

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

20 AUGUST 2020

DAY 253



Gauteng Transcribers
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 20 AUGUST 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 ready to proceed Mr Chair.

CHAIRPERSON: Yes.

ADV HULLEY SC: Mr Chair this morning's or today's session is going to concern the evidence of Brigadier
10 Ncube. He has been granted leave to cross-examine Mr McBride. The evidence of General Mabula will also be led today and he is being implicated by Mr McBride and General Booyesen and Mr Chair you have granted leave to – for him to cross-examine both of those witnesses. Mr Chair there are quite a few bundles but hopefully we can get through all the bundles with quite – quite briefly. There is the bundles in relation to Mr – sorry in relation to General Booyesen and that is the Z series of bundles. Then there is the bundle of Mr McBride and that is a YA –D
20 series and then there is some additional bundles that have been created in the – specifically in relation to Brigadier Ncube and in relation to General Mabula. They range from Y17 all the way up to Y26. The – we anticipate that the evidence will not be too long but of course one cannot always make an accurate assessment at the beginning. I

will commence with leading the evidence of Brigadier Ncube. I will ask that he be called to the stand.

CHAIRPERSON: Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

BRIGADIER NCUBE: Pharasa Daniel Ncube Chairperson.

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

BRIGADIER NCUBE: No objection.

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

BRIGADIER NCUBE: Yes.

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

BRIGADIER NCUBE: So help me God.

REGISTRAR: Thank you.

CHAIRPERSON: You may be seated.

ADV HULLEY SC: Good morning Brigadier.

20 **BRIGADIER NCUBE:** Good morning.

ADV HULLEY SC: Do I understand that you are still presently a Brigadier?

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: I would like to take you if you will to Bundle LEA17. If you turn and look behind you you should

see such a bundle. I understand it is in front of you. My apologies. The very document – bundle in front of you.

BRIGADIER NCUBE: This one.

ADV HULLEY SC: Mr Chair it is Bundle LEA17.

CHAIRPERSON: Mr Hulley will you please tell your team to also write bundle.

ADV HULLEY SC: Yes. Thank you Mr Chair.

CHAIRPERSON: Ja.

ADV HULLEY SC: I will indeed do so.

10 **CHAIRPERSON**: Bundle LEA17.

ADV HULLEY SC: I trust that by early next week we would have sorted out this problem relating to the bundles Mr Chair.

CHAIRPERSON: Well I can tell you that on not writing bundle you are not the only ones.

ADV HULLEY SC: Yes.

CHAIRPERSON: I think yesterday we had a similar situation.

ADV HULLEY SC: Thank you Mr Chair.

20 **CHAIRPERSON**: Okay alright.

ADV HULLEY SC: Now Brigadier if you would be so kind as to turn to page LEA17 and if you look at the top left hand corner there is a page numbering system it is page 4. It is in black.

BRIGADIER NCUBE: Page 4?

ADV HULLEY SC: Page 4.

BRIGADIER NCUBE: I am there Chairperson.

ADV HULLEY SC: Are you looking at the top left hand corner?

CHAIRPERSON: You see at – you will see one number on the top left corner it is in black and then there will be another one on the top right hand corner it will be red so when Mr Hulley refers you to page numbers he will refer to – he will be referring to the black number on the top left
10 corner.

BRIGADIER NCUBE: I am following that one.

CHAIRPERSON: And – and although it says 004 he will just say page 4. He will not mention the zeros. You got it?

BRIGADIER NCUBE: Chairperson I am there now in terms of the black colour.

CHAIRPERSON: Ja.

BRIGADIER NCUBE: The page I am there.

CHAIRPERSON: Yes. Ja.

ADV HULLEY SC: Okay so keep that open Sir with your
20 left hand and then with your right hand if you would not mind turning to page 27 of the same document.

BRIGADIER NCUBE: Chairperson I am on page 27.

ADV HULLEY SC: Now the signature that appears below the – the heading this – thus done and signed on this ... day of May 2019 at Rosebank above the name Pharasa

Daniel Ncube is that your signature?

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: And is that the affidavit that you or the statement that you have deposed to?

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: And you confirm that this statement is true and correct to the best of your knowledge?

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: Now Brigadier what I am going to do is
10 I am going to take you through – through your statement
but I am going to highlight the pertinent aspects of your
statement and then I am going to ask you some questions
in relation to the pertinent aspects. The – if I understand
correctly you have been – you have set out in your affidavit
or in the statement at page 2 what the purpose of this
application is or the purpose of your application was. You
see that? Under the heading B.

BRIGADIER NCUBE: Which page – sorry Chair.

ADV HULLEY SC: Sorry Chair the side – I have said page
20 2 exactly page 5.

BRIGADIER NCUBE: Of the same statement?

ADV HULLEY SC: Of the same statement.

BRIGADIER NCUBE: Yes Chairperson I am there on page
5.

ADV HULLEY SC: You have dealt on page 6 the following

page with your educational background.

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: And if you turn – if you proceed to page – sorry – to page 15 you will see there you deal with the appointment of the investigation team. Have you got it page 15 top left hand corner at the foot of the page you see your heading there: Appointment to the investigation team?

BRIGADIER NCUBE: Page 15?

10 **ADV HULLEY SC:** Look right at the bottom of the page.

BRIGADIER NCUBE: Page 15?

ADV HULLEY SC: On page 15. You have got the right page Sir or at least you had it. Look at the bottom of the page. You will see the heading Appointment to the investigation team.

BRIGADIER NCUBE: That is correct Chairperson and I have seen it.

ADV HULLEY SC: Now the specific issue that you have been called here to – to respond to relates to the
20 allegations that have been made by Mr McBride who was at – who was at IPID the Executive Director of IPID at a point in time. That correct?

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: Now if I understand correctly and if you could turn back to – with me to page 11 of the same

document. Between the years 2008 and 2009 you were the Section Commander of the Phokeng Organised Crime Unit.

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: And between 2009 and 2013 you were the Unit Commander of the Klerksdorp Organised Crime Unit.

BRIGADIER NCUBE: Which page are you?

ADV HULLEY SC: The following page on page 12.

BRIGADIER NCUBE: That is correct Chairperson.

10 **ADV HULLEY SC**: And then on page 13 between 2013 and you said to date but I imagine that the date that you referring to was the date of the signing of this statement you were the – you were the Unit Commander of the Tlhabane Organised Crime Unit. Is that correct?

BRIGADIER NCUBE: Not to date because it is proceed.

ADV HULLEY SC: Ja it is 2013 to date.

BRIGADIER NCUBE: Oh.

ADV HULLEY SC: And I imagine that the date is May of 2018 when you signed this affidavit, is that right?

20 **BRIGADIER NCUBE**: No Chairperson because when I signed it I was not – I was no more the Branch Commander but the Provincial Head Commercial Crime North West.

ADV HULLEY SC: Okay. Sorry where is that referred to over here? I am just – what year was that? When did you become the Branch Commander?

BRIGADIER NCUBE: Of Phokeng?

ADV HULLEY SC: Of Commercial Crime.

BRIGADIER NCUBE: Of Phokeng?

ADV HULLEY SC: Yes.

BRIGADIER NCUBE: 2013 Chairperson I was the Branch Commander of Organised Crime Phokeng.

ADV HULLEY SC: So let us just go back then to that heading that you have got. You have got it in bold face 2013 to date. It says Unit Commander Thlabane Organised
10 Crime Unit. Are you saying that that is incorrect?

BRIGADIER NCUBE: Chairperson it is incorrect because currently I am the Provincial Head Commercial Crime North West Province.

ADV HULLEY SC: Let me just understand that – the Thlabane Organised Crime Unit were you ever the Unit Commander of that unit?

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: And what was the time period of that?

BRIGADIER NCUBE: Chairperson I cannot remember but I
20 think it was from 2000 – 2013.

ADV HULLEY SC: Okay and when did you become the – when did you become the Provincial Head of the – do I understand correctly did you say the DPCI?

BRIGADIER NCUBE: No, no. I become the Provincial Head Commercial Crime Chairperson of the North West

detectives.

ADV HULLEY SC: And when was that?

BRIGADIER NCUBE: No.

ADV HULLEY SC: What year was that?

BRIGADIER NCUBE: I think it is 2017 Chairperson. I am not actually sure but I think it is 2017.

ADV HULLEY SC: Okay. Now in 2016 when you commenced the investigation or when you were made part of the team that was conducting the investigation into the security breach at the acting National Commissioner's residence where were you stationed at that point?

BRIGADIER NCUBE: I was stationed at Provincial – as a Provincial Head Commercial Crime Chairperson. That is why I said the time when I was appointed the year maybe it is before 2017 because when – when we carry out this investigation I was already the Provincial Head Commercial Crime Chairperson.

ADV HULLEY SC: Okay. And at that point in time you happened to be stationed in the North West Province, correct?

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: Now in – if I understand correctly you had been involved in a number of operations together with certain other members that were involved in this particular team to conduct the investigation into the security breach

at the acting National Commissioner's residence. Is that correct?

BRIGADIER NCUBE: Perhaps can I just ask to be re – your question to be repeated so that I can be able to understand it?

CHAIRPERSON: Yes okay.

ADV HULLEY SC: You had been appointed to a team from the North West that was conducting an investigation into a security breach that apparently took place at the acting
10 National Commissioner's residence, is that correct?

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: And do you recall the date on which you were appointed to that team?

BRIGADIER NCUBE: Chairperson I – I cannot remember the date but it was during November 2016.

ADV HULLEY SC: Now prior to that had – and sorry if I can just take you to the letter of appointment. I believe it is in – in General Ncube – so sorry General Mabula's statement. If you will turn with me if you look behind you
20 there is a bundle behind you and if you look at LEA26. Now if you would turn with me Mr Chair to page 35 of that bundle? Got it?

BRIGADIER NCUBE: No not yet.

ADV HULLEY SC: Top left hand corner.

BRIGADIER NCUBE: Okay. I have got it Chairperson.

ADV HULLEY SC: Now this is a document that is attached to the affidavit or the statement of General Mabula. It is addressed to the Deputy Provincial Commissioner Crime Detection South African Police Service North West and the heading of the letter is Mandate to conduct investigation security threat against the acting National Commissioner counter and security intelligence inquiry 2/10/2016. Do you see that document?

BRIGADIER NCUBE: I see the document Chairperson.

10 **ADV HULLEY SC:** Now do you – have you seen this document previously?

BRIGADIER NCUBE: Yes Chairperson.

ADV HULLEY SC: And do you see – did you see it at the time that you happened to be appointed to the team that was set up to investigate this threat?

BRIGADIER NCUBE: Can the question be repeated Chairperson?

20 **ADV HULLEY SC:** You were appointed if I understand correctly on the 30 November of 2016. My question is did you see it at that point in time when you were appointed to the team in other words on the 30th November 2016?

BRIGADIER NCUBE: Chairperson my appointment I was contacted maybe before the letter by Major General Mabula to inform me that the former Provincial Commissioner of the North West Lieutenant General Motswenyane have

given him instruction to formulate investigation team and he has nominated me to be part of that team.

ADV HULLEY SC: Okay so when you say you were contacted.

BRIGADIER NCUBE: That is correct.

ADV HULLEY SC: Before the letter?

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: Was it on the – was it before you saw the letter or was it before the 30 November?

10 **BRIGADIER NCUBE:** No it was before the 30 November Chairperson.

ADV HULLEY SC: And do you recall the date?

BRIGADIER NCUBE: I cannot recall the date Chairperson.

ADV HULLEY SC: Was it one or two days, three days, a week?

BRIGADIER NCUBE: No I think it was the end of the week and the next week I think the 30th – was the next week.

ADV HULLEY SC: Right. Now if you turn to paragraph 2 of that letter you will see he talks about the appointment
20 the heading is Appointment of team to conduct investigation and it says:

“I hereby appoint the following members to conduct the investigation and to report the findings and recommendation to my office.
And then it is

2.1 Major General NJ Mabula

2.2 Brigadier CM Kgorane

2.3 Brigadier PD Ncube

2.4 Colonel SM Reddy

2.5 Lieutenant Colonel I Dawood.”

Is it correct that this particular investigation was conducted by that team?

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: And on your understanding who was the
10 leader of the team?

BRIGADIER NCUBE: The leader of the team Chairperson was General Mabula.

ADV HULLEY SC: And on your understanding the – the investigation that had to be conducted was an investigation into a security threat, is that correct?

BRIGADIER NCUBE: That is correct and also a threat on the life of the former acting National Commissioner General Phahlane.

ADV HULLEY SC: Okay. Now what my – to go back to the
20 earlier question that I had asked you in relation to this team. Had you conducted investigations previously with the other members of this team as part of a team?

BRIGADIER NCUBE: No Chairperson as a team?

ADV HULLEY SC: As a team.

BRIGADIER NCUBE: Ja part of that team that I am in that

team?

ADV HULLEY SC: Correct.

BRIGADIER NCUBE: No Chairperson.

ADV HULLEY SC: And had you conducted any investigations as part of a team outside of your province with any of these members whether they are all the members or only some of the members?

BRIGADIER NCUBE: Chairperson yes. In terms of General Mabula.

10 **ADV HULLEY SC:** Hm.

BRIGADIER NCUBE: I have – there was a team that he led actually he did not – I must put it – it was a team that investigate Cato Manor cases in KwaZulu Natal I was also called to be part of the team.

ADV HULLEY SC: Okay. Any other teams – any other investigations?

BRIGADIER NCUBE: No the rest of the members on this they were not – they were not part of that team. They were not part of the – that Cato Manor team.

20 **ADV HULLEY SC:** Okay. But did you and General Mabula or you and any of these other members as part of a team conduct any investigations outside of the North West Province?

BRIGADIER NCUBE: Current?

ADV HULLEY SC: Not currently before – before this

investigation had you ever conducted an investigation as part of a team with any of these members whether it is with one member, two members or all the members outside of the North West Province?

BRIGADIER NCUBE: Chairperson I only remember the one of the Cato Manor.

ADV HULLEY SC: Now the Cato Manor investigation that was down in KwaZulu Natal, is that correct?

BRIGADIER NCUBE: That is correct Chairperson.

10 **ADV HULLEY SC:** And do you recall how you got to be involved in that team?

BRIGADIER NCUBE: Yes Chairperson.

ADV HULLEY SC: Could you tell us?

BRIGADIER NCUBE: It was – actually I was called because there was an operation that was need to take place in terms of effecting arrests.

ADV HULLEY SC: And pursuant to ...

BRIGADIER NCUBE: And I was also part of the investigation doing the investigation.

20 **ADV HULLEY SC:** And pursuant to that investigation you happened to arrest General Booysen if I recall correctly?

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: And if my memory serves me right you in fact arrested him on two occasions. Once in 2012 and once subsequent to that, is that correct?

