSON:** ...give it just to you now.

**MR NHLEKO:** Yes, they are very good to me Honourable Chairperson.

**CHAIRPERSON:** [laughs]

**MR NHLEKO:** I must state. He is the only person that organised me a cup of coffee during lunch at this Commission.

**CHAIRPERSON:** [laughs] So this Commission is not so bad, hey? [laughs]

10 **MR NHLEKO:** [laughs] I suppose ...[indistinct] members of the Commission. [laughs]

**CHAIRPERSON:** [laughs] And I suspect that the Chairperson might have been one of them.

**MR NHLEKO:** H'm.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** And by the way, Mr Hulley also... I mean, really. I got a chicken and mayo sandwich yesterday.

**CHAIRPERSON:** [laughs] Ja.

**MR NHLEKO:** What page is it?

20 **CHAIRPERSON:** Well, the columns start at page 50 but the actual paragraphs start at page 51.

**MR NHLEKO:** Oh, of my statement. Sorry.

**CHAIRPERSON:** Of your statement, ja. But when I say 50 and 51, I am talking about the red numbers at the top corner of each page.

**MR NHLEKO**: Okay. So I have already dealt with the page 51.

**CHAIRPERSON**: Ja.

**MR NHLEKO**: Ja, I have already dealt with page 51. So basically, I went over to page 52.

**CHAIRPERSON**: Ja, you read page 52 as well.

**MR NHLEKO**: Right. So I am now on page 53 of that file.

**CHAIRPERSON**: Ja.

**MR NHLEKO**: Yes.

10 **CHAIRPERSON**: So... so... ja, ja.

**MR NHLEKO**: So ...[intervenes]

**CHAIRPERSON**: But before you proceed. I just want to get this because I did not get it, just to check it. When you talk about alterations of certain paragraphs, you are not talking about alteration of the actual statement or statements of the witnesses but you are talking about alteration of IPID's report based on what the statements of witnesses say? Is that right? In other words, if in Madilonga for an example ...[intervenes]

20 **MR NHLEKO**: Yes.

**CHAIRPERSON**: ...when we talk about a change of certain paragraphs, we are not talking about, saying he had signed a statement which said A, B, C, D.

**MR NHLEKO**: Right.

**CHAIRPERSON**: Somebody in... at IPID went to that

statement and removed a paragraph and put in a para...  
another paragraph in a statement that had been signed. You  
are simple saying that in IPID's report where they referred to  
Mr Madilonga, this is what they said and then in the first  
report.

**MR NHLEKO**: Right.

**CHAIRPERSON**: But in the second report, they have put in  
something else in the report, not in the statement.

**MR NHLEKO**: Yes, my understanding is exactly that. I am...  
10 the statements were contained, I think, in the docket.

**CHAIRPERSON**: Yes.

**MR NHLEKO**: Yes.

**CHAIRPERSON**: Yes, yes, yes.

**MR NHLEKO**: They signed as they were.

**CHAIRPERSON**: Yes.

**MR NHLEKO**: But in the reports, in the production of the  
report and/or reports, then we had this particular direct, sort  
of the extracts from the statements.

**CHAIRPERSON**: Yes. Okay. No, I just wanted us to  
20 ...[indistinct] I think we are on the same page then.

**MR NHLEKO**: Okay.

**CHAIRPERSON**: Okay you can continue.

**MR NHLEKO**: I can continue.

**CHAIRPERSON**: Ja, continue.

**MR NHLEKO**: So paragraph 21... paragraph 5.2 reads the

success report dated the 4<sup>th</sup> of February 2011. This report is addressed to General Dramat, Setwayo(?) and Toka [00:21:21].

The relevant paragraphs of the success report reads as follows and I quote this paragraph:

“The report base reference 1402/01 and was sent by Colonel Leonie Verster...”

Paragraph A.1. of the report states that:

10 “On the 5<sup>th</sup> of November 2010, General Dramat held a meeting with the Zimbabwean Police at the DCP offices about the nationals who shot and killed one of their senior officers...”

Paragraph 3 states that:

“Captain Maluleke(?) [00:22:03] was tasked to trace an arrest, the said nationals. The report also covers the arrest of Gordon Ncube and appreciation of TRT members and members of Crime Intelligence...”

20 That paragraph in the second report is deleted and the paragraph beginning with the report, bears reference 1402/01 from the first report is deleted in the second report.

**CHAIRPERSON:** Now...[intervenes]

**MR NHLEKO:** At paragraph 21...[intervenes]

**CHAIRPERSON:** Yes, before we go to paragraph 21 Mr Nhleko. I just want us to... I first want to put this question before we move on because it might affect how I look at the



rest of the matters in the columns.

If the position was that the statements of the witnesses with regard to the Rendition matter were provided to you and they were in the docket and then there was this report which was supposed to be based on those statements ...[intervenes]

**MR NHLEKO**: Right?

**CHAIRPERSON**: ...I would take it that you would not have made any decision in regard to the disciplinary matters  
10 without looking at the actual statements themselves.

When I say without looking at them, it may be that you would not personally look at them but if you are not going to personally look at them, I would imagine that you would get somebody within the ministry to look at them and maybe give you an executive summary or something.

**MR NHLEKO**: Correct.

**CHAIRPERSON**: Am I right in thinking along those lines? That you would not make a decision, for example, that somebody must be suspended purely on the basis of the  
20 IPID report without going into the statements themselves?

**MR NHLEKO**: But Chair, that is... I think here we may have a little bit of a disagreement with you around there. Maybe a different understanding to that, I do not know. But the point is. That is why I had to commission, for an example, Werksmans to then say, "Do some detail work".

And of course, on the basis of which they had to also... there was no way that they would do... deal with this kind of work without, for an example, having the two reports but also the file above that, the question of the docket and the relevant information.

**CHAIRPERSON:** Okay let me put it this way. My understanding is that your concern ...[intervenes]

**MR NHLEKO:** Yes, Chair?

**CHAIRPERSON:** ...at some stage possible, maybe before  
10 you referred the matter to Werksmans, your concern was that there may have been an attempt on the part of one or more people at IPID to prevent you taking disciplinary action against General Dramat and maybe General Sibiya.

Or to prevent the NPA from coming to a decision that General Dramat and General Sibiya should be prosecuted and that is why there was this so-called alteration to move away from a recommendation that said they should be charged criminally.

They should be charged in terms of departmentally to a  
20 position where the second report said they should not be charged criminally. They should not be disciplined.

But my understanding is that you were concerned that there may well have been that intent on the part of somebody, one or more people at IPID and that is part of the reason why you wanted this to be investigated. Is my

understanding correct?

**MR NHLEKO**: No, that is correct Chair.

**CHAIRPERSON**: That is correct?

**MR NHLEKO**: H'm.

**CHAIRPERSON**: Now for me, the question that arises is if the statements of the witnesses, including Madilonga in this case, which are really the instruments that have the evidence.

If they have the evidence that somebody must be charged, those are the documents that contain the evidence. If there is no evidence that somebody be charged, that is... those are the documents that you do not have.

Now, I wonder why it could be thought that somebody at IPID by changing something in their report without the actual documents that contain the evidence, being changed.

Why it was thought that somebody could be trying maybe to defeat the ends of justice or something like that, when the actual statements remained the same.

Because I would have thought that even though the reports are there, the decision makers, whether it was yourself in regard to disciplinary matters or the NPA in regard to criminal matters, I do not see them making a decision without looking at the statements.

And if... and IPID, I would imagine, would have understood that, you know, that we have got our report but

the decisions cannot be taken just by... on the base of our report only. The decision makers will look at the actual statements as well.

And therefore, if they look at the statements, they will see the true evidence of what it says and if there is a conflict between the statements and the report, they would rely on the statements because the compilers of the report - we are not witnesses to the events, to the incidents. The actual witnesses are the people who signed the statements.

10 **MR NHLEKO:** No, I hear you, honourable Chairperson, I am certain that maybe at a particular point I did not maybe look at it that way but remember that what you have just said still does not necessarily resolve the issue. The issue would still be if in the original file you still have the original statements that say something else, why then in your report which then accompanies a particular file the articulation is different from – to that very same issue. I would not necessarily take it away.

**CHAIRPERSON:** Well, it might change, if one looks –  
20 somebody might give me a wrong summary of a certain document, so I read the summary and then I go to the document. When I read the document I realise that it may have some mistakes, it is not accurate but if I have access to both, I will tell them, you know, this summary of yours if flawed, this is not what is in the report and I might leave it

at that or I might say well, maybe next time I am not going to rely on your summary because it looks like you cannot give me a summary that I can rely on but if it is – it is different, it seems to me, if all I am going to have is his summary but if I am going to have available to me the statements as well and I am expected to read them before I make the decision, I will pick up that there is some inaccuracies on his summary but then once I have picked that up I will rely on the statements and not on his report.

10 Actually, I can throw it away and rely on the statements.

**MR NHLEKO:** Again, I hear you, Chair, and I appreciate that, except that that it is much more simpler. Suppose in your office you have a report writer, so your report writer deletes information that is brought to you. Okay? You are bound to react far stronger than you have suggested to then saying but this summary of your is not okay, want to adjust this that are here and there, so you are bound to ask a different question. The question would be why did you delete this information? You see? So I am then

20 saying it – to still require you to demand accountability around that issue because then there is the element of the pollution of facts, amongst other things. And it would – if that was somewhat allowed to have a – let us say you are provided with that summary with deleted information it would mislead you as the principal. I am just making an

example.

So much as I hear the example that you have just spoke to, I think it is a much simpler kind of an example as opposed to the kind of matter that we are dealing with here.

**CHAIRPERSON:** No, no, I am quite happy that we look at that but maybe it is good that you put it that way to say maybe my example is simpler because part of what I am trying to understand is why – why is it that something that  
 10 on the face of this appears or may appear to have been a simple thing? Why did it end up being such a big almost national issue, you know, this thing about these reports? So it is part of what I am trying to understand and that is part of the reason why I put this question so that I can get your perspective to say this is how I looked at it. When I say this, this is what it said to me and as a result of that – because this is what it said to me, this is the decision I made and this is how I dealt with it, so it is part of trying to look at that. But I interrupted while you were comparing  
 20 simply because I wanted to get this understanding from you, which I have got.

**MR NHLEKO:** But let me just add quickly, Chair, to then say perhaps also when we deal with this section and deal with the process as well it would be just a question of the two columns. I think most of the thing will also become

clearer, you know.

**CHAIRPERSON:** Ja, okay.

**MR NHLEKO:** As and when we proceed, Chair.

**CHAIRPERSON:** Proceed. No, let us proceed.

**MR NHLEKO:** No, thank you very much.

**CHAIRPERSON:** Okay.

**MR NHLEKO:** Paragraph 21 – that paragraph 5.3, emails by Captain Maluleke. The email quoted, states the following:

10            “He sent emails circulating more than 24 photos of both the suspects arrested and the members involved in the operation. The emails were sent to the PA of Dramat, Phumla, Zimbabwe Police and members of Crime Intelligence.”

That is what the first report says. The same paragraph in the so-called second report does not mention all the individuals to which the emails were sent to. It reads:

20            “He sent emails circulating more than 24 photos of both the suspects arrested and the members involved in the operation. He sent email to the Zimbabwean Police trying to find out how they travelled back home and that he is still tracing the remaining suspects.”

So same paragraph but two different contents, okay? On page 22 of the first report the letter to stakeholders dated

the 20<sup>th</sup> ...[intervenes]

**CHAIRPERSON:** I am sorry, before we got to paragraph 22.

**MR NHLEKO:** Yes, Chair.

**CHAIRPERSON:** I think what you have just read related to paragraph 21, is that right?

**MR NHLEKO:** Yes, that is the wrong page, paragraph 5.3 of the first report.

**CHAIRPERSON:** Ja, page 21. If you take what was said  
10 in the first report there, page 21, about Mr Maluleke and what was – page said there in the second report:

“On the understanding that what was said in the first report was specific in terms of who exactly the emails were sent to.”

But – oh, okay, well maybe I should say what it does not – what the second report does not say, it does not make a reference to say – it does not say the emails were sent to the PA of Dramat, Phumla.

**MR NHLEKO:** Right.

20 **CHAIRPERSON:** The second report says he sent emails to Zimbabwean Police. So it leaves out members of Crime Intelligence and Mr Dramat’s PA which I specifically mentioned in the first report, is that correct?

**MR NHLEKO:** That is correct.

**CHAIRPERSON:** That is the difference between the two.



**MR NHLEKO:** That is the difference.

**CHAIRPERSON:** Now is it not true that any decision-maker who having read the second report and even being aware of the first report maybe, at the time of reading the statements before making the decision, he or she would come across exactly the same information.

**MR NHLEKO:** I think it takes us back to the point you raised earlier on, is it not, Chair?

**CHAIRPERSON:** Yes, yes, yes. Yes, it does, I am trying  
10 to connect.

**MR NHLEKO:** Yes.

**CHAIRPERSON:** But I think your answer would be yes, he would come across the same information in the statements.

**MR NHLEKO:** You mean in the original statements? I think that was your point earlier on, to then say you have the pack of original statements somewhere.

**CHAIRPERSON:** Yes, yes.

**MR NHLEKO:** But in the production of the report he ...[intervenes]

20 **CHAIRPERSON:** Yes – ja, I am talking about what you call original statements. I do not want to call them original statements.

**MR NHLEKO:** Okay.

**CHAIRPERSON:** Because it may give the impression that there are other unoriginal statements so I am just saying

statements.

**MR NHLEKO**: Okay.

**CHAIRPERSON**: Ja. So what I am suggesting to you is that even though in the second report on page 21 it is not stated that he sent emails to Mr Dramat's PA and members of the Crime Intelligence, it is only said he sent emails to the Zimbabwean Police. The decision-maker, whether it is NPA or yourself, who would read the statements would come across the same information mainly that statements –  
10 emails were sent to the PA of Mr Dramat as well as to members of the Crime Intelligence.

**MR NHLEKO**: Oh, okay.

**CHAIRPERSON**: That is the suggestion I make.

**MR NHLEKO**: I hear your point.

**CHAIRPERSON**: Yes.

**MR NHLEKO**: Save to say that you still remain with the question, why is that matter put differently in the others.

**CHAIRPERSON**: Ja, no, no, that ...[intervenes]

**MR NHLEKO**: In the report.

20 **CHAIRPERSON**: I accept that but we are on the same page that the authors of the second report would know that anyone who took care to read the statements would actually get the full picture because the making the decision.

**MR NHLEKO**: Okay.

**CHAIRPERSON:** is that right?

**MR NHLEKO:** I hear you, Chair.

**CHAIRPERSON:** Ja, okay.

**ADV HULLEY SC:** Mr Chair, perhaps I can – if I can just explore some of that because I was going to leave it until the end but if I could explore some aspects of that just very briefly. What we understand from your testimony thus far, Mr Nhleko, is that the 22 January report read in a particular way, which was different from the 18 March  
10 report, the 22 January report itself, nothing was deleted from that report, it still remained in existence. The 18 March report had words that were similar to the 22 January report but some words have been removed, other words have been added and the recommendation was different. So you have got two reports, not one report with words deleted from the report, correct?

**MR NHLEKO:** Ja, that is correct. You are getting it right.

**ADV HULLEY SC:** And the 22 – the 18 March report does not purport to be the 22 January report, does it? In other  
20 words, it does not say that – on the report itself, it is not written 22 January, it is written 18 March.

**MR NHLEKO:** No, I am losing you there. I mean, you seem now to be suggesting that – does that question take us back to the question whether we should be talking about two reports or one report?

**MR NHLEKO:** Exactly, this report, ja.

**CHAIRPERSON:** Ja. But it may be important but I just wanted to make sure that that is where it takes us to.

**MR NHLEKO:** And I would still suggest, honourable Chair, that look, let us deal with these particular inconsistencies.

**CHAIRPERSON:** No, no, we will, we will, ja.

**MR NHLEKO:** And then, of course, we will come to the actual debate and discussion on these issues.

**CHAIRPERSON:** No, no, no, that is fine.

10 **MR NHLEKO:** And of course I think for instance as and when, you know, I have been presiding I hear certain articulations from the side of the Chair.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** So – and of course I may agree, I may not agree with ...[intervenes]

**CHAIRPERSON:** Yes, of course, yes.

**MR NHLEKO:** That will be part of, you know, further engagement this one, yes.

20 **CHAIRPERSON:** Yes. No, no, it is part of – ja, it is – as I see it, my approach is, certainly from my side, I am trying to get verifications.

**MR NHLEKO:** Okay.

**CHAIRPERSON:** Because I want to be able to see if I can see the matter from the angle of the IPID witnesses and then also look at it from your side as Minister in charge of

Police. So, therefore, for these clarifications. But I think let us go through - maybe the sooner we finalise what the alterations were...

**ADV HULLEY SC:** Thank you, Mr Chair.

**CHAIRPERSON:** A bit better and then we can come back and deal with issues arising from that.

**MR NHLEKO:** No, thank you very much, honourable Chair. On page 22, a letter to stakeholders dated the 20 August 2012 the letter states:

10 “Letter to stakeholders”

Dated 20 August 2012. The letter was generated the same day indicating that:

“In August 2010 General Sibiya and General Dramat went to Zimbabwe to discuss matters of cooperation on cross border crimes. General Sibiya was appointed as the coordinator on the cooperation issue between the two countries.”

Other letters about the arrests of Zimbabwean national in connection with the murder of Zimbabwean Police refers to  
20 the cooperation agreed during the same meeting.”

Now on what is paginated as page 21 on the second report – and in this report the names of the people involved in the cooperation with the Zimbabwean Police are no longer mentioned. The letter reads thus in the report, same title:

“Letter to stakeholders”

Dated 20 August 2012. I quote:

“The letter was generated the same day indicating to the trip to Zimbabwe to discuss matters of cooperation on cross-border crimes.”

**CHAIRPERSON:** Yes.

**MR NHLEKO:** That is how that – now we are in the second report.

**CHAIRPERSON:** Yes.

10 **MR NHLEKO:** That paragraph looks like that.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** Okay.

**CHAIRPERSON:** Before we proceed I think if in regard to that particular alteration there is something that we need to deal with, let us deal with it as we go along because maybe if we wait until the end it might be difficult but then we just deal with – let me just say to you, Mr Nhleko, on the face of it, it seems to me – I mean, in the first report you have quite a detailed paragraph or a portion whereas  
20 in the second one – in the second report you just have one sentence which could mean that somebody decided why do you have to put in all these details, try and condense yourself, for argument’s sake, try and condense your report. I mean, some people are quite particular and I guess in this case remember that the first report, as I

understand the position, Mr Khuba had done it without, if I recall correctly, without any input from Mr Sesoko. I may be mistaken, but certainly without any input I think from Mr McBride because Mr McBride had not arrived at IPID yet and then the third – the second report it appears that all three of them got involved. So I am just mentioning what is going on in my mind. You might wish to say something about them.

**ADV MOKHARI SC:** Chair ...[intervenes]

10 **MR NHLEKO:** No ...[intervenes]

**ADV MOKHARI SC:** Sorry, Chair, maybe before he responds.

**CHAIRPERSON:** Yes.

**ADV MOKHARI SC:** I was just scrolling down this, I see that is very long, it is a very long table.

**CHAIRPERSON:** So you suggest that we go through it.

**ADV MOKHARI SC:** Ja, if he is going to go through it, the whole of it and – I just want to find out from the evidence leaders, that if – then, I mean, if the position – because  
20 when I looked at the report, I mean, the table, the first report and the second report.

**CHAIRPERSON:** Ja.

**ADV MOKHARI SC:** What is there is that the second report – I mean, where in the first report there was reference to General Dramat and Sibiya?

**CHAIRPERSON:** Ja.

**ADV MOKHARI SC:** The second report removes them.

**CHAIRPERSON:** Yes.

**ADV MOKHARI SC:** So it does not refer to them.

**CHAIRPERSON:** Yes.

**ADV MOKHARI SC:** So if the evidence leaders agree that first – and the first report and the second report are identical.