BRIGADIER NCUBE: The second arrest Chairperson I cannot remember whether he was warned to appear but I know that there was a second incident that I was also involved but I – I cannot remember exactly whether it was arrest or whether it was a warning for him to appear in court. But I know there was two occasions.

ADV HULLEY SC: Okay. Brigadier if you could just speak into the microphone, I am told that your voice – people are not picking up your voice.

10 **BRIGADIER NCUBE:** I will do that.

ADV HULLEY SC: Thank you. Now if you would turn – go back to Bundle LEA17. Now you say at the top of that page – at page 16 you say at the top of that page that:

20 “During December of 2016 I was informed by Major General Mabula I was elected to form part of the investigation team that was to investigate a security breach at the residential place [Sable Hills, Waterfront Estate] of former acting National Commissioner Lieutenant General JK Phahlane.”

You see that?

BRIGADIER NCUBE: I see it Chairperson.

ADV HULLEY SC: Now is the date that you have indicated there correct because if I understand correctly you say –

you testified a moment ago that you had in fact been informed that you would be part of this team prior to – prior to 30 November 2016?

BRIGADIER NCUBE: Chairperson not part of the team prior. I was informed before the 30th and we commenced on the 30th up to the...

ADV HULLEY SC: So did...

BRIGADIER NCUBE: In terms of during December Chairperson. It is incorrect it is supposed to be during
10 November.

ADV HULLEY SC: So this date over here in paragraph 10 of your statement is incorrect it should in fact be during November?

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: And your understanding was that the investigation had – had been mandated by whom?

BRIGADIER NCUBE: It was mandated by the acting Divisional Commissioner by then of Crime Intelligence Chairperson Major General Mahele [?].

20 **ADV HULLEY SC:** Now – and who had authorised the appointment of a team from North West to come and conduct an investigation in respect of an incident that apparently took place in Gauteng?

BRIGADIER NCUBE: That was supposed to be approved Chairperson by the Provincial Commissioner North West

Lieutenant General Motswenyane.

ADV HULLEY SC: Once the team had been established were there any meetings that took place immediately after the team had been established? In other words, a meeting between you, the other members of the team and any – any additional party?

BRIGADIER NCUBE: The first thing that have happened Chairperson Major General Mabula facilitate the meeting with Crime Intelligence with the investigation team. That is
10 the briefing meeting. Crime Intelligence briefing the investigation team.

ADV HULLEY SC: So there was a meeting with Crime Intelligence investigation team and that regarded as a briefing session?

BRIGADIER NCUBE: That is correct Chairperson. That is the Crime Intelligence team that investigated the threat assessment against former acting National Commissioner General Phahlane.

ADV HULLEY SC: Were you present at that meeting?

20 **BRIGADIER NCUBE:** I was present Chairperson.

ADV HULLEY SC: And were the other members of your team also present?

BRIGADIER NCUBE: Correct Chairperson.

ADV HULLEY SC: And who was present from Crime Intelligence?

BRIGADIER NCUBE: Chairperson when I – my memory serve me well it was the acting herself Major General Mahele [?], Brigadier Motswenyane. I cannot remember the other members. I remember the two.

ADV HULLEY SC: Okay. But you are saying that at least those two people were present, Makhele and Motswenyane?

BRIGADIER NCUBE: That is correct, Chairperson.

ADV HULLEY SC: Are you saying that were additional people from Crime Intelligence, you just do not remember
10 their names or are you saying that you do not remember whether there were additional people?

BRIGADIER NCUBE: No, I think there were additional but I cannot remember their names.

ADV HULLEY SC: Yes. And when they gave you a briefing – I can imagine that the briefing was given to your team by Crime Intelligence?

BRIGADIER NCUBE: That is correct, Chairperson.

ADV HULLEY SC: And who was speaking?

BRIGADIER NCUBE: Brigadier Motswenyane. He was the
20 one was briefing the team with regards to the investigation.

ADV HULLEY SC: And other than to speak was there a presentation of any sorts? Was there either a slide-show or was there a pack? Was there documents that were presented?

BRIGADIER NCUBE: No, Chairperson they present to us

but he provide... he provide also copies of emails that they allege it was certain emails that was sent to the former Acting National Commissioner.

ADV HULLEY SC: And at that stage, what did you understand to be the concern, other than the threatening emails?

BRIGADIER NCUBE: Chairperson, the briefing was to the effect that a vehicle, a Ford Kuga, went to Sable Hills where the former Acting National Commissioner stayed and it went
10 to actually the service entrance, trying to enter the estate and it was referred to the main gate.

The occupants were four occupants according to the briefing of Crime Intelligence. There was one white male, one white female and two African males who went into the estate and looking the estate manager. And...

ADV HULLEY SC: Ja?

BRIGADIER NCUBE: And when they arrived at the estate manager, they introduced themselves as members from IPID.

ADV HULLEY SC: But remember, we are still talking at this
20 stage about the briefing session.

BRIGADIER NCUBE: Yes ...[intervenes]

ADV HULLEY SC: This is what was... were you informed about this at the briefing session?

BRIGADIER NCUBE: Yes, we were informed about this at the briefing session and they went also to the same...

actually, they give us how it happened in terms of the visit of these four people to the estate.

ADV HULLEY SC: And they get... we know that they gave you certain emails that of a threatening nature.

BRIGADIER NCUBE: Yes, they give us emails that they allege it was threatening emails that they said emails was actually sent by one individual Paul O'Sullivan to the Acting National Commissioner and the email was part of the investigation, the threat investigation.

10 **ADV HULLEY SC:** The emails were part of the threat investigations. That, in other words, the threat investigation that you had to conduct, your team?

BRIGADIER NCUBE: That is correct.

ADV HULLEY SC: Now you spoke earlier on about a security assessment. Just explain what you are referring to.

BRIGADIER NCUBE: I said they were briefing us Chairperson in terms of the security assessment they have done on the acting... the Acting National Commissioner.

ADV HULLEY SC: And when you say they, you are referring
20 to Crime Intelligence that conducted such assessment?

BRIGADIER NCUBE: That is correct, Chairperson

ADV HULLEY SC: And if I understand, what was the conclusion or the assessment that Crime Intelligence had reached?

BRIGADIER NCUBE: They, according to them, they reached

that there was a breach of security with related to the former Acting National Commissioner's life.

ADV HULLEY SC: Now what was it... so Crime Intelligence, if I understand it correctly, has come to the conclusion which they communicated to you, your team in this briefing session that there was a threat to the life of Acting National Commissioner. Do I understand that correctly?

BRIGADIER NCUBE: That is correct, Chairperson.

ADV HULLEY SC: And your function in relation to the
10 conclusion of the assessment that had been conducted by Crime Intelligence was to do what?

BRIGADIER NCUBE: Was to conduct investigation in relation to a threat imposed to the life of the former Acting National Commissioner, Chairperson.

ADV HULLEY SC: Was it supposed to be a criminal investigation or was it supposed... was it something different?

BRIGADIER NCUBE: Chairperson, we... because we were
20 having the emails and the briefing, we did not open a criminal docket. We opened an inquiry docket.

ADV HULLEY SC: Now once the investigation was conducted, on your understanding and based on what transpired at the briefing session, what were you supposed to do once you had completed your investigation?

BRIGADIER NCUBE: Chairperson, maybe I must give how it

has happened in terms of this investigation? We ...[intervenes]

ADV HULLEY SC: Well... no, no. Let us step a step back. At the briefing session you were informed of the threat assessment that... or the security assessment that had been conducted by Crime Intelligence.

Crime Intelligence came to the conclusion that there was a threat to the life of the Acting National Commissioner. Your instruction or your mandate was to conduct an
10 investigation.

If I understand correctly, it was an investigation into the threat of the life of the Acting National Commissioner.

BRIGADIER NCUBE: That is correct, Chairperson.

ADV HULLEY SC: Now once you had completed your investigation, according to the instruction that you had been given at that briefing session, what were you then to do?

BRIGADIER NCUBE: That is why Chairperson I said let me explain how did we approach it from that team in that investigation.

20 The approach... Chairperson, after the briefing of Crime Intelligence, General Mabula, the lead... the team leader then suggested to us – because during the briefing it was indicated that it is believed that the people who entered the Sable Hills are members of IPID, according to the briefing.

And General Mabula indicated to us to say, after the

briefing, let us make an appointment with DPP Pretoria. He said to us, let us go and brief the DPP regarding this investigation. The reason being, there was on public domain that IPID is investigating the Acting National Commissioner.

So for us to investigate this threat assessment, let us brought the DPP onboard so that our action must not been seen as action countering the investigation of IPID.

Then we went and briefed Advocate Mzinyathi. It was myself and Major General Mabula and Colonel Kgorane.

10 We briefed him in terms of what Crime Intelligence has briefed us and also in terms of the email that they allege was the threaten email.

And Advocate Mzinyathi indicated to us that to him this is a very serious allegation that need to be investigated and then he indicated to us to say he will allocate an advocate to the team and he divulged the name that time, to say Advocate Nemaorane will be assigned to the team. It is then that we commenced with the investigation.

ADV HULLEY SC: So if I understand correctly what -
20 pursuant to the question that I had asked earlier on – there was not necessarily an instruction given to you at the briefing session about what the investigation should entail. That was left to the team. Do I understand that correctly?

BRIGADIER NCUBE: Yes, in terms of the investigation. Chairperson, the Crime Intelligence, they do not have the

skills in terms of crime investigation. That is why there was a team nominated now to investigate in terms of crime investigation.

ADV HULLEY SC: Okay. And at that briefing session, was there any instruction given to? I am not, at this point in time, concerned with what happens after the briefing session. I want to know at the briefing was there an instruction given to you about what you should do once the investigation is complete?

10 **BRIGADIER NCUBE:** There was no specific instruction in terms of that Chairperson but the... our team leader, General Mabula, he was communicating with General Makhele in terms of giving the feedback, not in writing but verbal feedback in terms of the progress.

ADV HULLEY SC: Now the date of the briefing session, do you recall what that date was?

BRIGADIER NCUBE: If I remember well Chairperson, I think it was the 30th of November 2016.

ADV HULLEY SC: And the meeting with Advocate Mzinyathi
20 in Pretoria, do you recall what date was?

BRIGADIER NCUBE: Chairperson, I cannot recall. I think what happened, we had a meeting with Crime Intelligence early in the morning and when, after that meeting, General Mabula conducted Advocate Mzinyathi, allowed us to come and see him at his office on the same day.

ADV HULLEY SC: So you travelled to Pretoria to meet with Advocate Mzinyathi on the 30th of November?

BRIGADIER NCUBE: No, Chairperson we were already there in terms of the briefing of Crime Intelligence.

ADV HULLEY SC: So you say... sorry. That the briefing with Crime Intelligence took place in Pretoria. So you simple travelled to the offices of the DPP?

BRIGADIER NCUBE: That is correct, Chairperson.

ADV HULLEY SC: I see sir. Now let us just move forward
10 now to deal with the actual investigation that was conducted. You would have a meeting first with your team leader, General Mabula, to discuss the way forward. Is that correct?

BRIGADIER NCUBE: We did not have a meeting with him Chairperson because as I said, if... when he contacted me in terms of the instruction of the former provincial head, he already brief me to say: "That this is the investigation that we are going to conduct but I will convene the meeting with Crime Intelligence for the briefing of the team".

ADV HULLEY SC: But after the briefing session, did he call
20 a meeting before you went to go and meet with general... oh, sorry, with Advocate Mzinyathi or did you leave Crime Intelligence straight away after the briefing session and simple go to meet with Advocate Mzinyathi?

BRIGADIER NCUBE: I cannot recall but after the meeting yes we had seen him Chairperson after the meeting with

Crime Intelligence but I cannot recall that General Mabula had called a meeting after we met with Crime Intelligence.

ADV HULLEY SC: Now the actual investigation itself, did that investigation entail... was there a meeting that was held between General Mabula and the rest of the team to explain how the investigation was going to unfold and to share the responsibility of who is going to do what?

BRIGADIER NCUBE: No meeting to that effect but myself, Colonel Dawood and Brigadier Kgorane, Chairperson, our
10 duties was of investigators. Colonel Ready, actually he is from legal service. He was just part of the team in terms of legal opinions.

ADV HULLEY SC: And were there subsequent meetings held where you provided feedback to General Mabula of your investigations that you have conducted?

BRIGADIER NCUBE: Chairperson, I would not say it is meeting but we will, from time to time, when we are... we went and obtained statement, we will brief General Mabula as a team.

20 **ADV HULLEY SC:** When did you complete your investigations?

BRIGADIER NCUBE: Chairperson, what have happened, as I have said, we registered inquiry, inquiry docket. It was not a criminal docket. After we... we commenced with investigation. We went to Sable Hill to interview people that

Crime Intelligence has indicated they were interviewed.

Their statements were obtained and after their statements... after we have conducted preliminary investigation with regard to the inquiry docket, then we met with the advocate that Advocate Mzinyathi has allocated or assigned to the team. That is Advocate Nemaorane.

It was not long after we have commenced, after we have done the preliminary, then we presented the statement before Advocate Nemaorane and in that presentation of
10 statements, Advocate Nemaorane came with Advocate Johnson. T

They perused the statements in our presence and then they indicated to us to proceed with the investigation to complete it and we must bring back the inquiry docket to them.

I cannot remember when did we complete the investigation but what had happened is, after the completion of the inquiry, we submitted again back to them. Then they perused the file and they indicated to us: “No, we are of the
20 opinion there is a case to be answered here”.

And they advised us to register a docket. Then we went to register a criminal docket. And they said to us: “After you register a criminal docket, bring it to us for us now to decide”.

We registered the docket and the docket was submitted

before them. It was with Advocate Nemaorane. Then Advocate Nemaorane, after they perused the docket, they phoned General Mabula, the team leader, to say: “Your docket has been allocated to Advocate Mashuga. The team can make appointment to see Advocate Mashuga”. That is how it had unfolded Chairperson.

ADV HULLEY SC: So if I understand correctly, you had meetings with Advocate Nemaorane after an initial set of investigations and then you had subsequent meetings with
10 Advocate Johnson. And what was the other advocate’s name?

BRIGADIER NCUBE: No, the meeting with Advocate Johnson... as Advocate Mzinyathi indicated to us Chairperson that Advocate Nemaorane is allocated to the team. After we had done the preliminary investigation, we met with Advocate Nemaorane but at that meeting, Advocate Johnson was part of it when it would prevent now the preliminary investigation to Advocate Nemaorane.

ADV HULLEY SC: Do you recall the date of that meeting
20 where the preliminary investigation report was given?

BRIGADIER NCUBE: No, there was no report given. When I ...[intervenes]

ADV HULLEY SC: Sorry, when I say report, what you had reported to Advocate Nemaorane.