**CHAIRPERSON:** Yes.

10 **ADV MOKHARI SC:** Except that the second report has in certain instances where there is reference to Dramat and Sibiya, they removed that part.

**CHAIRPERSON:** Ja.

**ADV MOKHARI SC:** And if – and that is accepted because these are tables that comes from the report of Werksmans.

**CHAIRPERSON:** Ja.

**ADV MOKHARI SC:** Then there is no need for Mr Nhleko then to go through the issue, then will be really at the end  
20 as to why Dramat and Sibiya's names were removed.

**CHAIRPERSON:** Yes.

**ADV MOKHARI SC:** And then whether that constituted misconduct or not.

**CHAIRPERSON:** Yes, yes. No, I think it links with a question that I had asked earlier but I think we had some



discussion, Mr Nhleko and I, and I ended up not going back to it. What I had sought to ask was, in terms of the alterations, what really did you regard as important, you know, you say one, then you say A, B, C, that is what was important, there may have been other alterations but they were, in my view, neither here nor there. This is what was of concern to me.

Now it may be that it is exactly what Mr Mokhari has been saying, it may be that it is something else. If you say  
10 look, every reference to General Dramat, which had been in the first report from a certain page to a certain page was removed, that is what was of concern to me, then we can deal with that and I think there may be merit in what Mr Mokhari is saying to say there may be no need to go through everything if you are able to capture what was of concern to all the alterations.

**ADV HULLEY SC:** No, thanks Chair, I'll do, just four areas if not five somewhere there just to illustrate this point. In the first report, now let's go to page 60, I think, of Mr  
20 Nhleko's statement.

**CHAIRPERSON:** Page 60, ja.

**MR NHLEKO:** Okay, now in the first report – I'm not sure whether the Chair is following.

**CHAIRPERSON:** You are at the bottom part of page 60 where it says, Khuba's findings...[intervenes].

**MR NHLEKO:** Oh, ja, thanks very much page 29 and other things of Dramat's cell phone records is recorded by Khuba as – he says, that is Khuba, these are his words,

“An evaluation of the above findings, in the entire said record General Dramat requested for the period of the 20<sup>th</sup> 2010 to 28<sup>th</sup> February 2011, the number 015 534 6300 only appears once which rules out any form of communication before the 4<sup>th</sup> of November 2010 and after the said date. This supports his version that he called  
10 Lieutenant General Dramat in connection with the Zimbabwean policy”,

And then in the second report, on the same issue of Khuba's findings on Dramat there's a complete deletion there, nothing is said, okay, that is one example.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** The second example on the issue of the operation Khuba made the following findings in this respect, in his words,

20 “An evaluation of the above findings the success report signed by Leonie Verster was traced to Lieutenant Colonel Maluleka's laptop as picked from the retrieved deleted data. The report was amended on 26 January 2011 and what appears to be, that is me saying 31<sup>st</sup> January 2011, before it

could be emailed to a female officer, Warrant Officer Thabiso Mafatla on the 9<sup>th</sup> of February 2011 at 14h32. There is no material difference between the document retrieved from the laptop and that found at the Hawks offices during the investigation. This proves that Leonie Verster did not generate success report but only signed the report drafted by Colonel Maluleka, the date of the meeting between the Zimbabwean Police and General Dramat which took place on the 5<sup>th</sup> of November 2010 coincide with the date on the 4<sup>th</sup> of November 2010 which, according to cell phone records, General Dramat was called at 20h56 by Lieutenant Colonel Maluleka seeing permission to allow Zimbabwean Police Officers to enter into the country. Since the Zimbabwean Police were at Beitbridge between 20h00 and 21h00 it is logical that they arrived in Gauteng late at night leaving them with the opportunity to have the meeting with General Dramat, in the morning of the 5<sup>th</sup> of November 2010 as stated in the success report".

Now, in the second report, absolutely nothing is said about that. The third area the first report of the 22<sup>nd</sup> of January deals with the committed Government resources into the operation, Khuba makes the following

finding...[intervenes].

**CHAIRPERSON:** I'm sorry are you at 62, am I correct?

**MR NHLEKO:** Yes at – no at 61, honourable Chair.

**CHAIRPERSON:** 6-1?

**MR NHLEKO:** Ja it's – no 62, sorry yes, the one on top, I'm sorry.

**CHAIRPERSON:** Okay.

**MR NHLEKO:** It's difficult to follow these things.

**CHAIRPERSON:** Yes.

10 **MR NHLEKO:** The committed Government resources into the operation. Now Khuba makes the following finding, I quote,

“Despite the fact that General Dramat, as an accounting officer, did not sign any claim of Captain Maluleka delegating responsibility to Major General Sibiya to assist the Zimbabwean Police in tracing wanted suspects, invariably commit Government resources into an unlawful operation that amount to a criminal offence”.

20 Now in the second report nothing is said of this very same paragraph so there's a complete deletion there. Now, congratulating, in the first report, there's a heading that says, congratulating the officers for the arrest of John Nyoni. Khuba makes the following finding in this regard, I quote,

“An evaluation of the above findings, words of appreciation from General Dramat show both interests in the arrest of the Zimbabwean Nationals and his knowledge of the operation. If the operation was lawful, he would not have warned them not to tell anyone about it”.

Now the same heading in the second report, nothing is said completely about this particular matter so there’s a complete deletion there. On the heading titled, he  
10 received communication regarding success reports and photos of the operation through his personal assistant Phumla the investigator makes the following point, Mr Khuba,

“According to the information received from the seized laptop, Captain Maluleka sent emails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails were sent to the PA of General Dramat, Phumla, the Zimbabwean Police  
20 and members of Crime Intelligence”.

Corresponding to the second report nothing is said about this particular matter so there’s a complete deletion. So, of course, there’s a whole range of other deletions but I think following the understanding between the honourable Chair and Senior Counsel who carries it, you don’t want me

to bore you with this but I've made four examples of the deletion.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** And that's why, then, Chair, my issue was if you come across something like this, what do you do. Now if I were to say to you make a decision, and I think this is a point I was – I said earlier on to say, look, there are no cosmetic, dramatical kind of changes that we are dealing with here, we are dealing with material. So, surely the  
10 complete deletion of a particular paragraph and/or statement for an example in a report that you would have to decide, let's say as a Prosecuting Authority for an example it would certainly influence the kind of position that you would have to take and that's why I was saying earlier on, making this example that, if I'm writing a report to the United Nations about this Commission, it's of material value whether the Chair was sitting presiding over the proceedings of this Commission and that's different from, yes, the Chair was there but he was wearing red  
20 glasses, I don't know why I'm – I like red and ja, but I'm just saying there's a material difference in that. So – and this is what we should, essentially, be concerned about as to why you have this kind of a situation.

**CHAIRPERSON:** You see, what is the message that these so-called deletions gave you or what is the message that

these deletions gave you, what did you make of this because that must be what informed your next action? I told you, I think, earlier or yesterday or today that my inclination would have been to call them, to call the Executive Director and say, please explain to me what this is all about but maybe before I do that I would look at the statements and if the statements were intact then whatever I did with this may have been based on saying, do I think that it was a wrong analysis of the statements, wrong  
10 analysis of the issues that may have led to a wrong recommendation or do I – did I think it's something else, so what did you make of it? Do you think it may just be some innocuous deletion or did you think there is something behind it and if so, did you think that after looking at the statements or without looking at the statements themselves?

**MR NHLEKO:** Look, the way I viewed this, that these are serious acts of misconduct, total deletions right. Now, you are bound to develop some theoretical framework for  
20 example in your mind that firstly and foremost there's something untoward about something like this when you come across an analysis of this nature but also you're bound to also conclude that it's possible that there was a cover-up of sorts. Now, as to why there would be that cover-up it's a different process that would then have to

establish that, you know. You only remain at the level of being suspicious, the day there's something wrong. Now – and that's why, Chair, for me, I think I am on record at different sort of platforms for an example because I said, look there has got to be accountability about something like this so that also, the people implicated themselves are able to either clear their names and/or, whatever differently but you need an objective process to handle something like that. It cannot even be a person like myself, regardless of  
10 whatever experience that I think I might have around matters of this nature and so on but objectively take it out somewhere, get professional and objective people to deal with the matters of this particular nature and so on.

So that we – we'll have to get to the bottom of what actually happened and why. Now, I will possibly, disclose briefly one of my discussions, when the issue of, for an example, General Dramat who then said in his first letter to me and subsequently in further engagement and said, he wanted us to sit down and discuss about his options in  
20 terms of, you know, leaving the service and so on and at one particular point we met in my office, I think it must have been down in Cape Town and we spoke about this very same, sort of matter and so on and I said to him, look, I don't have an interest in you necessarily leaving the service I have an interest in knowing, you know, of course



through the correct processes in terms of what happened and of course you – as you would appreciate, Chair, you can't tell an employee whether to remain and stay behind or leave, I mean, it's not your call it's an individual choice that a person makes. So – because I was trying to say to him, and perhaps to anybody else who has to hear this thing, that you can't have an institution or institutions of Governance that function and anything that happens and seems to be untoward and so on and there's no  
10 accountability and when you want accountability around some of those issues – and by the way, issues of accountability it cuts both ways. If I do something wrong, I expect to be correct, for an example and to be subjected to processes of our law, processes of our instruments of – within the institutions and so on.

Now, that's my natural expectation around these particular matters but I think there has been this peddling of a view that says, you don't like certain people and you want to get rid of the, you know, at all costs and so on  
20 which is absolutely not true. For me it was just a simple exercise, these are the allegations that are out there, that you tampered with the report, face a legal process that has to got to deal with matters of that nature go and clear yourself, your name there, that's it.

**CHAIRPERSON:** Well I'm happy we have come to this

point because I think it's quite an important point. You say you thought to yourself that this could be an attempt to cover-up okay, is that right, that there is a possibility.

**MR NHLEKO**: Yes, suspicions in that regard.

**CHAIRPERSON**: Suspicious ja, now, I go back to this question and maybe you did answer it but, whether at the time of doing – of having that suspicion whether you were aware that the statements in the docket had all the information, for example, that may have been in the first  
10 report but was no longer in the second report. Were you aware of that or were you not aware of that at that time?

**MR NHLEKO**: No at that time, of course I wasn't aware.

**CHAIRPERSON**: You weren't aware?

**MR NHLEKO**: But I think, also, on this issue, and I'm happy that Mr Sandile July of Werksmans will also be appearing.

**CHAIRPERSON**: Yes, yes.

**MR NHLEKO**: Because he would shed more light.

**CHAIRPERSON**: Yes, yes.

20 **MR NHLEKO**: On the, you know, the nitty gritty's of the work that they did and of course what is it that they found, for an example.

**CHAIRPERSON**: Yes.

**MR NHLEKO**: In the docket that they looked into and the statements that were there, it does that, whether or not

those statement tally with the final product as found in the two reports, for an example.

**CHAIRPERSON:** Yes, what would you say to the proposition that it would be a very weak attempt on the part of anybody at IPID to try and cover-up what General Dramat and General Sibiya may have done wrong by changing what was in their first report without changing the actual statements on the basis of which decisions would be made, what would you say to that?

10 **MR NHLEKO:** Whether or not, I would think that's a weak attempt?

**CHAIRPERSON:** Sorry?

**MR NHLEKO:** Whether or not I would of that as a weak attempt?

**CHAIRPERSON:** Yes, yes to say, these people must be knowing what they are doing and they must have known, nobody was going to make a decision without reading the statements and it doesn't help to change something in the report, if in the statement, it remains there because the  
20 people who make decision will look at the statements and will see all the information that you are trying to remove, if that's your attempt.

**MR NHLEKO:** No, I think I would share in a more or less a similar view, Chairperson that, you know, if there's something that – for argument sake you wanted to

manipulate you needed to manipulate the entire line all the way back, for an example and that's why I'm also going back to the point that says I'm happy that Mr July would appear here because then we will also be looking into the process issues and some of the process issues, they also affect the National Prosecuting Authority and so forth. There was the whole question, for instance, of the docket itself being withdrawn from the National Prosecuting Authority for whatever the reasons were and so on and  
10 there's quite a bit of – few individuals involved there not on the side of IPID but of course the National Prosecuting Authority and so it goes. Now that is dealt with in detail in the report that I had to commission, in the work that I had to commission as the Werksmans investigation but I appreciate and understand the viewpoint by the Chair, it's – you are right that, naturally you do come to this question but how is it possible that this thing can be done only at this level and not the entire value chain of sorts and so on but I think as and when we engage further with it, we'll get  
20 more clarity, Chair.

**CHAIRPERSON:** No, no that's fine and of course, part of what one would look at is these are not just people who have no investigative experience, these are people who are – have got quite some experience of investigating and they would know exactly what to do if they wanted to do

this but that doesn't mean the alterations mustn't be looked at, I'm just putting this, Mr Hulley.

**ADV HULLEY SC:** Thank you Mr Chair. So, if I understand you correctly, what you're saying is that, insofar as the additional investigations were conducted – that were conducted you would prefer Mr July to speak to that?

**MR NHLEKO:** No, Mr Hulley, I think let's try and clarify this. You are talking about additional investigation, now I  
10 need to be careful about that because there has been reference to additional investigations but relating to the question of the...[intervenes].

**CHAIRPERSON:** Ja I think – Werksmans investigation.

**ADV HULLEY SC:** Werksmans investigation.

**MR NHLEKO:** Okay.

**ADV HULLEY SC:** So as far as the investigations conducted by Werksmans is concerned, you'd prefer Mr July to speak to that?

**MR NHLEKO:** Not necessarily, look, I prepared a  
20 statement and I came here, honourable Chair, in the first day and you looked at me and – in a very intimidating kind of manner and said, you are not going to present this thing word for word right throughout, okay but it's there, of course I'm exaggerating what I've just said, Chair, I'm sorry I'm saying it in jest. Now ...[intervenes].

**CHAIRPERSON:** No, I think what you're saying about Mr July, you are simply saying, you are happy that – you are giving your own understanding of issues, your own perspective.

**MR NHLEKO:** Yes.

**CHAIRPERSON:** And that the person that you asked to investigate will also come and give his own understanding and his perspective.

**MR NHLEKO:** Yes.

10 **CHAIRPERSON:** That's what you are saying.

**MR NHLEKO:** Yes, and particularly because he also had – he conducted the interviews, you know, face-to-face kind of interviews and interactions with people and he will be able to elucidate more points about what that experience entailed and so on.

**CHAIRPERSON:** No, and of course as we ask you questions, we will bear in mind that you are not responsible for his decisions except insofar as you adopted but you are responsible for your own decisions and  
20 obviously if you adopt you might be asked but I think it's clear you are saying you are giving your perspective, he will come and give me his perspective as well, ja, Mr Hulley.

**ADV HULLEY SC:** Thank you Mr Chair.  
Now...[intervenes].

**MR NHLEKO**: Could I – I'm sorry, Mr Chair...[intervenes].

**CHAIRPERSON**: Washing of hands?

**MR NHLEKO**: Washing of hands yes.

**CHAIRPERSON**: Okay we are going to have a – I think I've got an idea that after close to two hours there should be a break to wash hands. So, we are at quarter to four, maybe before – or maybe let's have the washing of hands then when we come back, we can talk about the way forward. Ja we'll adjourn for ten minutes is that fine? We'll adjourn  
10 for ten minutes.

We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON**: ...the way forward. I see Counsel for or he has just arrived. Let us talk about the way forward. We obviously have not finished. Well let me start with the witness. Mr Nhleko what is your situation? I – I imagine but you must just tell me what your situation is. I imagine that maybe we should look – you are still going to come back  
20 when Mr McBride is to be cross-examined. One option would be that we plan that when you come back you finish off your part and then Counsel cross-examines him. Another option is that we proceed for another hour or so but I doubt that we will finish within an hour – that hour. I am not sure if there is another option but what is your situation?

**MR NHLEKO**: Chair I initially had thought that we are going to finish yesterday but we then have now gravitated to where we are.

**CHAIRPERSON**: Yes. Yes.

**MR NHLEKO**: But this is a matter of priority.

**CHAIRPERSON**: Yes. Yes.

**MR NHLEKO**: And so as a result of which I think there would be something wrong if we do not finish tomorrow. I am just making an example.

10 **CHAIRPERSON**: Oh yes, yes, ja. No, no.

**MR NHLEKO**: There will be something fundamentally wrong.

**CHAIRPERSON**: No, no we – if we go into tomorrow, we will finish tomorrow.

**MR NHLEKO**: Yes so I am suggesting that in case you work around.

**CHAIRPERSON**: Ja. I still am prepared to..

**MR NHLEKO**: I am stuck around – I am stuck around this place that we do not like.

**CHAIRPERSON**: Yes okay. Okay.

20 **MR NHLEKO**: So we may...

**CHAIRPERSON**: So you...

**MR NHLEKO**: I am looking at the ...

**CHAIRPERSON**: You are looking at your Senior Counsel.

**MR NHLEKO**: At the SC here because...

**CHAIRPERSON**: I will be asking him just now what his



position is

**MR NHLEKO:** Yes but that is my position.

**CHAIRPERSON:** But from your side even tomorrow you will

[indistinct 00:02:36]

**MR NHLEKO:** Yes even tomorrow yes we can.

**CHAIRPERSON:** So we could go on for some time this afternoon and when we – if we still have not finished then continue tomorrow until we finish if we can with you. I know there are other matters but I think that we should be able to  
10 finish with you even with those matters I think. I think they might have to be moved just like you have been moved in terms of – okay alright. Mr Mokhari what is your situation?

**ADV MOKHARI SC:** Chair I – I will be happy if we can proceed for an hour or two today and if tomorrow, we can finish before twelve then I will be able to push the commitments that I have for tomorrow to afternoon.

**CHAIRPERSON:** Okay. Okay. Mr Hulley, I know you are stuck with – with me.

**ADV HULLEY SC:** Yes.

20 **CHAIRPERSON:** So if I am available you are available.

**ADV HULLEY SC:** We conjoined unfortunately or fortunately as the case may be.

**CHAIRPERSON:** I think let us go up to five and then we will see whether at five we go up to six or we stop at five and adjourn until tomorrow and then if we adjourn until tomorrow,

we could start earlier than ten if that suits everybody.

**ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** Ja okay alright. Thank you. Well let me ask this question as we move forward Mr Nhleko. You know there has been this question of whether the so called first report was the final report or the second report or not ja. Now that question may be quite important for purposes of the concerns that you have raised. Because if it was not a final report maybe it would follow from that that the IPID – that  
10 the final report could differ from a report that is not final and therefore if there were differences between the two that should not raise any alarms. Okay. Now I think from your affidavit I think you have taken the view that it was a final report – the first report, is that correct?

**MR NHLEKO:** Yes Sir that is very correct Chair.

**CHAIRPERSON:** Yes, yes. Now one of the things that Mr Khuba said when he gave evidence in the commission was that the first report was not a final report. And he said that is – that was so because – he said it was not a final report  
20 because there was still some investigation to be done when it was submitted. And as I recall he said although the cell phone records were there, they had not yet been analysed by I assume an expert. And he said the differences between the first report and the final report I do not know whether all of them or some of them were based on the analysis of the

cell phone records that had taken place. Now I am aware that there is a memorandum which Mr Mosing – Advocate Mosing from the NPA wrote to Mr Chauke of the NPA and to Ms Jiba or the NPA in which he also confirmed that the analysis of the cell phone records was outstanding. Are you aware of the same thing as well?

**MR NHLEKO**: No I am aware.

**CHAIRPERSON**: Ja.

**MR NHLEKO**: From the investigation report conducted by  
10 Werksmans that there is that aspect. In fact, I also accommodated it onto my statement.