BRIGADIER NCUBE: No, no. We presented the statement

Chairperson. We did not... we went... the preliminary investigation was conducted in terms of obtaining the statement at Sable Hill. Then we presented that statement to them and they indicated to us, we must proceed, complete the investigation in terms of the inquiry and we must bring the inquiry back to them.

ADV HULLEY SC: And at what stage did they decide that a criminal docket should be opened?

BRIGADIER NCUBE: I think it was in January 2017
10 Chairperson.

ADV HULLEY SC: Now let me understand. By January of 2017 when they advised you to open a criminal docket, by that stage, they were of the opinion that there is a case to be answered here.

BRIGADIER NCUBE: That is correct, Chairperson.

ADV HULLEY SC: But at the preliminary investigations or the preliminary... pardon me. At the presentation that you had given at the preliminary investigation stage, at that stage, they were... they felt that you must conduct further
20 investigations.

BRIGADIER NCUBE: That is correct, Chairperson.

ADV HULLEY SC: Did they express a view as to whether there was a case to be made at that stage or were, they uncertain?

BRIGADIER NCUBE: No, they did not indicate to us at that

stage when it was at the stage of the inquiry docket when we presented to them at the preliminary stage.

ADV HULLEY SC: Now speaking about reports, did you at any stage, either in 2016 or before the criminal docket was opened, did you at any stage present – and when I say you, I mean you and/or the rest of your team – present a report relating to the investigation that you had conducted at any point in time?

BRIGADIER NCUBE: Can the question be repeated?

10 **ADV HULLEY SC:** I want to know whether a report was compiled? And by report, I mean something that was either typed or written up in some form that was presented either to the NPA, alternatively, to anybody within the SAPS, whether it be Crime Intelligence, whether it be North West or anybody else?

Was any written report compiled by you and/or the rest of your team relating to the investigation that you had conducted up until the end of 2016, the beginning of 2017 before the criminal docket have been opened?

20 **BRIGADIER NCUBE:** Chairperson, I cannot remember when was that report drafted but when the Acting National Commissioner Mothiba came in, a report was drafted and we highlighted.

But I do not know in which stage, whether it was at the stage where they inquiry docket was... already was the

docket but a report, when the new Acting National Commissioner came Chairperson, it was submitted to the office of Acting National Commissioner.

ADV HULLEY SC: So a report was compiled? It was a written report?

BRIGADIER NCUBE: It was a written report.

ADV HULLEY SC: And the report was compiled by you, you or your team?

BRIGADIER NCUBE: It was the team Chairperson.

10 **ADV HULLEY SC:** And that report was presented to whom?

BRIGADIER NCUBE: It was presented to the Acting National Commissioner by then, Mothiba.

ADV HULLEY SC: And what year was this?

BRIGADIER NCUBE: I cannot remember the year Chairperson.

ADV HULLEY SC: Are we talking about 2016, 2017 or 2018?

BRIGADIER NCUBE: No, I... really, I do not want to commit myself. I cannot remember which year was that.

20 **ADV HULLEY SC:** So what I am trying to understand for present purposes. At what stage did you and your team come to the conclusion that having conducted the investigation there was indeed a security threat to the life of the then Acting National Commissioner Phahlane?

BRIGADIER NCUBE: Chairperson, I will answer the question by saying. This investigation, it was prosecutorial

handled investigation as I have indicated.

From the early stage of the inquiry, Advocate Nemaorane was in place. When the docket was registered it was booked to Advocate Mashuga who were guided by them in terms of the statement that we had obtained as a team.

We did not include in ourselves to say there is a threat against the National Commissioner. We put the statement before prosecutors who decided.

ADV HULLEY SC: So if I understand your response
10 correctly, you are saying that you did not come to the conclusion yourself necessarily that there was or was not a threat to the life of the Acting National Commissioner at the time.

Instead, you had just obtained statements. You have placed those statements before members of the NPA for them to make that assessment.

BRIGADIER NCUBE: That is correct, Chairperson because we were investigating whether there is any crime committed our investigation team. That is why after we obtained the
20 statement, then we put the statement before the prosecutors for the prosecutors to decide.

ADV HULLEY SC: Now let me understand. At what stage did it come about that your investigation had been broadened to determine whether there was any crime committed?

Had your mandate or the scope of your investigation been broadened to determine whether there was any crime committed? My understanding was that your mandate was to determine whether there had been a threat to the life of the Acting National Commissioner.

BRIGADIER NCUBE: That is correct, Chairperson but I indicted to say there was all as it is put to me to say: “Yes, that was the mandate to investigate”. But as the investigation team, we did take the statement from the
10 witnesses that we identified and we put the statement before the prosecutors.

ADV HULLEY SC: Yes and I understand that but I want to... I am asking a slightly different question. When you were initially appointed, I understood that your mandate was to determine whether there was a threat to the life of the Acting National Commissioner. That was your mandate.

So what I am asking you now is, was that mandate broadened to include whether there was any crime committed? That is my question.

20 **BRIGADIER NCUBE:** Chairperson, it was not broadened. It was still within the scope.

ADV HULLEY SC: Now you then conducted an investigation which you have outlined at page 16 paragraph 11. And you have identified the names there of several witnesses from whom statements were obtained. Is that correct?

BRIGADIER NCUBE: That is correct, Chairperson.

ADV HULLEY SC: And you continue identifying a number of witnesses all the way up to page 19 and you identified them as Witnesses 1 to 10. Is that correct?

BRIGADIER NCUBE: That is correct, Chairperson.

ADV HULLEY SC: Now you say there in paragraph 12 that:

10 “After the evidence was collected and presented to Advocate Nemaorane of the Offices of the DPP and on his instructions a criminal case was registered under Kameeldrift CAS 12/01/2017 impersonating an IPID official...”

Was that your understanding of the case that was opened at that stage?

BRIGADIER NCUBE: Can you repeat the page for me?

ADV HULLEY SC: If you turn to page 19.

BRIGADIER NCUBE: 19. I am there Chairperson.

ADV HULLEY SC: And if you look at paragraph 12.

BRIGADIER NCUBE: Yes.

ADV HULLEY SC: You say that:

20 “After the evidence was collected and presented to Advocate Nemaorane of the Offices of the DPP and on his instructions a criminal case was registered under Kameeldrift CAS 12/01/2017 impersonating an IPID official...”

Do you see that?

BRIGADIER NCUBE: That is correct, Chairperson.

ADV HULLEY SC: And then you say that:

“Advocate Mashuga was thereafter assigned to oversee and guide the investigation. After the evidence was gathered it was perused by Advocate Mashuga and a J51 for arrest was authorised in respect of Paul O’Sullivan and Sarah Jane Trent...”

Now the first part when you were advised to or instructed to register a criminal case, why at that stage...

10 sorry.

At that stage, your understanding was that it was about... the criminal investigation was in respect of the impersonation of an IPID official. Is that correct?

BRIGADIER NCUBE: That is correct, Chairperson.

ADV HULLEY SC: And the investigation was against Mr Paul O’Sullivan and Ms Sarah Trent. Is that correct?

BRIGADIER NCUBE: Yes, Chairperson.

ADV HULLEY SC: Now at this stage, have you or have you not concluded at this stage whether alone as your team or
20 together with anybody from the NPA’s office, has there been a conclusion reached – and when I say conclusion, I mean in your minds that there is a security threat to the life of the Acting National Commissioner Phahlane at that stage.

BRIGADIER NCUBE: Chairperson, in terms of the charges, I think when the J50 was drawn up Advocate

Mashuga also add the charge of intimidation with regard to the former Acting National Commissioner General Phahlane in terms of the email that was actually sent threatening. It was not only an impersonating(?) charge only, Chairperson. There were other few charges that Adv Mashuga drafted.

ADV HULLEY SC: Okay. So this warrant of arrest, the J50 warrant of arrest, when was that prepared, do you recall?

10 **BRIGADIER NCUBE:** I cannot recall but my supporting statements for applying – I think it can be in the bundle, it can maybe assist in terms of the date.

ADV HULLEY SC: Okay. If you will just bear with me. If you would turn – if I recall correctly, you applied for a warrant of arrest in February of 2017, is that right?

BRIGADIER NCUBE: Ja, I think it is 2017, Chairperson.

ADV HULLEY SC: Just bear with me? If you would turn with me to bundle LEA18. If you would turn with me to page 14.

20 **BRIGADIER NCUBE:** Page 14?

ADV HULLEY SC: That is right.

BRIGADIER NCUBE: Yes, Chairperson, I am on page 14.

ADV HULLEY SC: Now the – pardon me, actually you have got to start at page 13. This is the statement in terms of Section 43 of the CPA, that is the Criminal

Procedure Act 51 of 1977 and on page 14 are the particulars of the suspects of whom a warrant is sought. This is the application or the affidavit or the statement that is filed in support of an application for the warrant of arrest, is that correct?

BRIGADIER NCUBE: That is correct, Chairperson.

ADV HULLEY SC: And if you would turn to page 21 you, the deponent, will find that affidavit, is that correct?

BRIGADIER NCUBE: That is correct, Chairperson.

10 **ADV HULLEY SC:** Okay. Now the actual warrant of arrest, if I understand correctly, was obtained subsequently. If you turn with me to page – bundle LEA17 at page 29, you have attached a copy of that to your affidavit.

BRIGADIER NCUBE: Page?

ADV HULLEY SC: Page 29 of bundle LEA17.

BRIGADIER NCUBE: That is correct, I am on the page, Chairperson.

20 **ADV HULLEY SC:** Now that relates to Sarah Jane Trent and if you turn to the following page you will see that that relates – that is the warrant of arrest in respect of Mr O’Sullivan.

BRIGADIER NCUBE: That is correct, Chairperson.

ADV HULLEY SC: And if you look at the date stamp at the foot of both documents you will see that it is dated the

8 February of 2017.

BRIGADIER NCUBE: That is correct, Chairperson.

CHAIRPERSON: Sorry, Mr Hulley, I think I am on a wrong page. What was the page? I think I am on 21.

ADV HULLEY SC: Pages 29, Mr Chair.

CHAIRPERSON: Oh, 29, not 21.

BRIGADIER NCUBE: And page 30, my apologies, Mr Chair.

CHAIRPERSON: Okay, I thought that was 21. 29?

10 **ADV HULLEY SC**: That is correct, Mr Chair.

CHAIRPERSON: Okay.

ADV HULLEY SC: Now, if I understand correctly, if you go back to bundle LEA18 at page 40(?) in this affidavit, was used in support of the obtaining of those warrants of arrest, is that correct?

BRIGADIER NCUBE: That is correct, Chairperson.

20 **ADV HULLEY SC**: Now we will get back to these documents, what I am asking you is before we get to February, when you opened the docket, do I understand your statement correctly that at that stage you understood that the case against whoever it is that was being investigated was one of impersonating an IPID official?

BRIGADIER NCUBE: Can you repeat the question?

ADV HULLEY SC: When you opened the docket, the docket was opened prior to the 8 February of 2017, is that

correct?

BRIGADIER NCUBE: That is correct, Chairperson.

ADV HULLEY SC: In fact, it was opened at the beginning of January of 2017.

BRIGADIER NCUBE: That is correct, Chairperson.

ADV HULLEY SC: Now at the time when that docket was opened your understanding was that the case against the suspects was a case of impersonation of an IPID official. That is what you say here in your statement. I am just
10 trying to understand if I, my reading of your statement is correct.

BRIGADIER NCUBE: The one that is applying for the J50.

ADV HULLEY SC: Look at page 19 on bundle LEA17.

BRIGADIER NCUBE: Page 19.

ADV HULLEY SC: Have you got LEA17, sir?

BRIGADIER NCUBE: Ja. And then the page?

ADV HULLEY SC: Page 19.

BRIGADIER NCUBE: Page 19. Yes, I am on page 19.

ADV HULLEY SC: Paragraph 12:

20 "After evidence was obtained and collected..."

Sorry:

"After evidence was collected and presented to Advocate Nemaorane of the offices of the DPP and on his instructions a criminal case was registered under Kameelsdrift as 12/01/2017 impersonating an

IPID official.”

Now, if I understand correctly, this happened at the beginning of January of 2017. All I am trying to understand is. at that stage they felt – and when I say they, I am talking about Advocate Nemaorane and whoever else was assisting him, they felt that the case was one of impersonation of an IPID official.

BRIGADIER NCUBE: That is correct, Chairperson.

ADV HULLEY SC: Okay. Now what ...[intervenes]

10 **CHAIRPERSON:** We have reached the short break.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: Fine. We take the short break. How much time do you think you will need with Brigadier Ncube?

ADV HULLEY SC: Chair, I will imagine that it probably be another 30 minutes. I thought it would be less than that.

CHAIRPERSON: Ja.

ADV HULLEY SC: But it will probably be another 30 minutes.

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

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: No, it is fine. We will take the short adjournment and resume at half past eleven. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Let us continue.

ADV HULLEY SC: Thank you, Mr Chair. Brigadier Ncube just to – and specifically having regard to the issues that we have got to deal with over years in relation to the purpose for which this Commission has been established, I want to move on and deal with the issues that are specifically relevant to the Commission.

Now if I understand correctly, by January 2017 there had been investigations that were conducted by you and your team, statements or affidavits had been obtained, they had been placed before the NPA, Advocate Nemaorane in particular and the decision was taken that this related to the crime of impersonation of an IPID official and a docket was opened to that effect.

The docket was opened in Kameeldrift, which is in Pretoria, is that correct?

BRIGADIER NCUBE: That is correct, Chairperson.

ADV HULLEY SC: Now your team at that stage had conducted its investigation, why was that investigation not – having discharged your mandate, a docket has been opened, why was that investigation not handed over to the police officials at Kameelsdrift police station and you and the rest of your team return to the North West Province where you are based.

BRIGADIER NCUBE: Chairperson, we proceed with the

investigation and we placed the docket before the prosecutors or the advocate at DPP's office.

CHAIRPERSON: So are you saying – you are saying the process is if you start the investigation you proceed until you have completed it. After that you hand over the docket to the NPA to decide whether to prosecute or not to prosecute.

BRIGADIER NCUBE: That is correct, Chairperson, but this ...[intervenes]

10 **CHAIRPERSON:** That is what you are saying.

BRIGADIER NCUBE: This was not an ordinary docket like a complainant went to police station, register a docket and that docket allocated to a detective. It was investigation that was allocated to an investigation team. We continue and we submit it to DPP.

ADV HULLEY SC: Yes, but if my understanding was correct – and perhaps it was wrong but if my understanding was correct, the specific mandate that had been given to you at the briefing session was that you had to investigate
20 a security threat against the life of the then Acting National Commissioner Phahlane.

BRIGADIER NCUBE: That is correct, Chairperson.