**CHAIRPERSON**: Yes.

**MR NHLEKO**: Which is more of an issue dealing with the process and the handling.

**CHAIRPERSON**: Yes.

**MR NHLEKO**: Of this particular matter between IPID and the NPA.

**CHAIRPERSON**: Yes.

**MR NHLEKO**: And could I just allude to two things – sorry  
20 because the Chair spoke to the question of what Mr Khuba said that this is the final report.

**CHAIRPERSON**: Yes but before you do that I just wanted to check before I proceed that you are aware of this – we are on the same page. You are aware that Mr Mosing also said in some memorandum that the analysis of cell phone records

was outstanding at the time the first report was submitted to them. You are aware of that?

**MR NHLEKO**: Yes I am aware I saw it in the investigation report.

**CHAIRPERSON**: You are aware okay alright. Okay. Now my question on this debate of whether the first report was final or not is therefore how could it be – how could it have been regarded as final if the work – the investigative work had not been completed yet?

10 **MR NHLEKO**: How I would respond to that maybe in two or three different sort of ways. The first one Chair is that I think investigators who also did this work will shed more light on that question when they coming to testify. That I think just the few extracts that I made before this commission. The one thing that you can clearly see is that there is no additional information in the second report. Rather something has been taken away from the first report. So I think for me that is very glaring. You know you have deleted paragraphs, deleted statements and so on in the  
20 construction of the second one and so on. So it is a – I am aware that somewhere in the – in the investigation conducted by Werksmans that issue also was a letter around the question of you know in fact there are two things. The question of the cell phone records and warning statements.

**CHAIRPERSON**: The warning statements ja.

**MR NHLEKO:** You know those are the things.

**CHAIRPERSON:** I leave out the warning statements because I take it they – the people concerned could not be forced to make them.

**MR NHLEKO:** Yes.

**CHAIRPERSON:** But the cell phone records stands on a different footing.

**MR NHLEKO:** Ja.

**CHAIRPERSON:** So my question is how could anybody  
10 regard the first report as final when the investigation had not  
been completed because there was still an analysis of the  
cell phone records that was to be done?

**MR NHLEKO:** Oh okay. Now I do not want to claim any  
particular knowledge around specifically that area. Save to  
say you know Chair that when that was done my  
understanding is that you had two reports before the report  
of the January 22. You have a draft produced in October and  
a draft produced in November 2013.

**CHAIRPERSON:** Hm.

20 **MR NHLEKO:** Now a – I think the former acting Executive  
Director Ms Koekie Mbeki would also shed some light around  
the question of that report of the 22<sup>nd</sup> because she by then  
was the Accounting Officer. That is about almost three  
months before Mr McBride came in they emerged and so on.  
She would also shed light around the question of the finality

of that report and what the arrangements were between IPID and the NPA for an example. My understanding from what I hear is that she also was quite involved with that work of the investigation done by Mr Khuba.

**CHAIRPERSON:** But would you agree that the report on the basis of which together with the statements you as Minister would be expected to make a decision and the NPA would be expected to make its own decisions about criminal matters would be the final report and not a report that was not final.

10 **MR NHLEKO:** Yes it would be the final report.

**CHAIRPERSON:** You would agree?

**MR NHLEKO:** I agree with that.

**CHAIRPERSON:** So therefore to the extent that the first report may not have been a final report you would not be expected to make your decision based on it. Now when I talk about your decision, I am talking about disciplinary matters whether somebody must be charged or suspended and so on. I am not suggesting that if you pick up that there was something that needed to be investigated you could not  
20 say let it be investigated but I am just saying you would accept that you would be expected to make your decisions on the basis of a final report whichever it is?

**MR NHLEKO:** Yes.

**CHAIRPERSON:** But it must be a final report.

**MR NHLEKO:** No that is correct.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** I think that is a correct.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** Articulation.

**CHAIRPERSON:** Okay. Okay alright.

**MR NHLEKO:** My contention only with regards to the first report which I refer to as a final report.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** Is that if the report was not final what was it  
10 doing at the NPA?

**CHAIRPERSON:** Well...

**MR NHLEKO:** That is not for the Chair to answer it is a rhetorical question I am just saying. So what was it? Why would a draft report be in the hands of the National Prosecuting Authority for them to decide to prosecute or not to prosecute?

**CHAIRPERSON:** Yes. Yes.

**MR NHLEKO:** If it is a draft. If it was a draft.

**CHAIRPERSON:** Just give me the other – there is the other  
20 lever arch file that I cannot remember what it is called that Mr Hulley you...

**ADV HULLEY SC:** In relation to which Mr Chair?

**CHAIRPERSON:** Well it has got my notes. Have you seen that one? I just want to us to speak with specifics. At the beginning it has got some notes that I made – handwritten

notes at the beginning. The files that were brought up yesterday. Ja right at the beginning it has got my handwritten notes. While he is looking for the file that has got my notes let me say this – let me say two things to you Mr Nhleko in regard to your rhetorical question.

**MR NHLEKO:** Yes.

**CHAIRPERSON:** Mr Khuba gave evidence here and said he was placed under tremendous pressure to submit his report to the NPA. I think one of the people that he said placed  
10 considerable pressure on him was General Ntlemeza if I am not mistaken. I think he said something like you are delaying – you are delaying my move to the Hawks or something like that. You know when are you finishing the investigation. I am paraphrasing.

**MR NHLEKO:** Okay.

**CHAIRPERSON:** You know. But I think he also said Mr Mosing also put a lot of pressure on him and he even said normally a report like that must be signed by the Executive Director of IPID but this was submitted with his signature  
20 only. He might have said the acting Executive Director was not available or something I am not sure but definitely he said there was a lot of pressure put on him to complete his investigation and submit his report. That is one. But two I definitely have made a note I saw a memorandum by Mr Mosing addressed to Mr Jiba – Ms Jiba I am sorry – Mr Jiba



and Mr Chauke within the NPA in which he definitely there are still outstanding – there is still something outstanding and that is the analysis of the cell phone records but definitely he said there was a lot of pressure put on him to complete his investigation and submit his report. That is one.

But two, I definitely have made a note. I saw a memo by Mr Moseng addressed to Mr Jiba... Ms Jiba. I am sorry. Ms Jiba and Mr Chauke within the LPA in which he definitely  
10 said there are still outstanding... there is still something outstanding and that is the analyses of the cell phone records.

He may have actually said this is not final. I am not sure. I may be mistaken about that part but I am not mistaken about the part where he said the analyses of the cell phone records is outstanding.

So now, if I am correct factually that that is what Mr Moseng said, I want to suggest to you that that must mean that the final... or rather, the first report was not a product of  
20 a complete investigation or a completed investigation.

And if that was so, my logic suggest that it could not be a final report. Have you got something to say to this thinking?

**MR NHLEKO:** No, I think that is arguable point Honourable Chair. You know, for starters, I would not be privy to

discussions between certain individuals. I know that the... the claim or allegation has been made which is... which I think it makes me very big, you know, that I must also have captured the National Prosecuting Authority and so on.

Now it is quite significant but I will deal with that point a day... at another point... at a later point your Honourable Chair.

But I am saying, I would not be privy, for instance, to discussions either pertaining to Mr Moseng, Moeletsi and  
10 Chauke and whomever, except what I see in the reports that indeed there were such things.

I would also not be privy to the pressure points that Mr Khuba must have been subjected to by... whether it is ...[indistinct] or any other individual and so on. I would not know about those.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** Now.. and I still do think that if Ms Mbeki was to be called, I think she would shed more light about this issue of...

20 So if the January 22 report was not final, so how come it followed a legislative, a sort of route, to the NPA for the NPA to make a decision?

So if the report was not final, what was... perhaps also the logical and relevant question related to that would be, what was the rush? If I may put it that way?

**CHAIRPERSON:** Yes, yes.

**MR NHLEKO:** So what would have been the rush  
...[intervenes]

**CHAIRPERSON:** Yes, yes.

**MR NHLEKO:** If that report was not complete? And then  
you take it to the National Prosecuting Authority and so on.

**CHAIRPERSON:** Yes, yes.

**MR NHLEKO:** And perhaps, that is when the statements  
allegedly made by Mr Khuba, perhaps will also assist in  
10 determining the question of the finality of this particular  
report.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** But as things stand, my position is simple.  
That was the final report and that is why it was with the NPA  
for prosecution. Now and that is why, even amongst other  
things, the NPA itself, besides the memo from Moseng to  
Chauke or Ms Jiba and so, the matter was also even  
escalated to the level of the National Director of Public  
Prosecution then. So how could it get that far when we  
20 have... if this is a draft report? And so. So, I think those  
are relevant questions.

**CHAIRPERSON:** No, no. I think you are right. Those  
questions are relevant. I am going to read to you something  
in my own notes in regard to what Ms Moseng said in the  
memo that I am talking about. I cannot locate the memo

itself but once I have read, maybe counsel will be able to locate it.

**ADV HULLEY SC:** [No audible response]

**CHAIRPERSON:** I am saying, once I have read the relevant part, the quotations in my handwritten notes, maybe counsel will be able to tell us where it is...[intervenes]

**ADV HULLEY SC:** Okay.

**CHAIRPERSON:** ...in the bundle but we might not need to go there for present purposes. But I want to say, I am not  
10 sure what the position is with Ms Mbeki.

But you are maybe aware that when the IPID witnesses gave evidence here... or rather, when Mr Khuba gave evidence here or even from his statements, he said that Ms Mbeki told him not to involve Mr Sesoko in this investigation which he found strange because Mr Sesoko was his supervisor.

The only person that he was reporting to for all investigations. He did not understand why, in regard to this particular one, he should not involve Mr Sesoko. That is one  
20 of the things that Mr Khuba said.

Two, both Mr Khuba... I think Mr Khuba and Mr McBride but certainly Mr Khuba, I think, he raised the question of how... he raised the question of the involvement of Crime Intelligence in this investigation.

And now I maybe mixing up Khuba and McBride but one

or more of them said Crime Intelligence does not get involved in investigations. That is not their job. Their job is different.

But in this case, they had begun this investigation and it was then handed over to us and that was changed. That is what I was told.