ADV HULLEY SC: You had reached a point where you had taken statements from all the witnesses and – so you had taken statements from witnesses, you had presented

that to the – so you had given an interim presentation to the NPA's office. That was followed up with a further presentation that took place towards the end of December, early January. That second presentation resulted in a criminal charge being laid in Kameelsdrift and a docket being opened. Now at that stage it seems to me that your mandate is completed because you have conducted your investigation, you have now opened a criminal docket. What I want to know is, do you agree with me that at that

10 stage your mandate has been discharged or do I misunderstand?

BRIGADIER NCUBE: No, I cannot agree, Chairperson, this investigation, it was started by the team. As I indicated, it is not an ordinary case where a complainant went to police station, open a case and thereafter the case is allocated to the relevant unit. We investigated and we submit the docket before the DPP.

ADV HULLEY SC: So, if I understand correctly, your understanding, you would continue to carry the docket, you

20 would continue to conduct the investigations until a decision has been taken to prosecute or not to prosecute.

BRIGADIER NCUBE: That is correct, Chairperson.

ADV HULLEY SC: Now there is a suggestion and I am not sure if I understand the suggestion entirely. There is a suggestion that this was a prosecutor or an NPA driven

investigation. Are you suggesting that.

BRIGADIER NCUBE: No, I am not suggesting that. When we went and brief Advocate Mzinyathi, Chairperson. Or maybe he allocated an advocate to the investigation. When the docket was registered and put to Advocate Nemaorane, Advocate Nemaorane booked a docket to Advocate Mashuga. That was the criminal docket now. So that investigation is not my opinion, it was done that way.

ADV HULLEY SC: No, no, I am just trying to understand.
10 If – my understanding of what you were saying is that you had gone – you and General Mabula, had gone up to meet with Advocate Mzinyathi. So it is in fact from your side that you drew him into the investigation in a sense. That is my understanding.

BRIGADIER NCUBE: Yes, we went, Advocate, we went to the advocate, Chairperson.

ADV HULLEY SC: Now if I understood correctly from your earlier testimony, the purpose of that meeting with Advocate Mzinyathi was to ascertain from him specifically
20 whether it was appropriate for your team to conduct the investigation given that IPID was conducting and investigating against the Acting National Commissioner at the time.

BRIGADIER NCUBE: It was for us because we were already a team that is going to investigate to bring the DPP

on board to say DPP, we are going to investigate this matter but we will also – because as I have testified, Chairperson, in our mind there were at public domain that IPID is investigating General Phahlane.

So we did not want to be seen as people who are now interfering in IPD investigation or countering the investigation. So we want to bring the DPP on board.

ADV HULLEY SC: But when you say you want to bring him on board, are you saying you want to bring him on board, so that he remains part of the team that he is investigating, either him or somebody that he assigns, he is investigating the security threat to the life of General Phahlane or are you saying that you wanted to bring him on board in terms of the fact that what you want to do as the investigation team? What is the role that is going to be played insofar as the NPA is concerned from that point onwards according to your understanding?

BRIGADIER NCUBE: My understanding is while the investigation – we have commenced with the investigation, the NPA will give directives in terms of whether there is any *prima facie* case in the docket or there is no *prima facie* case in the docket.

CHAIRPERSON: So, in other words, you wanted to be able to say there is somebody else other than us put things – there is something to be investigated here.

BRIGADIER NCUBE: That is correct, Chairperson.

CHAIRPERSON: Okay.

ADV HULLEY SC: Now after that you continued to conduct the investigation, you got the first few statements, you then open the docket in the earlier part of January of 2017. You then executed or you applied for a warrant of arrest. You then executed the warrant of arrest on the 10 February 2017, is that correct?

BRIGADIER NCUBE: That is correct, Chairperson.

10 **ADV HULLEY SC:** And in terms of the investigation, just take me through now the Kameelsdrift investigation. Where did you ultimately land up? You started with the investigation initially into a security threat against the life of General Phahlane. It then resulted in a criminal investigation that was about impersonation of an IPID official. Ultimately, what were all the charges that were brought against Mr O’Sullivan and Ms Trent?

BRIGADIER NCUBE: Chairperson, it was impersonating, that was actually drafted by Adv Mashuga. There was also
20 extortion, I can get extortion, intimidation and I think also fraud. That was actually drafted by Adv Mashuga, that was in the statement.

CHAIRPERSON: Mr Hulley?

ADV HULLEY SC: Yes, Mr Chair.

CHAIRPERSON: I know what counsel for Brigadier Ncube

and yourself discussed with me in chambers but I do want to say if at all possible, let us try and see if you cannot finish your questioning of this witness by half past twelve.

ADV HULLEY SC: I know you have got to – you might take longer but ...[intervenes]

ADV HULLEY SC: I will certainly endeavour to do so, Chair.

CHAIRPERSON: Ja because I think I must just say this, it is not so clear that whatever fights there may have been
10 between different sections of the – between the police and IPID. It is not so clear that it connect properly to the terms of reference.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: So let us see if by half past twelve we have a better picture that it does.

ADV HULLEY SC: No, absolutely. Thank you, Mr Chair.

CHAIRPERSON: Okay.

ADV HULLEY SC: Brigadier Ncube, other than Ms Trent and Mr O’Sullivan, you also opened a criminal investigation
20 against certain members of IPID, is that correct?

BRIGADIER NCUBE: No, I did not open any other docket against members of IPID.

ADV HULLEY SC: Were members of IPID not charged on your understanding?

BRIGADIER NCUBE: Chairperson, the question was, I

opened the docket against members of IPID.

CHAIRPERSON: Yes. No, he is asking a further question now. He is not challenging your – well, maybe I should not say that. He is asking a different question but which might be related to the one he asked earlier on. Earlier on he asked whether you opened a case against IPID members.

ADV HULLEY SC: Yes.

CHAIRPERSON: And you said no. So now he is asking whether does that mean that they were not charged?

10 **BRIGADIER NCUBE:** They were charged on the same matter, Chairperson.

ADV HULLEY SC: Okay. And do you recall what they were charged with and who was charged?

BRIGADIER NCUBE: How it unfolded, Chairperson, after Mr Paul O’Sullivan and Sarah Jane Trent were charged and appear in court, the advocate who handled the case, Adv Mashuga give me directive to go and take warning statements of two members of IPID who were together with Mr O’Sullivan and Sarah Jane Trent at Sable Hills. That is
20 Mr Mandla Mahlangu, the late, may he so rest in peace, and then Mr Damani, both are members of IPID. I went and obtained their warning statement and put the warning statement before Adv Mashwai(?). Then he decided that those two members must be charged.

CHAIRPERSON: I just want to say, Mr Hulley, just in case

what I said earlier on might be misinterpreted. I do not mean that Brigadier Ncube should not get a chance to deal with any allegations that may have been made against him that might put him in a bad light out there but I just want us not to take too long.

ADV HULLEY SC: Absolutely so, Chair.

CHAIRPERSON: Ja.

ADV HULLEY SC: Now when we – insofar as the charges against the IPID officials are concerned, did I understand
10 correctly that some of the IPID officials were being investigated for defeating the ends of justice in relation to their investigation against General Phahlane?

BRIGADIER NCUBE: No, I am not aware of that charges, Chairperson.

ADV HULLEY SC: If you would turn with me, sir, to bundle LEA18, I would like you to turn to page 3.

BRIGADIER NCUBE: Page 3.

ADV HULLEY SC: Sorry, pages 2 and 3.

BRIGADIER NCUBE: Page 2 and 3?

20 **ADV HULLEY SC:** That is right.

BRIGADIER NCUBE: Yes.

ADV HULLEY SC: Now this particular statement is a statement of a certain Elvis – sorry, Alwyn Petrus Du Preez and if you turn to page 3, you will see that it is dated the 4 February of 2017 and you will see that the statement is

taken by Mr Dawood. Now Mr Dawood was – or rather, Lieutenant Colonel Dawood was one of the members of your team, is that correct?

BRIGADIER NCUBE: That is correct, Chairperson.

ADV HULLEY SC: Do you know what the purpose of taking this particular statement was?

BRIGADIER NCUBE: Chairperson, when I looked at this statement it seems it was actually a directive from the Advocate who handled the case, that additional statement,
10 it will be obtained for the witness to clarify certain aspects.

ADV HULLEY SC: Sorry, it was pursuant to an instruction or a ...[intervenes]

BRIGADIER NCUBE: Directives. When I look through the statement because I know Adv Mashuga was issuing directives in writing whenever he wants us to obtain additional statement. When I look to the formation of this statement, it seems additional statement as per query of Advocate Mashuga.

CHAIRPERSON: What is the basis for you thinking that it
20 is because of a directive? Is there something you see there which gives you that meaning?

ADV HULLEY SC: Paragraph 2 of the statement:

“I hereby wish to make an addendum to my statement in relation to queries which relate to investigation of intimidation towards Lieutenant

General J K Phahlane.”

So I am of opinion maybe it is additional statement from the directives of the advocate.

CHAIRPERSON: Of course, nothing there indicates that there was a directive issued. It may be that there was a directive issued, it may be that there was no directive. He decided that there was a loophole or there was some aspect that needed clarification and he decided the way to sort that out is to get an addendum, is it?

10 **BRIGADIER NCUBE:** That is correct, Chairperson.

CHAIRPERSON: Yes, unless you say from your experience you know that whenever an addendum is added like this it is normally because there is a directive from the relevant advocate in the NPA, unless that is this case, but otherwise, from what you have read here, you cannot say it is because of a directive.

BRIGADIER NCUBE: Ja, Chairperson.

CHAIRPERSON: Okay.

20 **ADV HULLEY SC:** Are you aware of the directive outside of what you are reading over here?

BRIGADIER NCUBE: No, Chairperson, I am not aware but normally when additional statement need to be obtained will always be the directive from maybe DPP or the advocate who handled the case.

ADV HULLEY SC: And were you aware of the

investigation that was taken – or the fact that statements were being taken from Mr du Preez?

BRIGADIER NCUBE: That is correct, Chair.

ADV HULLEY SC: You were aware of it?

BRIGADIER NCUBE: Yes, Chairperson.

ADV HULLEY SC: Okay. Now what was the purpose of obtaining a statement from Mr du Preez?

BRIGADIER NCUBE: Chairperson, Mr du Preez is a driver of General Phahlane. Now when the securities – actually,
10 when we went to him, we want check in terms of the security precautions and measures, that is why we approach him.

CHAIRPERSON: One second, Mr Hulley? Thank you.

ADV HULLEY SC: Thank you, Mr Chair. You knew that he was the driver of General Phahlane, is that correct?

BRIGADIER NCUBE: That is correct.

ADV HULLEY SC: And you knew that a statement had been obtained from him by IPID, is that correct?

BRIGADIER NCUBE: I think he indicated at one of the
20 statements, Chairperson, I was aware, yes, Chairperson.

ADV HULLEY SC: Why was he approached by members of your team on your understanding? I just want to understand that. Why was he being approached?

BRIGADIER NCUBE: As I have already testified, Chairperson, to say we were checking in terms as a driver

in terms of the security precautions and measures.

ADV HULLEY SC: So, in other words, if I understand correctly you were conducting an investigation at that stage into the security measures and one of the people that was responsible or one of the people who fell within the parameters of the security measures was the driver of General Phahlane.

BRIGADIER NCUBE: No, Chairperson, would relate to the threat levelled against Phahlane. The driver, he move
10 around with him.

ADV HULLEY SC: Yes.

BRIGADIER NCUBE: So we want to check whether there is any other thing that him himself is having or he knows of.

ADV HULLEY SC: Okay, so he was relevant witness because he drove General Phahlane and the person who drove General Phahlane would be a person who is relevant to questions relating to the security. That is what I understand you to be saying.

20 **BRIGADIER NCUBE:** That is correct, Chairperson.

ADV HULLEY SC: During the course of the investigation – I am not sure if you met with Mr du Preez at all. Did you meet with Mr du Preez?

BRIGADIER NCUBE: Ja, I think I met with him but in both – the statement was obtained by Colonel Dawood. Yes, I

met with him at their office when his first statement was obtained.

ADV HULLEY SC: Now, you gave a statement on the 8 December of 2016. Do I understand correctly that you were present when he gave that statement?

BRIGADIER NCUBE: The first statement?

ADV HULLEY SC: Yes.

BRIGADIER NCUBE: Yes, Chairperson.

ADV HULLEY SC: If I understand correctly, you actually
10 took a statement from him relating to the events or relating to the IPID investigation and Mr Paul O’Sullivan.

BRIGADIER NCUBE: The statement that we actually were – as I have testified to say in terms of the security and the precaution, I think the first statement will also indicate to him to say we are investigating the threat against General Phahlane and we just want to know in terms of that.

ADV HULLEY SC: Okay. Will you turn to bundle LEA17, to page 337.

BRIGADIER NCUBE: Page?

20 **ADV HULLEY SC:** 337.

BRIGADIER NCUBE: 300...?

ADV HULLEY SC: 337.

BRIGADIER NCUBE: Yes, 337.

ADV HULLEY SC: That is right and if you turn to page 338.

BRIGADIER NCUBE: 3..?

ADV HULLEY SC: So the document at page 337 and 338 is one document, it is the statement of Mr du Preez. In fact, think it is Captain du Preez, is that correct? Is this his statement, sir?

BRIGADIER NCUBE: Just help me with the page, 33..?

ADV HULLEY SC: 337. Have you got bundle LEA17, page 337?

BRIGADIER NCUBE: Chairperson, 337 is an index and
10 under it is 338. I do not know where I am on the
...[intervenes]

ADV HULLEY SC: Are you on bundle LEA17?

BRIGADIER NCUBE: You probably have a wrong bundle. Go to bundle LEA17. Look at the spine of the bundle, LEA17. What have you – is it LEA17? And on page 337 you have an index. Okay, somebody will approach you to address this.

ADV HULLEY SC: Are you looking at the top left-hand corner, sir?

20 **CHAIRPERSON:** Remember to look at black numbers.

BRIGADIER NCUBE: Oh no, I was looking the red one.

CHAIRPERSON: Ja, just always remember when page numbers are mentioned look at the black numbers.

BRIGADIER NCUBE: Okay, I have it, Chairperson, my apology.

CHAIRPERSON: Okay, alright.

BRIGADIER NCUBE: I am on 337 now.

ADV HULLEY SC: Thank you very much, Chair. Now this is the statement that we were referring to earlier on which you referred to as the first statement, is that correct?

BRIGADIER NCUBE: That is correct, Chairperson.

ADV HULLEY SC: Now according to this statement he says in paragraph 2 that:

10 “On the 8 November 2016 at 10h00 I was interviewed by police investigating team which consists of two Brigadiers and one Colonel. As the interview was to start I was informed that the interview would mainly focus on the safety, security and threats towards the Acting National Commissioner J K Phahlane.”

Do you see that?

BRIGADIER NCUBE: That is correct, Chairperson.

ADV HULLEY SC: He then talks about in paragraph 3 – he talks about whether:

20 “I was asked if I know a Mr Paul O’Sullivan and I informed the police investigating team that I had an encounter with Mr Paul O’Sullivan/IPID not too long ago and that I was not happy about what transpired in that but I did not do anything about the incident as I was told it was a criminal offence to talk about

anything related to the said interview/encounter with Mr Paul O’Sullivan/IPID.”

Now this team that he is referring to over here consisting of two Brigadiers and one Colonel. Were you one of the two Brigadiers who interviewed him?

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: Now he refers to a meeting that took place on the 8th of November 2016. I am trying to understand how you interviewed him on the 8th of
10 November of 2016 if you were briefed at the end of November or early December of 2016.

BRIGADIER NCUBE: Chairperson our investigation commenced on the 30th of November 2016. We did not do any investigation I had to do that.

ADV HULLEY SC: Okay.

BRIGADIER NCUBE: And I do not know whether if this is an incorrect date but me I - in the team I commenced on the 30th of November 2016.

ADV HULLEY SC: So it is possible that he you should be
20 referring to the 8th of December of 2016?

BRIGADIER NCUBE: Yes it can be the 8th if the statement was on the 8th of November, if the statement was obtained by our team.

ADV HULLEY SC: Okay. Now he says - if you turn to page LEA017 at page 338. He says in paragraph 10 that

he had done nothing about the intimidation/threat towards me as I was not allowed to talk about it and I was reminded more than once that it would be a criminal offence to do so.

I did mention it in my statement to the either about the intimidations/threat towards me in the manner in which the draft statement that was given to me as put the Attorney General Jacob Phahlane in a bad light. Now he - what I want to know is as far as this his issue is
10 concerned. Was the allegation or your understanding of what he was asserting over here?

BRIGADIER NCUBE: Can the question be repeated
Chairperson I did not follow it, correctly so.

ADV HULLEY SC: What was your understanding of the point that he was making in paragraph 10?

BRIGADIER NCUBE: What my understanding is it seems he was threatened and he was informed that he must not talk about it. If he talk about it, it will be an offence against him, that is my understanding Chairperson.

20 **ADV HULLEY SC:** No, no look at the next part of the sentence he says I did mention it in my statement to IPID about the intimidations/threats towards me and the manner in which the draft statement that was given to me as to put the Attorney General Jacob Phahlane in a bad light. What I am asking is what was your understanding about what he

was saying in that respect?

BRIGADIER NCUBE: My understanding maybe is he put it in his statement when the statement was taken by IPID but nothing was done about that threat of him.

ADV HULLEY SC: Okay. Was this issue pursued – let me ask you that, was this issue pursued about the painting General Phahlane in a bad light. Did you continue to investigate what that entails?

BRIGADIER NCUBE: No we did not Chairperson.

10 **ADV HULLEY SC:** Okay. Let us go back then to the second statement which we referred to a month ago in LEA18 at page 2. Now we spoke about this statement a moment ago and were you aware of why this statement was taken?

I asked you that a month ago you said that it was your understanding based upon the content of paragraph 2 that it would have been pursuant through a directive that had been issued within the DPP's office.

20 **BRIGADIER NCUBE:** That is correct Chairperson normally the additional - there is a statement that was taken at the first instances and maybe the Prosecutor read it through that statement. He will always say please obtain a clarifying certain aspects.

ADV HULLEY SC: If you go through the statement, he says that on the 25th of November 2016 I received a

statement from a member of IPID mentioned as Mandla on my email relating to the alleged corruption investigation against the Attorney General Phahlane. I went through the draft statement and I wish to state that I was not in agreement with the following aspects of the statement.

He then says at the bottom of that page at paragraph 6 the moment which these words were used made the draft statement factually incorrect and it is therefore my view not true. Now from what I can gather
10 from this statement his complaining about the fact that he had been sent a draft statement as part of an IPID investigation onto General Phahlane. Correct?

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: He says that the – he does not agree with the content of the statement.

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: And he says that the statement was factually incorrect for various reasons which is outlined in paragraph 5.

20 **BRIGADIER NCUBE:** That is correct Chairperson.

ADV HULLEY SC: Now what I am wanting to understand is why is an investigation now being conducted into the investigation that was being conducted by IPID?

BRIGADIER NCUBE: Chairperson as I indicated maybe the statement the advocate have said that the witness must

clarify his point that is why the statement was obtained.

ADV HULLEY SC: No, no that is not my question. You were part of the team and of course if you do not have personal knowledge of course say so. What I am trying to ask you is as a member of the team why was an investigation been conducted by your team into the investigation that have been conducted by IPID?

BRIGADIER NCUBE: My answer will be Chair maybe there was instruction from the DPP to clarify this because
10 we could not went an obtained additional statement from our own because we did not know of the statement, the draft statement that he received from IPID.

ADV HULLEY SC: Now from your side and I have asked you previously about meetings that were held between the team. But from your side the platoon your team meet frequently after January of 2017. In other words, once the criminal investigation was underway.

BRIGADIER NCUBE: Ja, I think we meet on several times as a team Chairperson. I cannot remember how many
20 times but as a team we will meet, discuss, brief each other.

ADV HULLEY SC: And are these meetings being held on an ad hoc basis do you go back to your normal duties and meet occasionally and conduct investigations occasionally or are you conducting the investigations in relation to these, this criminal investigation on a fulltime basis?

BRIGADIER NCUBE: When we were conducting the investigation from 2016, we were doing it on ad hoc because most of the work was in Pretoria. We will come maybe we will sleep over after we finish, we will go back, when the case appear, we will give the case to court.

ADV HULLEY SC: Now before the criminal – going back now to December of 2016. Before the criminal investigation was commenced you would have had a meeting, if I recall correctly, you would have had a meeting
10 with General Phahlane and – wait just bear with me, with General Phahlane and Colonel Dawood roundabout the 21st of December. Is that correct?

BRIGADIER NCUBE: Yes, it can be correct there because I know I was looking for his statement and I was struggling because of the commitment as a National Commissioner. He schedule were very tight, hectic. When you make an appointment with him Chairperson, when you want to take the statement, he will be called for something and then you need to make another appointment with him, it was very
20 hectic.

ADV HULLEY SC: If you – just turn with me to bundle LEA23. So before we go to this report did you at any stage meet with General Phahlane at Sun City or in the Sun City region?

BRIGADIER NCUBE: I cannot remember.

ADV HULLEY SC: You cannot recall.

BRIGADIER NCUBE: I cannot remember but I remember I do not know which year when he was a national acting during the award, I was at Sun City he was there. I do not know which year was that one but it was during the police awards.

ADV HULLEY SC: So there was awards that were being handed out at Sun City?

BRIGADIER NCUBE: Yes.

10 **ADV HULLEY SC:** And you would have met him at that...[intervenes]

BRIGADIER NCUBE: No, I did not meet him he was there. There was no meeting or anything between me and him, I was attending the awards, him as the National Commissioner he was there as the guest speaker or the keynote speaker of the event Chairperson.

ADV HULLEY SC: Very well. Now ultimately the reason this investigation was against Sarah-Jane Trent and Mr O'Sullivan what came of the criminal investigation?

20 **BRIGADIER NCUBE:** Chairperson the case was struck off the role when Advocate Mashuga applied for indictment and then actually to do the indictment and further to join other accused and the magistrate refused and say he strike it off the roll in terms of Section 342 whenever we want to put it back it must be with the instruction of the NDBP.

CHAIRPERSON: We are at 12:17.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Alerting you.

ADV HULLEY SC: Thank you Chair. What was General Mabula role in respect of these investigations. Do I understand correctly that General Mabula was not himself involved in the investigations he was just a team leader?

BRIGADIER NCUBE: That is correct.

ADV HULLEY SC: And you would report – you as the
10 members of the team would report to him.

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: We getting to the arrest of Miss Sarah Trent on the 10th and I am not really concerned about the warrant of arrest for her. What is the – at this point – what is the purpose of seizing her cellphone at that stage?

BRIGADIER NCUBE: Chairperson the cellphone was used
in the commission of crime in the sense that information
was sent to witnesses by her warning witnesses to attend
to IPID office as if an investigator himself even providing
20 case numbers.

To say I confirm the case number as an IPID case number. It even indicates I confirm your status that you are not a suspect you are a witness but I warn you to come with your attorney regard Sarah-Jane Trent, to the witness to come to. So that message we want to retrieve the

information that was sent in terms of impersonating the IPID officials.

ADV HULLEY SC: Okay. Now at that stage you did not apply for a warrant or for a subpoena in respect of the content of the phone or to detain or to seize the phone. Is that correct?

BRIGADIER NCUBE: That is correct Chairperson but that cellphone Chairperson was seized during her arrest in terms of Section S it was used in a commission of criminal
10 in terms of Section 20 and Section 23 allow a police official who can seize the item that is being suspected to be used which is in the custody of the person who is being arrested. I applied those two sections to seize that cellphone Chairperson.

ADV HULLEY SC: Okay so you say in Section 23 let me just understand it says that on arrest of any person, the person making the arrest - if he is a person say if he is a peace officer search the person arrested and seize any articles referred to in Section 20 which is found in the
20 possession of or in the custody of or under the control of the person arrested. And there such peace officer is not a police official he shall forfeit deliver any such article to a police official and if he is not a peace officer but you would have been a peace officer. So the second portion does apply to you.

BRIGADIER NCUBE: Yes.

ADV HULLEY SC: Okay. Now if I recall correctly at the time that she was arrested when the arrest took place at the premises of Mr O’Sullivan’s business. Is that correct?

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: And that took place at approximately 16:30 on the 10th of February of 2017.

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: And then you reconvened at the Shell
10 garage long Marlboro Drive is that correct?

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: And at that stage you realised that she did not have a cellphone with her.

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: So I am trying to understand once you realised that she did not have her cellphone on her how did you then get the cellphone and why?

BRIGADIER NCUBE: Chairperson I was part of the operation the warrant of arrest of Miss Sarah-Jane Trent
20 was executed by Brigadier Kgorane I was present. What had happened is after we execute the warrant Miss Sarah-Jane Trent asked to phone her lawyer. Brigadier Kgorane her to phone the lawyer and then we were having a lady their Captain Mashugu with us and then Miss Sarah-Jane Trent want to check something in the house.

He went with the Captain, the instruction Brigadier Kgorane was – after he was spoken with the cellphone you hand the cellphone to Captain Mashugu because he had already indicated to him when he arrested, we are going to seize it. And what had happened is after we spoke with the cellphone he locked the cellphone in the boot of the car and then we went out with her. When we arrived at the garage Brigadier Kgorane approached Captain Mashugu for the cellphone it is then that we realised that the cellphone
10 was put on the boot and we drove back to seize it there.

ADV HULLEY SC: Okay I would like you to go back to LEA80 at page 14. Now this of course is the statement that you said that you had placed it in support of the warrant of arrest.

BRIGADIER NCUBE: Yes Sir, Chairperson.

ADV HULLEY SC: Just take us through this any portion of the statement where it shows in this statement that she had used the cellphone in the commission of the crime of impersonating an IPID official. You have got a number of
20 statements there are facts in support of the application. You have the statement of Mr Emmanuel Shekuve[?] on paragraph 7.

BRIGADIER NCUBE: In terms of the supplementary statement of supporting statements Chairperson it was not mentioned in my statement.

ADV HULLEY SC: But you say that there was – so there is nothing in this statement to show that she had used the cellphone for the purpose of committing the crime. Turn to page 19 Sir.

BRIGADIER NCUBE: Yes Chairperson I am on page 19.

ADV HULLEY SC: Now there you mention the cellphone of Miss Trent, you give the ID number and the cell number of the phone that was used.

BRIGADIER NCUBE: My apologies Chairperson which
10 paragraph?

ADV HULLEY SC: It is at the bottom of the 23rd of November 2016 one of the witnesses namely Mr Jooste received a call from Paul O’Sullivan who requested a witness to provide him with a number plate as well as photographs of all the vehicles of General Phahlane.

The witness also received a number of text messages via WhatsApp from mobile number 0848491, blah, blah. One of the messages on the same day as the call requested that the details of the number plates be
20 forwarded to WhatsApp, sorry via WhatsApp.

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: Is that what you referring to?

BRIGADIER NCUBE: Yes and it continued their Chairperson that the mobile number is registered in the name of Trent, Sarah-Jane with ID number 840214023208.

ADV HULLEY SC: What I am trying to understand is in as far as impersonation of an IPID official is concerned. What is it in that statement that you have obtained and I understand it to be the statement that you have obtained from Mr Jooste. What is it in that statement that suggests that this cellphone could be utilised for investigation or assist in an investigation of the crime of impersonating of an IPID official? That is the question.

10 **BRIGADIER NCUBE:** It was requesting information from the witness.

ADV HULLEY SC: Okay.

BRIGADIER NCUBE: As is if he is an investigator of IPID, Chairperson.

ADV HULLEY SC: Now you did not apply for a warrant for the cellphone?

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: And you did not apply subsequently for a warrant for the cellphone after you had already detained it?

20 **BRIGADIER NCUBE:** No I did not apply for anything after the seizure of the cellphone.

ADV HULLEY SC: If I understand correctly, well help me out I know that you seized it during the course of the arrest but was there any other reason why you did not apply for a warrant at the time that you applied for a warrant of her

arrest?

BRIGADIER NCUBE: I have already answered this Chairperson that I utilised the two sections of the seizure act, Section 20 and Section 23. I did not see it necessary because there are two sections that empower a police official who can seize the actions that is being utilised or was used for the commission of the crime.

CHAIRPERSON: We are at half past Mr Hulley.

ADV HULLEY SC: Thank you Chair.

10 **CHAIRPERSON:** If I am missing anything you must tell me so far the picture I am getting is not one that suggests that whatever evidence has been given with regard to Brigadier Ncube connects to whatever he may have done to any state capture or corruption but if I am missing something you must tell me.

So it seems that it may have – there may have been wrong doing, there might not have been wrong doing but it might not be the kind of wrong doing that the Commission is really interested in.

20 If that understanding is correct it would seem to me that if there is anything that he wants to cover that has not been covered just to put his side of the story, then he should be allowed to put his side of the story in relation to those particular allegations that might not have been covered but if I am missing something we can look at it.

ADV HULLEY SC: Thank you Mr Chair. You are obviously familiar with some of the allegations that have been made against you about your involvement in this team.

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: Now just in relation to the allegations that you have heard against you and of course the allegations that you were involved not only in this team specially in relation to the investigation of IPID into General Phahlane but that you have also been involved at
10 an earlier stage in the investigation into General Booyen in respect of the Cato Manor, those ones.

BRIGADIER NCUBE: Yes I was; I have testified to that that I was part of that team.

ADV HULLEY SC: Now in relation to the investigation in respect of the IPID officials that was conducted by your team. What happened to that investigation?