And then of course, you have, according to Mr Khuba and Ms Mbeki saying, although you are going to investigate this, do not involve Mr Sesoko, you know.

10 So there are those things. But this is what I wrote here about it. The memorandum I am talking about ...[intervenes]

**ADV HULLEY SC:** Mr Chair.

**CHAIRPERSON:** Ja?

**ADV HULLEY SC:** Can I be of some assistance?

**CHAIRPERSON:** Yes? It is stated 13 February 2014.

**ADV HULLEY SC:** Wait.

**CHAIRPERSON:** Have you got it? Okay.

**ADV HULLEY SC:** It is part of the Y7 Bundle.

**CHAIRPERSON:** Oh, just say where it is on the record.

20 **ADV HULLEY SC:** Yes.

**CHAIRPERSON:** But I will read from my note just for the record ...[indistinct] ...[intervenes]

**ADV HULLEY SC:** It is on page 112 Y7.

**CHAIRPERSON:** Okay. Alright. This is what I wrote here. The memo was also addressed to Mr H Chauke, the DPP for

Southern Gauteng. The purpose of that memo is said to be:

“To provide a summary of the facts and evidence in the matter for the Director of Public Prosecutions, South Gauteng to be able to make an informed decision regarding the prosecution of the matter...”

That is said to be the purpose of the memo by Mr Moseng. And then, I made a note here that says:

10 “The part of Mr Khuba’s version that says that the investigation had not been completed and that therefore the January 2014 was not a final report, seems to be corroborated by Mr Moseng’s memorandum of 13 February 2014.

In part of 6.3 of his memo, Mr Moseng said in part when talking about his view, that Major General Sibiya did not appear to have been involved...”

He said:

20 “The cell phone evidence, however, does not corroborate his presence during the operations. This can be looked at again more closely after an expert has been procured to analyse the cell phone data. This could not be done by the time of writing this report despite it being pointed out to the investigating team...”

**MR NHLEKO**: Yes.

**CHAIRPERSON**: So I just thought I would mention that that

is what caught my attention as I was looking but I am not sure if there is anything that you want to add on the issue or to clarify, as the report is final... was final or not. I think you have said what you wanted to say.

**MR NHLEKO:** No, I think largely that is what I have been... but I also definitely it will be to the benefit of this Commission if Ms Mbeki was to be located and report.

Now for instance, in the investigation report by Werksmans, they provide an explanation because they have  
10 also engaged with Ms Kuki as to this question why Mr Sesoko was not to be involved with Mr Khuba in the... to the construction of that first report.

I think Ms Mbeki and I am not going to verbatim but I am also just para-phrasing in a sense. It was concerned about the fact that Mr Sesoko had a criminal record which he was still in the process of expunging from the system.

And that with his involvement, she thought it was going to be challenged by the implicated persons, for instance, on the grounds of that criminal record and so on. Something to  
20 that effect.

Look, as to what that means, really, I think it can then be further explored with her ...[intervenues]

**CHAIRPERSON:** Ja. Yes.

**MR NHLEKO:** ...as and when she deposes some information with this Commission.

**CHAIRPERSON:** H'm. No, no, no. That is fine. I know that at some stage last year, I asked whether attempts have been made to make contact with Ms Mbeki. I seem to understand that at some stage, I was told she also tried to make contact with the Commission but I am not sure ...[intervenes]

**ADV HULLEY SC:** Her affidavit was recently ...[indistinct] ...[intervenes]

**CHAIRPERSON:** ...where that process is.

**ADV HULLEY SC:** Apparently, she... we have got the draft  
10 that she has prepared but it has yet to be deposed by her.

**CHAIRPERSON:** Yes okay. Alright. But just going back then to from your side. You have said that you regarded the first report as final from your point of view.

**MR NHLEKO:** Correct.

**CHAIRPERSON:** And I think you did indeed also say but you were not aware that there was something still to be done at that time. I think you said you were not aware. Is that right? About the cell phone record analyses.

**MR NHLEKO:** Okay, let me try and put it in context stage  
20 here. When the matter arose of the illegal renditions of the Zimbabweans, there are series of events leading up to the points of investigations.

The first point is that the Civilian Secretariat of Police, they did some work. They... which was not necessarily investigated but basically and analyses and overview of what



were the issues.

And if I am not mistaken, that report made recommendations to the then Minister of Police who was not me. And then the recommendation, the local stat dealing in that report dealing with recommendations, they raised two things.

That they recommended that either the Minister of Police then was to engage with the Minister of Justice and Constitutional Development and agree on an appointment of  
10 a judge or a senior judge or a retired judge, I think.

But there was also reference to the DPCI judge here I think. It must have been Judge Pillay at that time, that he could also be utilised for investigative work around the question of the allegations of the renditions of the Zimbabweans.

And the second recommendation, if I am not mistaken, said the investigation could also be... because I think DPCI also did some investigation at some point.

They were investigating themselves effectively in a  
20 sense. That that investigation needed to be taken away from the police service because they were also implicated, I think.

That is my assumption. And then gave it to IPID, alright, which I think was the correct position. So it does appear that the then minister before I came in took that position for this investigative work to be done by IPID.

And that is when Mr Khuba then gets assigned to actually conduct this investigation. I think there was... correctly so. I think there was also the involvement. I think somebody cited the fact that the Crime Intelligence was also somewhat involved to some extent and then pulled out at a later point.

So you had all those kind of processes. The third area was the Criminal Justice itself. I have also dealt with this particular issue of the renditions of the Zimbabweans. They  
10 even issued a statement to that effect and called upon an investigation to be conducted on this issue.

And I think Advocate Moseng in the... in his interactions with Werksmans, the investigators eluded to the mere fact that the then Minister of Justice and Constitutional Development also addressed senior management at the National Prosecuting Authority about the question of the illegal renditions of the Zimbabweans and that something needed to be done.

So I am saying there were series of these particular  
20 matters long before Mr McBride came in and long before I also came in, okay. So, you know, correctly so, anybody who comes in may tell me that I found these particular matters in process and I found them midstream and so forth and that was basically it. So I am just clarifying this area because it is also important to refer to context in a

sense, yes.

**CHAIRPERSON:** Ja. No, that is alright. But would you agree with this proposition that if the first report was not based on a completed investigation, IPID was maybe not just entitled but obliged to give you a report that is based on a completed investigation.

**MR NHLEKO:** I am trying to hear you, honourable Chair.

**CHAIRPERSON:** I am not sure what you were saying but let me repeat what I am saying.

10 **MR NHLEKO:** No, no, I am just saying I am trying to hear you in terms of the point that they are making.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** Ja.

**CHAIRPERSON:** No, it is a question.

**MR NHLEKO:** Okay.

**CHAIRPERSON:** Would you agree with the proposition that says if the first report, namely that of the 22 January, was based – was not based on a completed investigation, IPID was entitled, maybe was obliged, actually, to give you  
20 a report that was based on a completed investigation.

**MR NHLEKO:** In other words, it would have been a complete investigation, you would not have a report that is sitting somewhere, you know, incomplete, and then have another one which is said to be complete to this end and so on, so my view would be that if a report is not complete

– a report is not complete, so all you do, you continue further work to complete the report before you submit it to your principal.

**CHAIRPERSON:** Yes, yes, yes. I think that suggests that you would agree with that proposition.

**MR NHLEKO:** Yes.

**CHAIRPERSON:** Ja, ja, okay. Thank you. Mr Hulley.

**ADV HULLEY SC:** Thank you, Chair ...[intervenes]

**MR NHLEKO:** Can I also ...[intervenes]

10 **CHAIRPERSON:** I am sorry, yes.

**MR NHLEKO:** Because I think it is a matter that also arises, honourable Chair from some of the issues that you said, there is this assertion that investigator's reports are to be signed by an Executive Director of IPID. Now there is no law that say that, there is no regulation that says that. In fact, there are other major reports that were – major investigation reports, I am sorry, whereby, - I needed to qualify that, that were conducted by IPID. So I will cite largely to – there was a Mr Angus, for an example, who  
20 conducted investigation around the issue of Cato Manor in Durban, the killings that were taking place there and implicating the conduct of the police and so on. Now there was no executive director that signed there, it was the chief investigator who signed and referred the report to the National Prosecuting Authority. Similarly, also with regards

to Marikana, I am told that Mr Gamanjane, one of the implicated persons who must also appear here as a state capture to – he was commissioned to do work there. Now that report was also not signed by an Executive Director but it was signed off by a Chief Investigator and referred to the National Prosecuting Authority, so it is not a matter that would also be performed any way in law or regulations, for example, or IPID Act.

In the work that Werksmans did they also interacted  
10 – specifically interrogated this question and Ms Mbeki, Ms Kuki Mbeki clarified this issue that it is not so. So but I am raising this because the impression has been made that if a report by IPID is valid, it has got to be sanctioned inside of – by the Executive Director, that is not correct. So, I am raising it because the Chair said something about it.

**CHAIRPERSON:** No, no, that is fine. Mr Hulley.

**ADV HULLEY SC:** Thank you, Mr Chair. The particular issue is dealt with extensively in the affidavits of Mr Sandile July. I would prefer to deal with it in the context of  
20 his testimony, understand that the witness ...[intervenes]

**CHAIRPERSON:** Which issue – is that the question of who signs or the earlier question that ...[intervenes]

**ADV HULLEY SC:** The question of who signs the – or whether the report has to be signed by the Executive Director.

**CHAIRPERSON:** Oh, okay, okay.

**ADV HULLEY SC:** That also depends on at what level the report is being – or the investigation is being conducted, whether it is a national investigation, provincial investigation, it is dependent upon the regulations that are applicable. Unfortunately, the regulations are not in the current bundle that we have handed up to you, it was a matter that was to be dealt with with Mr July.

**CHAIRPERSON:** Well, to the extent that this witness has  
10 taken a position on that point, if as an evidence leader you do not believe he is correct, at some stage before he leaves the witness stand you need to come back to him and deal with that, ja.