BRIGADIER NCUBE: Chairperson it seems that there is a two picture that is being painted. There was no separate investigation of IPID members the same case of Mr
20 O’Sullivan and Miss Sarah-Jane Trent the advocate decided that we must charge the two IPID members. This case was struck off the roll when it was struck with regard to accused.

ADV HULLEY SC: Okay so the – so the – all the investigations involved the IPID officials and Ms O’Sullivan –

sorry Ms Trent and Mr O’Sullivan and that case was struck off the role.

BRIGADIER NCUBE: That is correct Chairperson.

CHAIRPERSON: So you got involved in the investigation relating to IPID as well as General Phahlane because you were instructed to be part of a team that would do investigation, is that right? You got involved in the investigation team because you were instructed to get involved in the investigation team.

10 **BRIGADIER NCUBE**: That is correct Chairperson.

CHAIRPERSON: It was not your own decision to say?

BRIGADIER NCUBE: No.

CHAIRPERSON: You want to get involved?

BRIGADIER NCUBE: No.

CHAIRPERSON: Yes, yes. Okay.

ADV HULLEY SC: Thank you Mr Chair. Now after the – after the investigation was at an advanced stage there was an investigation that was conducted by IPID as well into the investigation or rather into some of the things that had been
20 done by the members of your team, is that correct?

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: And statements were taken from – from you and from other members of – of your team?

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: Now the allegations in respect of – or the

purpose of that investigation as I understand it was to investigate the question of whether the investigation conducted by your team was designed to undermine the investigation by IPID into General Phahlane?

BRIGADIER NCUBE: Chairperson I need to give how things have unfold. After the arrest of Ms Sarah-Jane Trent we went to court. She applied for bail – actually she – she bring an urgent application, bail was granted. After her release Chairperson she went and opened a case against her team.

- 10 1. Kidnapping against us.
 2. Theft of cell phone.

And then after the arrest of Mr Paul O’Sullivan and after his release he went and opened a case against me specific when I do arrest of contempt of court. IPID went and opened a case against the team, the former North West Provincial Commissioner for allowing us to come and do the investigation of defeating the end of justice. Those are the cases that were investigated against us when we were doing the – that investigation.

20 **ADV HULLEY SC**: Okay. Now I would like to take the – take you to a page - if you would turn with me to LEA23 page 71.

BRIGADIER NCUBE: LEA20?

ADV HULLEY SC: LEA23 at page 71.

BRIGADIER NCUBE: 71. Yes Chairperson I am there.

ADV HULLEY SC: Now this document says it is Warning

Statement for Brigadier Daniel Pharasa Ncube and it is signed on page – if you turn to page 74 – it is signed on the 11 December of 2017. Is that your signature at the foot of the page?

BRIGADIER NCUBE: Yes Chairperson it is my signature.

ADV HULLEY SC: Now in this statement you explain at paragraph 3 on page 72 you explained that

10 “On the 30 November 2016 I was approached by Major General Jan Mabula as my senior appointed as a member of the investigating team of which he was the lead investigator to conduct an investigation into a security breach against the then action – but I imagine it was meant to be acting National Commissioner of the South African Police Service Lieutenant General Phahlane. You say as a result hereof presumably as a result of being approached to conduct that investigation I with other members of the

20 investigating team led by General Mabula received a briefing at Crime Intelligence Pretoria and they conducted an investigation registered under a Potchefstroom inquiry. The investigation showed that there had been criminal offences committed by Mr Paul

O’Sullivan and Ms Trent and as a result thereof General Mabula as complainant registered a complaint at Kameelsdrift under reference number Kameelsdrift CAS 12/1/2016. I was allocated to do the investigation in this matter and for purposes there are witness statements had been obtained at the Sable Hill Estate when General Phahlane was residing.”

10 Now in the statement if I understand correctly this particular statement was prepared with the assistance of your attorneys, is that correct?

BRIGADIER NCUBE: That is correct Chairperson.

ADV HULLEY SC: You then – you then go on to say at paragraph five

“The investigation revealed that and you set out what the investigation unearthed.

5.2 The investigation further revealed that the security manager was asked by Mr
20 O’Sullivan and you set that out. In

5.3 You say after the completion of the investigation the case docket was placed before designated Advocate Mashuga who decided that Mr O’Sullivan and Trent be charged with intimidation in contravening the

IPID Act. You say that a J50 Warrant of Arrest was issued against the two namely Mr O’Sullivan and Ms Trent both were arrested and brought before the court.”

And you continue. In the statement you do not talk about a meeting that took place on the 30 November 2016 with Advocate Mzinyathi. I just want to understand why that was left out.

BRIGADIER NCUBE: Chairperson this was a warning
10 statement. Allegation was put before me with the dates and a venue. I was responding to that.

ADV HULLEY SC: The allegation against you what did you understand at that stage to be the allegation against you?

BRIGADIER NCUBE: It was defeating the end of justice Chair.

ADV HULLEY SC: And what did you understand was being alleged that you had done to defeat the ends of justice?

BRIGADIER NCUBE: I cannot specific in terms of what was put to me but it was defeating the end of justice specific to
20 say what did I defeat I cannot remember now. Chairperson.

ADV HULLEY SC: Well specifically what was being said is that this entire investigation was simply a concoction. It had simply been fabricated in order to justify undermining the investigation that had been conducted by IPID into General Phahlane.

BRIGADIER NCUBE: Incorrect Chairperson. This investigation Chairperson was done through prosecutorial guide investigation from the inquiry docket until they advise us to open a criminal docket. Nowhere that we should – we were actually fabricating.

ADV HULLEY SC: No I understand that. Sorry that is – I am not saying that you – you have done that. What I am saying to you at this point in time is that your understanding was that IPID was investigating a charge against you of
10 defeating the ends of justice. So I asked you what is that – what did you understand was being alleged by IPID that you had done to defeat the ends of justice and you said you could not understand the specific details so now I am providing you with those specific details. What IPID was saying is that you had defeated the ends of justice you and your team had defeated the ends of justice by conducting an investigation which had been fabricated because there was no true basis for the investigation but you had conducted the investigation in order to undermine the investigation that had
20 been conducted against General Phahlane. That is what was being alleged.

BRIGADIER NCUBE: That is incorrect Chairperson.

ADV HULLEY SC: Oh did – you do not understand that to be the allegation. I am not – I am not asking you if that is – if it is true that that was so I am asking if it is true that you

understood that to be the charges against you?

BRIGADIER NCUBE: No Chairperson I have answered to say it was defeating the ends of justice but specifically I cannot now tell Chairperson actually the allegation against me in terms of defeating – I have conducted myself in this manner.

ADV HULLEY SC: Okay. So in paragraph 5.6 you say the following on the following page at page 74.

10 “At no stage during the investigation of this matter did I influence any witnesses to give any contradicting statement at – to IPID investigations nor interfere with the investigation of IPID conducted against Lieutenant General Phahlane.”

BRIGADIER NCUBE: That is correct Chairperson.

20 **ADV HULLEY SC:** So it is clear that your own understanding was that the allegation being made against you whether it is true or not is a separate issue. But your understanding was that the allegation being made against you was that you had somehow influenced witnesses to give contradictory statements to IPID investigators and that you had somehow interfered in the investigation of IPID against Lieutenant General Phahlane.

BRIGADIER NCUBE: That is correct Chairperson. That is why I responded to it in this paragraph.

ADV HULLEY SC: Now it would have seemed to me and help me in this respect. But it would have seemed to me that one of the very important or crucial aspects of your defence that was being prepared over here in the statement with the assistance of your attorneys was to say but actually we were quite alive to the possibility that it may be alleged that we were – to undermine an IPID investigation and for that reason right at the beginning on the 30 November we actually went to meet with Advocate Mzinyathi.

10 **BRIGADIER NCUBE:** That is correct Chairperson. It was on the public domain that IPID is investigating General Phahlane. Now once we get into the investigation of the security breach we see it fit to engage the DPP.

ADV HULLEY SC: And I understand that you saying that. What I am asking you is why does that statement – that allegation – that very important fact which is part of your defence why does it not appear in your statement?

BRIGADIER NCUBE: No I think Chairperson I was responding to allegation as I have already indicated. It was
20 put to me with the dates that I commit this and I – I responded the way I responded.

CHAIRPERSON: Hm.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Okay thank you. Does Mr Joubert intend re-examining anything?

ADV JOUBERT: Mr Chair I just have – perhaps have one aspect to clear up?

CHAIRPERSON: Sorry?

ADV JOUBERT: Just one aspect I need to clear up.

CHAIRPERSON: Yes okay alright. They have sanitised the podium before you go there.

ADV JOUBERT: Brigadier Ncube on the last document you were referred to Exhibit LE23 page 71 to 74 your warning statement. Now you will remember your – your evidence is
10 that from the outset this was a prosecution driven – no rather a prosecution overseeing investigation. You mention in paragraph 5.3 in your warning statement that a designated advocate, Advocate Mashuge decided that Mr O’Sullivan and Ms Trent must be charged. Now can you just explain is it not very extraordinary that already by the February of 2017 we know by the 8 February Advocate Mashuge requested warrants for their arrest? Is that not indicative indeed that at that very short period of time and Advocate of the High Court was already designated to deal with this matter?

20 **BRIGADIER NCUBE:** Yes.

ADV JOUBERT: Very well. And just with reference to the affidavit where the incorrect date was mentioned by Mr Van Zyl you can see that affidavit was deposed to and taken on 8 December so clearly it must have been a typographical error when he said he was seen by members on the 8 November.

BRIGADIER NCUBE: That is correct Chairperson because the team only started on the 30 November 2016.

ADV JOUBERT: And at no stage is your – is the warning – the summary of your investigation from the outset you simply did your job as a police officer. You gathered evidence on instruction under the direction of the DPP in this matter?

BRIGADIER NCUBE: That is correct Chairperson.

ADV JOUBERT: Thereafter any decisions of prosecution was taken by the DPP and the entire indictment and a
10 summary of substantial facts is also before them – this commission where it – where it – which contains a summary of the events and the decision to charge whoever we charged inclusive the members of IPID?

BRIGADIER NCUBE: That is correct Chairperson.

ADV JOUBERT: Thank you Mr Chair.

CHAIRPERSON: Thank you Mr Joubert. Thank you very much Brigadier Ncube. If a need arises you may be asked to come back but for today you are excused. Okay. We are at ten to one. I guess that we – it is convenient that we take
20 the lunch adjournment. As I indicated to counsel in chambers, I will take a longer lunch than normal up to half past two to enable me to attend to something important relating to the work of the commission. So we are going to resume at half past two. We adjourn.

ADV HULLEY SC: Thank you Mr Chair.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

INQUIRY RESUMES:

CHAIRPERSON: Let us continue. You may be seated.
Please switch on your mic.

ADV HULLEY SC: My apologies. The next witness is Major
General Nthebo Jan Mabula. I will ask that he be sworn in
Mr Chair.

10 **CHAIRPERSON:** Okay alright.

REGISTRAR: Please state your full names for the record.

MAJOR GENERAL MABULA: Nthebo Jan Mabula.

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

MAJOR GENERAL MABULA: No.

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

MAJOR GENERAL MABULA: Yes.

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

MAJOR GENERAL MABULA: So help me God.

NTHEBO JAN MABULA: (d.s.s.)

CHAIRPERSON: Thank you. You may be seated. Advocate

Hulley. Yes, okay. You may continue.

EXAMINATION BY ADV HULLEY SC: Thank you, Mr Chair.

It is major general if I understand correctly? Is that so?

MAJOR GENERAL MABULA: Retired major general.

ADV HULLEY SC: Retired major general?

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Very well. Now Major General, you have been implicated in these proceedings and you have come to testify in relation to... on the evidence that has been led
10 against you.

CHAIRPERSON: On a lighter note. This title would make people who are not familiar with these titles is that it is major general, it is higher than a general. [laughs]

MAJOR GENERAL MABULA: [laughs]

CHAIRPERSON: That is not the case, is it?

MAJOR GENERAL MABULA: Yes, the Lieutenant General is above.

CHAIRPERSON: Ja.

MAJOR GENERAL MABULA: Ja, the general that is
20 opposite. Yes.

CHAIRPERSON: [laughs] Ja.

MAJOR GENERAL MABULA: Yes, Chairperson.

ADV HULLEY SC: Mr Chair, if I may? I am told that the transcribers had difficulty hearing the oath been taken. If it can be administered for a second time?

CHAIRPERSON: Okay let us have it done again.

REGISTRAR: Please state your full names for the record.

MAJOR GENERAL MABULA: Nthebo Jan Mabula.

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

MAJOR GENERAL MABULA: No, Chairperson.

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

MAJOR GENERAL MABULA: Yes, Chairperson.

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

MAJOR GENERAL MABULA: So help me God.

NTHEBO JAN MABULA: (d.s.s.)

CHAIRPERSON: Thank you. Well, if they still did not hear, it can be recorded that he has taken the oath two times.
[laughs]

ADV HULLEY SC: Thank you, Mr Chair.

20 **CHAIRPERSON:** We cannot do better than that.

ADV HULLEY SC: I have been told that it is customary that when referring to a major general or a lieutenant general to simple use the title general in a spoken form. Is that correct?

MAJOR GENERAL MABULA: Correct, Chairperson.

ADV HULLEY SC: So for the balance of this evidence I will refer to you as General Mabula. Is that fine?

MAJOR GENERAL MABULA: You are welcome Chair.

ADV HULLEY SC: Now in these proceedings you have been implicated by a General Booyesen and then by a Mr Robert McBride. Is that correct?

MAJOR GENERAL MABULA: Correct so Chairperson.

ADV HULLEY SC: And you have given statements dealing with both sets of allegations made by these two individuals?

10 **MAJOR GENERAL MABULA:** Correct, Chairperson.

ADV HULLEY SC: If you will go with me to Bundle LE26?

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: And if you would turn to page 4. It is typed that bundle.

MAJOR GENERAL MABULA: Page 4?

ADV HULLEY SC: Top left-hand corner.

MAJOR GENERAL MABULA: On my statement...

CHAIRPERSON: Have you explained to him about the black numbers and the red numbers?

20 **ADV HULLEY SC:** The black... if you look at this top left-hand corner sir.

MAJOR GENERAL MABULA: This one?

ADV HULLEY SC: Anyone. Can you see the top left-hand corner of that document?

MAJOR GENERAL MABULA: Yes, I see. Yes.

ADV HULLEY SC: Now there is a number that is in black.

MAJOR GENERAL MABULA: Oh, okay. I see.

ADV HULLEY SC: It has got LEA.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Batch 26. And then it has got a number.

MAJOR GENERAL MABULA: I got it.

CHAIRPERSON: So whenever he refers to a page number, he will be referring to that black number. Number 1, number 2. He will not say 0004 for example. He will just say page
10 4.

MAJOR GENERAL MABULA: Okay thank you.

CHAIRPERSON: So for you to follow. Ja.

MAJOR GENERAL MABULA: Thanks, Chairperson.

ADV HULLEY SC: Thank you, Mr Chair. Now if you hold that page open and you turn with me to page 34 of the same document.

MAJOR GENERAL MABULA: Page 34...

ADV HULLEY SC: You will see there on page 34
...[intervenes]

20 **MAJOR GENERAL MABULA:** Page 34, né?

ADV HULLEY SC: Ja, page 34. There is the signature of the Commissioner of Oaths and on the preceding page, on page 33 is a signature at the top of the page.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Whose signature is that?

MAJOR GENERAL MABULA: The one above is mine.

Above my name, yes.

ADV HULLEY SC: And is this the statement that you gave in relation to the allegations made by Mr McBride.

MAJOR GENERAL MABULA: Probably so.

ADV HULLEY SC: Well, let us be certain. If you would turn with me to page 5 of that document.

MAJOR GENERAL MABULA: Page 5.

ADV HULLEY SC: And if you look at paragraph 1.2.

10 **MAJOR GENERAL MABULA:** Yes.

ADV HULLEY SC: You need that. You have got 1.1.1. and you say:

“I am an implicated person having been so implicated by Mr Robert John McBride...”

This affidavit is your response to Mr McBride’s allegations. Correct?

MAJOR GENERAL MABULA: Correct.

20 **ADV HULLEY SC:** Now you have also given another statement and if you would put that bundle aside for just a moment and turn with me to page LEA26.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Sorry, you have got to put that bundle aside. Look on the spine, you will see that there is a bundle that is marked LEA26. Sorry, on the spine sir.

MAJOR GENERAL MABULA: Yes, 26.

ADV HULLEY SC: Is that 26?

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Okay. Then turn to page 126. Have you got it?

MAJOR GENERAL MABULA: 126... Yes, I got it.

ADV HULLEY SC: Okay. Now if you hold that page and turn with me to page 141 of the same document.

MAJOR GENERAL MABULA: 141, yes.

ADV HULLEY SC: And is that your signature in the top half
10 of that page under the words, this done and signed at this 22
day of May 2019?

MAJOR GENERAL MABULA: It is my signature, yes.

ADV HULLEY SC: And is this your statement that is made in response to the allegations made by General Booyesen?

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: And do you confirm that both these statements, the one who was made in relation to Mr McBride and the one made in relation to General Booyesen? You confirm that they are true and correct?

20 **MAJOR GENERAL MABULA:** Yes. Yes, Chairperson.

ADV HULLEY SC: I would like to deal first with the allegations that have been in the affidavit that you have filed in response to Mr McBride's statement.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: So I want you to go back, in other words,

to LEA26 at page 4.

MAJOR GENERAL MABULA: Page 4. Yes, I am there.

ADV HULLEY SC: Now you say... if you will turn with me then to page 8 of that document.

MAJOR GENERAL MABULA: I am there.

ADV HULLEY SC: You have outlined over here your history, your career history and you deal with the last items and you say that from the 1st of March of 2010 to the 1st of November of 2016, you were the Provincial Head,
10 Director for Priority Crime Investigations by the HAWKS in the North West. Is that correct?

MAJOR GENERAL MABULA: Correct, Chairperson.

ADV HULLEY SC: And then between the 1st of November of 2016 and the date on which you have deposed to this statement, you were the Deputy Provincial Commissioner Crime Detection in the North West.

MAJOR GENERAL MABULA: Correct, Chairperson.

ADV HULLEY SC: Now in relation to the allegations that have been made by Mr McBride which relates to a team that
20 you were pointed to head-up in respect of a security threat at the home of Acting National Commissioner Phahlane.

MAJOR GENERAL MABULA: Correct, Chairperson.

ADV HULLEY SC: And that took place during the period that you were the Deputy Provincial Commissioner Crime Detection. Is that correct?

MAJOR GENERAL MABULA: Correct, Chairperson.

ADV HULLEY SC: Now can you explain to us how your appointment to that team came about?

MAJOR GENERAL MABULA: Chairperson, as it has already been admitted to the fact that I was the Deputy Provincial Commissioner reporting to the Provincial Commissioner of the North West.

I actually... I was called by the provincial commissioner in the early morning to her office wherein she informed me
10 that she had a call from the then Acting Division of Commissioner of Crime Intelligence where she might request our assistance in terms of an investigation that relates to a security threat to the then Acting National Commissioner, Lieutenant General Phahlane.

ADV HULLEY SC: So when you say you were called in the provincial commissioner, who are you referring to now?

MAJOR GENERAL MABULA: Come again?

ADV HULLEY SC: You said you were called in by the provincial commissioner.

20 **MAJOR GENERAL MABULA:** Yes.

ADV HULLEY SC: For the North West. Who were you referring to?

MAJOR GENERAL MABULA: I am referring from my office in Potchefstroom.

ADV HULLEY SC: What is the name of the person that you

are talking about?

MAJOR GENERAL MABULA: General Motswenyane.

ADV HULLEY SC: Okay.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: And you said that she phoned you in the early morning.

MAJOR GENERAL MABULA: Ja, when we reported for work. I think it was... I am not quite sure but I think it might have been between half-past seven and eight o'clock.

10 **ADV HULLEY SC:** And on what day... what was the date of this... was it a telephone call or were you summonsed by somebody else?

MAJOR GENERAL MABULA: No, obviously, what would have happened, my staff officer would have received a call. Normally, I would wait to see who instructed me. Is it an official or is it personnel to phone my office to say, "Can you summons the general to my office?"

ADV HULLEY SC: I see.

20 **MAJOR GENERAL MABULA:** You would not personally phoned me. Then I will be informed by my staff officer or whoever.

CHAIRPERSON: Try and look this side as you give your answers because I am the person that have to ...[intervenes]

MAJOR GENERAL MABULA: Oh, sorry, sorry.

CHAIRPERSON: You are not telling him.

MAJOR GENERAL MABULA: Okay.

CHAIRPERSON: He is asking you the questions.

MAJOR GENERAL MABULA: Okay, sorry. I am sorry.

CHAIRPERSON: I need to be able to see and hear you properly.

MAJOR GENERAL MABULA: Okay.

CHAIRPERSON: No, it is fine.

ADV HULLEY SC: So you then had a meeting now on the same day with General Motswenyane. Is that correct?

10 **MAJOR GENERAL MABULA:** I reported to her office, yes. On the same day. It is the same building. It does not need me really to drive. It is just for me to walk. It is maybe a minute and I will be in her office.

ADV HULLEY SC: Okay. And then she explained to you that there was a security breach in respect of the Acting National Commissioner's private residence. Is that correct?

MAJOR GENERAL MABULA: She explained me the alleged security breach.

ADV HULLEY SC: Okay.

20 **MAJOR GENERAL MABULA:** Yes, she said there is this allegation.

ADV HULLEY SC: And what did she want you to do now that she is informing you of this?

MAJOR GENERAL MABULA: She informed me because apparently, she did receive a request from the Acting

Divisional Commissioner to avail myself to assist in terms of the allegations.

ADV HULLEY SC: So the request was specifically from the Acting Divisional Commissioner of Crime Intelligence for you to avail yourself?

MAJOR GENERAL MABULA: That is the record that I have received from the then Provincial Commissioner, General Motswenyane.

ADV HULLEY SC: So in other words, the Acting Divisional
10 Commissioner had specifically request you, General Mabula?

MAJOR GENERAL MABULA: Well, I cannot say she specifically because I do not know the conversation. How it came to myself personally. I think the person who would be in the position is the one who informed me.

ADV HULLEY SC: Sure. But it was your ...[intervenes]

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Sorry. But it was your understanding that you had been requested specifically by the Acting Divisional Commissioner?

20 **MAJOR GENERAL MABULA:** Not... I am not going to say, specifically me. This is what I say. I am the... the Provincial Commissioner said he received a request from the Acting Divisional Commissioner to avail an investigator to investigate the alleged security breach.

So I do not want to bind myself to say specifically it was

me. He never said to me. He said, specifically you. So I do not know whether he came to his own discretion or what but I am not going to.

ADV HULLEY SC: Okay. Then insofar as the team was concerned that was to assist you in this task ...[intervenes]

MAJOR GENERAL MABULA: Correct.

ADV HULLEY SC: ...were you to appoint the team or was the Provincial Commissioner, General Motswenyane, did she indicate what the team or who the members of the team
10 would be?

MAJOR GENERAL MABULA: No, she did not indicate. It was upon myself to assemble a team but obviously I would then engage with her to say, I would need a team. Because remember, I had other responsibilities in the province.

ADV HULLEY SC: Very well. You, obviously... either you would have availed you at the time or you obviously required as to where the residence of the Acting National Commissioner was at that point in time.

MAJOR GENERAL MABULA: No, there was no need for me
20 at that time when I informed to require where because the only statement and maybe it was, there is this security breach at the house of the Acting National Commissioner in Pretoria and then the Crime Intelligence is requested and wanted to come and assist in terms of the investigations.

ADV HULLEY SC: Now it was only in Pretoria.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: So she had told you that much that it was in Pretoria.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Did you acquire why it is that you had been appointed to investigate a matter that related to a security breach that took place in a different province?

MAJOR GENERAL MABULA: I did not because it was not a surprise. It is a practise.

10 **ADV HULLEY SC:** Pardon? Say that again.

MAJOR GENERAL MABULA: I was not surprised.

ADV HULLEY SC: Okay.

MAJOR GENERAL MABULA: Because in the police, that is how it works. You are not having a boundary to investigate because we are a national competency. So I was not surprised.

CHAIRPERSON: I am sorry, Mr Hulley. I missed your question. I just want to understand his answer in the context of the question.

20 **ADV HULLEY SC:** The question Mr Chair was whether he had made an enquiry from the Provincial Commissioner as to why he who was placed in the North West was being asked to go and investigate a security breach that took place in a different province.

CHAIRPERSON: Yes, okay. Okay and the answer was that

you did not ask?

MAJOR GENERAL MABULA: No, I did not Chair.

CHAIRPERSON: But you elaborated. Just tell me your elaboration on that.

MAJOR GENERAL MABULA: My elaboration is, I was not surprised. It seems your question was like you said, like I was not... for me, it was not something that is very strange for someone who can be approached from one province to do investigation in another province.

10 **CHAIRPERSON:** Is that normal in your experience?

MAJOR GENERAL MABULA: It is a normal experience within the police.

CHAIRPERSON: Oh, is that so?

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: Okay is there either certain types of cases where that is, in respect of which, that is normal or it is all types of cases? There is no specific... there are no specific categories of cases?

20 **MAJOR GENERAL MABULA:** I will not say there is a specific case because then otherwise I would be trying to... but as far as I know, there is that kind of arrangement within the police.

CHAIRPERSON: There is such a practise?

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: okay.

ADV HULLEY SC: And is that in relation to all types of investigations or certain types of investigations where that is normal practise?

MAJOR GENERAL MABULA: Look, I am not going to bind myself to say certain types of investigations because for me it lies with the discretion of whoever approaches.

So I am not going to dictate this is the type but what I know there is that kind of cross-provincial investigations where people are actually requested to do work in other
10 provinces.

CHAIRPERSON: Well, what you are on... the only thing you are expected to say Major General Mabula is what you know.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: If you do not know that it is according to specific categories of cases, obviously, you cannot say it is according to specific categories.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: But if you do know that it is according to specific categories, that is what you say.

20 **MAJOR GENERAL MABULA:** Okay.

CHAIRPERSON: Okay.

ADV HULLEY SC: Thank you. Thank you, Mr Chair. So this particular conversation that you had with the Provincial Commissioner, do you recall the date on which that conversation took place?

MAJOR GENERAL MABULA: No, I do not recall the date.

ADV HULLEY SC: Now the Provincial Commissioner requested you to assemble a team and then to go about conducting an investigation. Is that correct?

MAJOR GENERAL MABULA: Ja. What the Provincial Commissioner informed me is I must, as you say, assemble a team and go to Crime Intelligence to have... because he did not have the full facts of what is really going to happen. So obviously, he would send me to Crime Intelligence to go and
10 have a hearing.

ADV HULLEY SC: Okay. Now I think the term that was used previously was that there would be a briefing session.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Now the meeting with the Provincial Commissioner Motswenyane, after that meeting had been completed, in other words, you have finished with the meeting and you understand what your instruction is, did you on the same day assemble the team and the travel off to Crime Intelligence?

20 **MAJOR GENERAL MABULA:** Well, I am not sure whether it was the same day but I did go to get a team to Crime Intelligence.

ADV HULLEY SC: How did you select the members of the team? What criteria did you use?

MAJOR GENERAL MABULA: No, I looked at people with

more experience in terms of people who were previously in DPCI, Brigadier Kgorane and Brigadier Mobe(?) and Colonel Dawood who did previously DPCI with more experience. So I was looking into that. But in addition, I also nominated a person from Legal Service to be part of the team.

ADV HULLEY SC: Is that Lieutenant Colonel Makhele?

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: And why did you select him?

MAJOR GENERAL MABULA: I wanted him because of...

10 remember, we are dealing with legal issues and once we have someone we feel your investigation team from legal experience, you are always... it is always there to assist.

ADV HULLEY SC: And when you say that you were dealing with legal issues, what legal issues are we referring to now?

MAJOR GENERAL MABULA: No, the investigations as well.

ADV HULLEY SC: Okay.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: So you then having assembled the team, you then travelled up to Pretoria where you meet with the
20 Divisional Commissioner of Crime Intelligence. Is that correct?

MAJOR GENERAL MABULA: Correct.

ADV HULLEY SC: And this is the briefing session that we speak of?

MAJOR GENERAL MABULA: Yes, it was.

ADV HULLEY SC: What transpires? What is told you in this briefing session?

MAJOR GENERAL MABULA: Basically, it is like we were told that there is a security breach in the residence of the Former Acting National Commissioner and threat level against him. And then there were also some emails that were produced to us that would also amount to the threats.

ADV HULLEY SC: And what else was told to you.

MAJOR GENERAL MABULA: It was basically that I did
10 not... unless I have to elaborate exactly what they said. There was this vehicle and so on. I am not sure whether you want me to go as far as that.

ADV HULLEY SC: Yes, I want to understand what... not obviously verbatim but in terms of the substance what was conveyed to you at that meeting.

MAJOR GENERAL MABULA: In terms of the substance, it was said they have done a security assessment and then in terms of this assessment, the feeling is the life of the Acting National Commissioner is in danger and it requires us to do
20 further investigation as to verify as to whether there is criminality.

ADV HULLEY SC: So they said they have done investigations?

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: And the assessment is that there is a

threat to the life of the Acting National Commissioner.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Now who was present in this meeting from you and your team's side and on the side of Crime Intelligence?