**ADV HULLEY SC:** We certainly will deal with it.

**CHAIRPERSON:** Ja. Ja, otherwise he will have good enough reason to think you have not issue with his position.

**ADV HULLEY SC:** Well, if I understand it, Mr Nhleko, would it be fair to say insofar as that is concerned you say  
20 there is no law that makes provision for that, are you referring to the [indistinct] **40.47** perhaps, what are you referring to?

**CHAIRPERSON:** Well, maybe I should say the witness just came up with this issue when you may have been on a certain path. You can shelve his issue ...[intervenes]

**ADV HULLEY SC:** Absolutely.

**CHAIRPERSON:** And deal with it at the right time. As long as before at some stage tomorrow before he leaves...

**ADV HULLEY SC:** Indeed, Mr Chair.

**CHAIRPERSON:** You have raised it with him if you have an issue with it.

**ADV HULLEY SC:** Thank you, Mr Chair.

**CHAIRPERSON:** But otherwise you can stick to the path that you were on just before he raised that issue.

10 **ADV HULLEY SC:** After the investigation had been completed by the Werksmans' team they submitted a report to you. The report was dated the 24 April.

**MR NHLEKO:** Yes, yes, correct, sir.

**ADV HULLEY SC:** And – but between the time that their terms of reference were given to them and the time of the completion of the report, which was the 24 April, there would have been some interaction between you and Werksmans, would that be correct?

20 **MR NHLEKO:** Now what kind of interaction exactly? Do you mean between the time when they started the investigation and the time when they did what? Completed it?

**ADV HULLEY SC:** Between the terms of reference, if my memory serves me correct, was the 25 February of 2015.

**MR NHLEKO:** Right.

**ADV HULLEY SC:** And the report was completed on the 4 April – sorry, the 24 April of 2015. What I am asking you is whether there was interaction in between that time.

**MR NHLEKO:** I am not sure whether between that time but there was ongoing interaction, that is how I will put it. I would not necessarily pin it down to a specific period.

**ADV HULLEY SC:** Sure.

**MR NHLEKO:** There was an ongoing interaction.

**ADV HULLEY SC:** And the interaction that took place  
10 would have been – would have, amongst others -were there any reports that were being – interim reports that were being provided to you?

**MR NHLEKO:** I cannot recall whether there were interim reports except that one of the issues I recall was when Mr July raised what he thought was the lack of cooperation for instance on the side of Mr Khuba to which my reaction was basically, you know, calling Mr Khuba and said look, these investigators, I had appointed them, please cooperate with the investigation and that was it. But it is possible that  
20 there could have been other briefs even if - you know, when I refer to briefs, I need to qualify this because briefs by lawyers is something else, you know, but briefs in the context of public roles as we played them, it could be a brief as an when somebody walks in and they would brief this is where we are with the investigation or whatever or



any other process related thereto. So it is possible.

**ADV HULLEY SC:** So you got a report back. At least one of the report backs to you was that Mr Khuba or the IPID investigators were not cooperating. You then contacted Mr Khuba.

**MR NHLEKO:** No, no, let me correct you, Mr Hulley. I did not say IPID investigators, I spoke about Mr Khuba.

**ADV HULLEY SC:** Yes.

**CHAIRPERSON:** Now there is a litany of investigators of  
10 IPID who are commissioned on a weekly basis so I would not say that they were not cooperating because the issue in this instance was pertaining to the investigation report produced by Mr Khuba.

**ADV HULLEY SC:** Very well.

**MR NHLEKO:** So I wanted to correct that, sir.

**ADV HULLEY SC:** So, if I understand correctly, the report back to you was specifically that Mr Khuba is not cooperating.

**MR NHLEKO:** I have responded, Chair.

20 **CHAIRPERSON:** I am sorry, I did not hear the question.

**ADV HULLEY SC:** What I had asked the witness earlier on, I was trying to understand what the report back from Werksmans was, so my earlier question was, was the report back that Mr Khuba or the IPID investigators were not cooperating, understand from the response that was

given was that he was speaking specifically about Khuba. I just want to make it clear or I just want to understand, was the report back from Werksmans that Mr Khuba specifically was not cooperating?

**MR NHLEKO:** I responded to that question, Chair.

**CHAIRPERSON:** Okay, just respond again so that there is no doubt.

**MR NHLEKO:** They responded that Mr July reported to me that Mr Khuba seemed not to have been cooperative with  
10 the investigation.

**ADV HULLEY SC:** Was there any report in relation to the other two, that is Mr McBride and Mr Sesoko?

**MR NHLEKO:** No, I do not remember anything except that – of course, at a later point I was being briefed. Whether at the conclusion of their report or towards the conclusion I also cannot recall but people that had been interviewed and spoken to, they also included Mr McBride and a statement was taken in that regard. I was there something simply to that effect.

20 **ADV HULLEY SC:** Now initially you got your PA to telephone Mr Khuba, would that be correct?

**MR NHLEKO:** No, that is incorrect.

**ADV HULLEY SC:** So your PA did not phone Mr Khuba?

**MR NHLEKO:** I do not know whether she did.

**ADV HULLEY SC:** Well, if she did - and Mr Khuba

testified that she had phone him on several occasions – if she did phone him, on whose instructions would she be acting?

**MR NHLEKO:** I also would not know really on whose instructions it would be.

**ADV HULLEY SC:** In fact she – sorry.

**MR NHLEKO:** Look, even in the affidavit deposed by Mr Khuba he does not say that he was called several times, so I think there is a little bit of an exaggeration there, I mean,  
10 just...

**ADV HULLEY SC:** Just bear with me? But the point is and I will get to the reference shortly, the point is that if she did phone him, she would not have been acting on your instructions according to you.

**MR NHLEKO:** Look, I would not know what people in my office and, you know, what they do and who do they phone and say what to other people and so on. I mean, there is no way I would know.

**CHAIRPERSON:** Well, you may or may not remember  
20 whether if she did phone you had asked her to phone. I think the question is whether if she phoned she would have phoned because you asked her to or you might say I cannot remember whether I had asked her to and it could be that she phoned without me asking her to – so what is your recollection around that?

**MR NHLEKO:** No, I mean, why would I phone Mr Khuba?  
What for?

**CHAIRPERSON:** Yes.

**MR NHLEKO:** I mean, that is the point.

**CHAIRPERSON:** So the short answer ...[intervenes]

**MR NHLEKO:** The only call I remember...

**CHAIRPERSON:** Ja?

**MR NHLEKO:** Is the one pertaining to a matter that was  
brought to my attention by Mr July the investigating person  
10 for Werksmans.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** And that is basically...

**CHAIRPERSON:** Ja, okay.

**MR NHLEKO:** Now – so I see that, you know, claims have  
been made that I called him and I wanted him to come  
down to Cape Town.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** I mean, Cape Town is the other end of the  
world from Limpopo, you know, it is not – so why would I  
20 want to do that? Really. This person, by the way, has got  
nothing to do with me because it is not a person that I  
supervised directly, okay? It would be something else, for  
instance, if – and I would understand - that let us take a  
person like Mr McBride in his ...[intervenes]

**CHAIRPERSON:** Ja, the Executive Director.

**MR NHLEKO:** In his position as the Executive Director of IPID that indeed it is possible that I would summon him to meetings wherever, and so on and so on. But an investigator, really...

**CHAIRPERSON:** Is – I have not refreshed my memory on this, is what you are saying that you would not have contacted Mr Khuba at all because if you wanted something relating to IPID you would talk to the Executive Director or is the position that there is an occasion that you say you  
10 did call him but not another occasion?

**MR NHLEKO:** No, not at any other occasion, in fact ...[intervenes]

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

**MR NHLEKO:** ...in fact I do not know why Honourable Chair this thing is made an issue because precisely it is hearsay, I mean somebody says my PA called him, and Khuba does not say that I called him, then that is the difference, it would be something else if we ...[intervenes]

**CHAIRPERSON:** Well let's talk about you and Mr Khuba  
20 because I seem to remember that Mr Khuba testified that you called him, that is what I am trying to clarify.

**MR NHLEKO:** Okay.

**CHAIRPERSON:** Whether you are saying yes I did call him maybe once, for a specific reason but if he says or if somebody says I called him on another occasion that is

what I am denying, or whether your position is I never called Mr Khuba for anything.

**MR NHLEKO:** No I already clarified on the issue of calling Mr Khuba, that I indeed did, once.

**CHAIRPERSON:** Okay, only once.

**MR NHLEKO:** Only once and in fact in his affidavit that is what he says.

**CHAIRPERSON:** Ja, this is what he talks about.

**MR NHLEKO:** He says no it was just a call, a very brief  
10 call from me and it was once.

**CHAIRPERSON:** Yes, ja okay.

**MR NHLEKO:** And then he refers then to this other person that he calls – he says it was my PA who called him because he does not even cite that person in the affidavit as to who it was except to say that that was my PA.

**CHAIRPERSON:** Yes, okay.

**MR NHLEKO:** Who called him and said whatever.

**ADV HULLEY SC:** Mr Chair the relevance – sorry the passages in Exhibit Y4 it is the affidavit of Mr Khuba and it  
20 appears at page 25.

**CHAIRPERSON:** Does it say anything other than what Mr Nhleko says namely Mr Khuba talks about Mr Nhleko calling him once, he doesn't talk about ...[intervenes]

**ADV HULLEY SC:** That is true, he records Mr Nhleko personally calls him once.

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:** And as far as the PA is concerned it is several calls.

**CHAIRPERSON:** Oh, okay, and it is Mr Khuba who says Mr Nhleko's PA called him several times.

**ADV HULLEY SC:** So he says the following, it is page 25 of that exhibit at paragraph 81, he says:

10           “Shortly before Mr McBride's suspension in March of 2015 I received a number of calls from the then Minister of Police, Minister Nati Nhleko's personal assistant who did not disclose her name, save to say that she was his personal assistant. She informed me that Minister Nhleko wanted to see me. I informed her that I required the permission from the Executive Director of IPID, Mr McBride, before I could do so she phoned again and told me that Minister Nhleko wanted me to fly to Cape Town over the weekend and that he would cover the costs. I told her that it would make no difference whether

20           the meeting took place during office hours or over the weekend, because as long as the meeting related to IPID business the Executive Director had to know about it. On the following day Minister Nhleko phoned me and told me to cooperate with Werksmans Attorneys regarding the January and

March 2014 reports.

Now there were several calls from her according to Mr Khuba, if we are to understand correctly you say that you don't know what your – the staff within your office are doing, but what is clear is on your version and on Mr Khuba's version you did phone him.

**CHAIRPERSON:** He said he phoned him once.

**ADV HULLEY SC:** Yes you did phone him, but you phoned him once, that is clear, there is no doubt about that, that  
10 you are conceding to.

**MR NHLEKO:** Both myself and Mr Khuba we talk about the same thing.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** Once, that's what happened. Now Chair I do not know why we are ...[intervenes]

**CHAIRPERSON:** Hang on Mr Nhleko, I think let's allow Mr Hulley to continue, exactly what your concern is might be addressed in the next question.

**MR NHLEKO:** No I am sure Chair that it is not because  
20 he has already made this point.

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

**MR NHLEKO:** The point he has made which is also made in Khuba's affidavit, is that essentially this Commission is talking about a faceless person. Khuba's affidavit says she did not disclose her name. So Mr Hulley why do you



call her my PA, when my PA had a name.

**CHAIRPERSON:** I think the affidavit of Mr Khuba, the passage that Mr Hulley read said the Minister's PA.

**MR NHLEKO:** Yes, but he says ...[intervenes]

**CHAIRPERSON:** That's why he is saying your PA.

**MR NHLEKO:** No, no, no in the affidavit Mr Khuba himself he then says she did not disclose her name.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** So the question arises maybe to both Mr  
10 Hulley and Mr Khuba, so the PA I had, had a name and a  
surname, so this Commission where is it going to talk  
about faceless people.

**CHAIRPERSON:** No Mr Nhleko ...[intervenes]

**MR NHLEKO:** Because the point is this Chair  
...[intervenes]

**CHAIRPERSON:** No, Mr Nhleko, no, no, no.

**MR NHLEKO:** Okay.

**CHAIRPERSON:** These are some of the things that make  
us take long. Mr Khuba according to the passage that Mr  
20 Hulley read ...[intervenes]

**MR NHLEKO:** Right.

**CHAIRPERSON:** Said that the person who called her said  
she was or he was, I can't remember whether it was a he  
or a she.

**MR NHLEKO:** No she.

**CHAIRPERSON:** She was the Minister's PA, but did not disclose her name, right. So you have confirmed to Mr Hulley that you did call Mr Khuba once and you have said that Mr Khuba also talks about one occasion when you called him. He then talks about these other calls from the person that he understood or was told was your PA, I think Mr Hulley must then come up with the next question and then you answer that, let's make progress, let's hear what the question is.

10 **MR NHLEKO:** No, I accept that Chair, thanks.

**ADV MOKHARI SC:** Chair maybe before he continues, before he answers, I don't know if Mr Hulley wants to really take this issue of a call that Khuba says was made by somebody else to him because if he wants to take it further he should also give the witness the benefit of what Khuba is said to have told McBride about the same issue.

**CHAIRPERSON:** Yes, okay.

**ADV MOKHARI SC:** Because we have that very same issue in McBride's statement at paragraph 30 where McBride says  
20 that Khuba told him something different in respect of the same thing.

**CHAIRPERSON:** Yes.

**ADV MOKHARI SC:** Maybe for his benefit I can just read it out then he can decide whether to what extent he wants to take it further.

**CHAIRPERSON:** I think that is why I was saying Mr Nhleko must wait for the next question because depending on what that question is it might include what you are talking about.

**ADV MOKHARI SC:** Yes indeed.

**CHAIRPERSON:** But we are at two minutes to five.

**ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** I am not sure whether it is convenient to wrap it up because I think we must stop at five, wrap it up at this stage or do you want to put your next question and then  
10 once we've got the answer we adjourn?

**ADV HULLEY SC:** Well I think let me, because it seems that something, a little bit more might come out of this but what I want to deal with just to allay or to deal with one concern that has been raised by Mr Nhleko, relating to this so-called nameless – sorry faceless person. That is not what Mr Khuba is saying, he is not identifying her as a faceless person, he is saying a specific person. If I tell you that I spoke to a person who identified herself as your wife, now unless you have got several thousand wives, then it  
20 becomes difficult of course, but if you have only got one wife it is easy to know who that person is, you got back to her and you speak to her, she will then tell you actually that is not true, but you can then say to us as far as your affidavit or your response is concerned I know the person that he is referring to, the person is Ms – and tell us who that person

is, and say I have not been able to get hold of her because for the last three or four years I have not been in the Ministry, I don't know what has become of her, or something to that effect. You are telling us that this is a faceless person, you know the face of your PA, presumably you had a PA, is that correct?

Is that correct?

**MR NHLEKO:** I have already attested to that Mr Hulley but look the example you just made is the most simply stick  
10 kind of an example and does not apply in institutions of governance.

**CHAIRPERSON:** Okay ...[intervenes]

**MR NHLEKO:** In formal institutions if I pick up a call and I am calling Mr Hulley, right, I would say Mr Hulley, is that Mr Hulley and Mr Hulley says yes it is me, I say Mr Hulley you are speaking to Nkosinathi Phiwayinkosi Thamsanqa Nhleko, right, whatever my function is and so forth, I am calling you let's say now PA, I am calling you on behalf of a Mr Mokhari, okay I am working for Mr Mokhari instructs  
20 me that you are this that and that.

**CHAIRPERSON:** Mr Nhleko as I understand your position you did not instruct your secretary or your PA to call Mr Khuba.

**MR NHLEKO:** Why are you bothering to go into that because once you say I did not instruct her, and if she said

to Mr Khuba that if she phoned Mr Khuba in the first place several times and said that she was – if that was my PA phoning she was doing so without my knowledge, that should be all you should be really interested in, then we can move on.

**MR NHLEKO:** No I accept that Chair, but low-angling is quite different from how Mr Hulley wants to take up this issue.

**CHAIRPERSON:** Yes, yes.

10 **MR NHLEKO:** And that is why I have a problem, and the problem is nothing to do with you Chair but a problem in terms of the manner in which he is angling into this thing, you know it is as if a indeed I must have instructed my PA to do this and so on, and I am saying no, that cannot be correct.

**CHAIRPERSON:** Ja, ja, Mr Nhleko has said if his PA did phone Mr Khuba it was not because he had asked her to do so, but he knows that he phoned him once, Mr Khuba accepts that he phoned him once. Maybe this is the right  
20 time to adjourn or ...

**ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** Is that fine?

**ADV HULLEY SC:** That is fine.

**CHAIRPERSON:** There is not a question that you wanted to ...[intervenes]

**ADV HULLEY SC:** Well I do want to ask further questions related to the very issue around the ...[intervenes]

**CHAIRPERSON:** And then we wrap up?

**ADV HULLEY SC:** But if you don't mind.

**CHAIRPERSON:** Ja, we can say another two, three, five minutes that's fine.

**ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** And then we stop.

**ADV MOKHARI SC:** Chair would you like me to read that  
10 paragraph, I think it will resolve the whole thing.

**CHAIRPERSON:** Okay, okay read it Mr Mokhari.

**ADV MOKHARI SC:** Well this day in McBride's affidavit ...[intervenes]

**CHAIRPERSON:** Ja, don't speak far from your mic.

**ADV MOKHARI SC:** On my thing it is written as RJL006.

**CHAIRPERSON:** Don't be far from your mic.

**ADV MOKHARI SC:** Oh yes.

**CHAIRPERSON:** Ja.

**ADV MOKHARI SC:** So on the same issue Mr McBride  
20 writes as follows, paragraph 30 he says:

“Khuba reported having received multiple calls from Nhleko's personal assistant asking him to meet with Nhleko for a face to face meeting.”

Then he proceeds and he says:

“Nhleko himself called Khuba promising him that the

Minister will cover his travelling costs to Cape Town on the weekend so that I would not find out about it.”

So Khuba has told this Commission in an affidavit and McBride two different things. So that is your result.

**CHAIRPERSON:** Mmm, mmm, okay.

**ADV HULLEY SC:** Well with respect I am not sure that that does resolve it at all, because obviously two witnesses may have a different recollection of things. I do not want  
10 to debate that issue with the witness.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** That is a matter that Mr Mokhari of course will be at liberty to raise and to argue.

**CHAIRPERSON:** Yes, maybe what we should do, maybe we should adjourn, you also get a chance to look at the whole thing so when we come back tomorrow you might wrap it up in a certain way.

**ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** But I think let us stop. Tomorrow we  
20 should start earlier, earlier than ten if we can. I think we should start at half past nine, will that be fine with everybody?

**ADV MOKHARI SC:** That will be fine Chair.

**CHAIRPERSON:** That will be fine with you Mr Nhleko?

**MR NHLEKO:** It is good.

**CHAIRPERSON:** I am going to put a deadline for us to finish with Mr Nhleko tomorrow.

**ADV HULLEY SC:** Yes Mr Chair.

**CHAIRPERSON:** We must aim to finish with him within two hours.

**ADV HULLEY SC:** That is perfectly in order, of course it is subject ...[intervenes]

**CHAIRPERSON:** So we will start at half past nine, I am saying we must finish with him within two hours, that  
10 excludes re-examination, so I am not including re-examination on that but from the point of view of the evidence leader and myself.

**ADV MOKHARI SC:** Chair I am very happy with that timeline because I don't anticipate re-examination to be more than 30 minutes.

**CHAIRPERSON:** Yes, okay. Okay, no thank you. So tomorrow, so Mr Hulley you look at what is really important and we deal with that tomorrow within two hours I want us to finish with him, so that we can move on to other matters.

20 **ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** Thank you to you Mr Nhleko and to Mr Mokhari for all your cooperation, so that we can try and wrap this up tomorrow. Thank you very much.

**MR NHLEKO:** Thank you very much sir.

**CHAIRPERSON:** So we will adjourn and then tomorrow we



will start at half past nine.

We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS TO 29 JULY 2020**