MAJOR GENERAL MABULA: From my side it was Brigadier Ncube, Brigadier Kgorane, Colonel Ready, and Lieutenant Colonel Dawood by that time. And then from Crime Intelligence, if I remember well, there were three people.

10 **ADV HULLEY SC:** H'm?

MAJOR GENERAL MABULA: It was the Acting Regional Commissioner, General Makhele, Brigadier Moyane(?) and the other colleague, I only know him as BM and I do not... I cannot remember what is his surname but he was full general.

ADV HULLEY SC: So there were three people. Could there have been more people? I am trying to adduce.

MAJOR GENERAL MABULA: I quickly... I can think quickly of the three. I cannot remember whether there were more
20 than that but my memory, if it serves me well, it says three people.

ADV HULLEY SC: Okay.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: So we know that Moyane, it is clear. We know that... is it General Makhele?

MAJOR GENERAL MABULA: Makhele, yes.

ADV HULLEY SC: and then who is the third person, colonel?

MAJOR GENERAL MABULA: General BM. I think it is a nickname. I do not have the surname.

ADV HULLEY SC: Do you know how to spell that? I am trying to catch the name.

MAJOR GENERAL MABULA: No, I think it is a nickname but ...[intervenes]

10 **ADV HULLEY SC:** Oh, BM?

MAJOR GENERAL MABULA: Ja, BM. Like...

ADV HULLEY SC: Okay so that is... is it his or her initials?

MAJOR GENERAL MABULA: That is what they call him. I do not know whether it is his initials or what but

CHAIRPERSON: Or maybe it is the car that he was driving.

MAJOR GENERAL MABULA: Yes. [laughs]

CHAIRPERSON: [laughs]

ADV HULLEY SC: [laughs] Now you say that they had reported that there was a security assessment that had been
20 done by them. Presumably when you say by them it would have been done by Crime Intelligence.

MAJOR GENERAL MABULA: Correct.

ADV HULLEY SC: And the security assessment determined that there was a security risk or a threat to the life of the Acting National Commissioner. Is that correct?

MAJOR GENERAL MABULA: It is correct.

ADV HULLEY SC: Were there any documents that were produced?

MAJOR GENERAL MABULA: As far as my memory serves me well, we only received the emails, a number of emails.

ADV HULLEY SC: And who was the person... who were the persons or people... sorry. Who was the person or people that were speaking on behalf of Crime Intelligence that were speaking?

10 **MAJOR GENERAL MABULA:** It was Brigadier Moyane.

ADV HULLEY SC: Okay. So all the information that had been transmitted to you or that had been conveyed to you at that meeting had been conveyed specifically by Moyane, Brigadier Moyane?

MAJOR GENERAL MABULA: Yes. Well, the Acting Divisional Commissioner was acting... or he act then and there but the main person who was actually taking us to it was Brigadier Moyane.

20 **ADV HULLEY SC:** And the date of the meeting, do you recall that?

MAJOR GENERAL MABULA: I think the 30th.

CHAIRPERSON: The 30th of...?

MAJOR GENERAL MABULA: The 30th of November.

CHAIRPERSON: 2016?

MAJOR GENERAL MABULA: 2016.

CHAIRPERSON: Okay.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Now the document or the... or in terms of the report that was been conveyed to you about the security threats that had been done by the Crime Intelligence, did they indicate whether there was a written document to that affect or whether he indicated that it was simple a verbal assessment that had been given to them?

MAJOR GENERAL MABULA: Well, they did not go as far as
10 telling us the written document. They said they have done this assessment and this is what they felt but it was not clear as to whether there is a document that they have compiled.

ADV HULLEY SC: Okay.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: And were you ever presented with a document at all?

MAJOR GENERAL MABULA: No.

ADV HULLEY SC: Now in terms of the briefing that have been given to you, did they tell you who is it that you had to
20 investigate, what the nature of the complaint was or the concern was?

Were you able to take down notes to make a summary for the full detailed explanation of what it is that you were going to investigate?

MAJOR GENERAL MABULA: Look, as far as I recall, they

spoke about this vehicle that went to the residence of the Acting National Commissioner driving by one white person and white lady and two African males and they were posing certain questions which might amount to also breach of security as well.

That is basically what they were trying to tell us. And then on top of that, they give us also emails that would actually suggest that there were certain threatening remarks on the emails.

10 **ADV HULLEY SC:** And did they suggest that the threatening emails and that the vehicle that had gone through the residence was somehow connected with each other?

MAJOR GENERAL MABULA: Yes, somehow. Yes.

ADV HULLEY SC: Did they identify everybody that you needed to investigate?

MAJOR GENERAL MABULA: I think they said they went and checked the ownership of the vehicle which came out to a certain person called Paul O'Sullivan.

ADV HULLEY SC: Oh, I see.

20 **MAJOR GENERAL MABULA:** Yes.

ADV HULLEY SC: Now in terms of the report that had been given to you in that briefing session, had they indicated to you other than Paul O'Sullivan you mentioned that there was a white male, there was a white lady. Other than the two of them, who else was involved? Do they suggest that

there was anybody else that you had to investigate?

MAJOR GENERAL MABULA: Well, the only – the other two, I know it was only two African males but by then we did not have the names, who the people were.

ADV HULLEY SC: Okay. And this is now on the 30th. What do you do – you have the briefing session, you presumably decide what it is that you are going to do about this.

MAJOR GENERAL MABULA: Yes.

10 **ADV HULLEY SC:** You make that decision together with Crime Intelligence or do you and your team go and retire elsewhere and decide how you are going to deal with the situation?

MAJOR GENERAL MABULA: Yes, after the briefing by Crime Intelligence myself and my team we went out and decide on the way forward.

ADV HULLEY SC: And what is it that you decided?

MAJOR GENERAL MABULA: The first thing that I did because obviously even that time it was very much rife or it
20 was well-known fact that General Phahlane was more on eNCA. IPID was like on top of him. So one would actually say but it is public knowledge that IPID, they are busy investigating General Phahlane.

Now the question you ask, now you still have to do security threats on the very same. Now it puzzled me.

Then I said to the team I think the first thing that one need to do, I will phone the DPP. I phoned the DPP personally because with the current situation now, one goes there, you are actually see as – remember, the media, IPID was involved more with media so one would need really to look at your own integrity.

So I phoned DPP, but DPP, I remember very well, was not – I think he was not at work, he was on leave, because remember now it was more on festive(?). He told
10 me that I am not at work and then I said no, but there is this urgent thing that I want to see you. Then he agreed. He moved to his office and I went with Brigadier Ncube and Colonel Dawood. I briefed him to say Advocate, this is what we found from Crime Intelligence. Now the reason why I am coming here, I am looking puzzled because we are aware that the same – the residence of General Phahlane, there is this investigation that you saw over the news.

So I want – let us share ideas, I am not sure
20 whether to go or not. Then he presented what Crime Intelligence gave. Then he said to me no, but General, investigation is investigation, you will need to carry on with the investigation but because of the level of the issues now, you know, what is happening currently, I will assign an advocate that will deal with the team and on that very

same note he said to me he will give me Advocate Nemaorane. That was the understanding and then after then one was relieved to say now at least DPP is giving go-ahead because it was an extraordinary situation, this one.

ADV HULLEY SC: Now just to understand. Firstly, when you talk about the DPP, who are you referring to?

MAJOR GENERAL MABULA: Advocate Mzinyathi.

ADV HULLEY SC: Mzinyathi, okay.

10 **MAJOR GENERAL MABULA:** Yes, I think he is based in Pretoria.

ADV HULLEY SC: I see.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Why were you going to see him at all? I am not sure if I am following that.

MAJOR GENERAL MABULA: I am saying I decided to go and see Advocate Mzinyathi as the DPP.

ADV HULLEY SC: Yes.

20 **MAJOR GENERAL MABULA:** It was well-known fact that IPID they were busy with investigation on the very same area where he know – we have this security threat. Now he has two investigations, the other one, it is in favour of General Phahlane, the other one is against him. Now you come – you remember, we all observed that IPID has mandates to investigate. Now you cannot be seen when

somebody is investigating you come in as well. It does not make sense.

So now – and also, it does not – you know, on an interim basis nothing would have stopped me to go there to investigate but I will say to avoid whatever might come, let me go to the DPP, tell him this is what we see, what does it say because the other thing, the DPP would also be aware that the Acting National Commissioner at his level is being investigated.

10 Now obviously all these investigations will go to his office as DPP. So that is why I felt - I used that discretion to say I must go to him.

ADV HULLEY SC: Why I am asking this question because I understood that you do not know who – other than the two, Paul O’Sullivan and the white lady, you know that there were two black gentlemen in the vehicle but you do not know who they are. So I am trying to understand how you know that IPID is involved in this matter at all?

MAJOR GENERAL MABULA: Look it is also public
20 knowledge, when IPID was investigating General Phahlane earlier than that there was somewhere where Paul O’Sullivan issues were coming in, in that investigation on the media. It was not a secret.

ADV HULLEY SC: I am not following that. You are saying this is in the public domain?

MAJOR GENERAL MABULA: Yes, I say ...[intervenes]

ADV HULLEY SC: That IPID was investigating the Acting National Commissioner?

MAJOR GENERAL MABULA: Yes. But, on top of that, while General Phahlane was investigated, the name of Paul O'Sullivan was coming into play as well.

ADV HULLEY SC: In the media?

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: And you are saying that according to
10 the media reports that you were familiar with you understood that Paul O'Sullivan had been investigating the Acting National Commissioner and you – do I misunderstand that?

MAJOR GENERAL MABULA: No, not necessarily investigating, what I am saying, whatever investigation that was relating – in relation to General Phahlane, Paul O'Sullivan's name was also featuring into.

ADV HULLEY SC: And was that investigation that you understood then Paul O'Sullivan's name was mentioned,
20 but you understand that from the media reports to be an investigation being conducted by IPID?

MAJOR GENERAL MABULA: There was that relationship. It was clear, there was a relationship between Paul O'Sullivan ...[intervenes]

ADV HULLEY SC: No ...[intervenes]

MAJOR GENERAL MABULA: And IPID by that time.

ADV HULLEY SC: Sorry, listen to my question. I am trying to understand on what basis you decided to go and see the DPP. Now you say it was because you were concerned about possibly interfering in an IPID investigation?

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: I understood from your earlier responses that you did not know other than Paul O’Sullivan
10 and the white lady, you did not know who was involved in going to the Acting National Commissioner’s residence. So pursuant to that I am asking you on what basis did you go up to IPID? And if I understand your response correctly you are saying it is because you understood that there was a relationship between Paul O’Sullivan and IPID. Now I am asking you is that based upon the media reports that you speak of?

MAJOR GENERAL MABULA: It is based on the media reports. It is also based on the briefing that you received
20 to say they are seeing Paul O’Sullivan when he went to the residence the Acting National Commissioner. He identify himself as a member of IPID. Yes.

ADV HULLEY SC: And then you decided you were going to go and first see whether – you are going to first go and see the DPP about this issue. Did you investigate at that

stage before you went and go and see the DPP? Did you investigate whether Paul O’Sullivan was indeed a member of IPID?

MAJOR GENERAL MABULA: No, I have not started because – I have not started the investigation because my investigation obviously when you carry, you can link on the very same premises where General Phahlane is. That is why I wanted to clear the air so that tomorrow it must not be someone went and tried to do whatever. So that is why
10 for me from investigation perspective I want to clear the air so that if the DPP said no, no, I am aware of this investigation and then says carry on with the investigations, at least obviously there must not be a commission because like I have said, IPID have a total mandate to investigate. We also have a mandate to investigate which causes – for me personally it causes a little bit of a confusion.

ADV HULLEY SC: So when you say that you are going to go and see the DPP to see whether they are aware of the
20 investigation are you referring to the investigation that was being conducted by IPID into the Acting National Commissioner?

MAJOR GENERAL MABULA: No, no, no, the investigation that was about to start.

ADV HULLEY SC: Okay.

MAJOR GENERAL MABULA: I wanted to inform the DPP to say this is what we received, the complaint, we are going to investigate that but on the same breath we are aware that there is investigation in the very same premises, again the person who is alleged there are security threats against him.

ADV HULLEY SC: Now after you went to go and see the DPP what was the assessment that was made over there about the future conduct of your team's investigation?

10 **MAJOR GENERAL MABULA:** Come again? Can you just rephrase it?

ADV HULLEY SC: You went to go and see the DPP.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: You met with Advocate Mzinyathi.

MAJOR GENERAL MABULA: Mzinyathi, yes.

ADV HULLEY SC: After that meeting or in the meeting was it decided how you were to proceed with this matter?

MAJOR GENERAL MABULA: That In that meeting we were given a green light by the advocate. In addition, he
20 said he will assign Advocate Nemaorane to be from the NPA's side to supervise this investigation.

ADV HULLEY SC: Now moving forward, you would have met with your team afterwards presumably. You have already met with Mzinyathi – sorry, Advocate Mzinyathi, you go back presumably either to North West or elsewhere

to discuss the way forward and how the different tasks are going to be divided between your team members, is that correct?

MAJOR GENERAL MABULA: Correct.

ADV HULLEY SC: And when did that meeting take place?

MAJOR GENERAL MABULA: I would not say a meeting because immediately after we go the green light from the DPP, Advocate Mzinyathi, then my instruction was now that we have consulted the DPP we must as soon as possible –
10 because, I mean, if there is a security threat it means we need to act, so we must start with the investigation.

CHAIRPERSON: When you consulted with Advocate Mzinyathi were you seeking his opinion of the case so that you could see whether he thought it was something worth investigating or were you just consulting him not necessarily seeking his opinion or did you need his approval before you could embark on the investigation?

MAJOR GENERAL MABULA: Actually, Chairperson, I needed his opinion.

20 **CHAIRPERSON:** Yes. He could say if he said what are you investigating here, there is nothing, would that have been the end of the investigation that was about to start?

MAJOR GENERAL MABULA: I was ...[intervenes]

CHAIRPERSON: If his opinion was that you should not investigate, there are no grounds to investigate?

MAJOR GENERAL MABULA: I ...[intervenes]

CHAIRPERSON: Is it something you do not know?

MAJOR GENERAL MABULA: No, I ...[intervenes]

CHAIRPERSON: It has never happened?

MAJOR GENERAL MABULA: No.

CHAIRPERSON: Okay. But you – if he said his opinion was that you should continue then you would continue definitely?

MAJOR GENERAL MABULA: Yes, we did.

10 **CHAIRPERSON:** Okay, alright. Are the circumstances where – or let me ask this question this way. What types of investigations do you need an opinion from somebody from the NPA before you can embark on them? Is it all investigations?

MAJOR GENERAL MABULA: No, in terms of my experience I never had opinion from ...[intervenes]

CHAIRPERSON: This was the first time?

MAJOR GENERAL MABULA: This was the first time. That is why I am saying ...[intervenes]

20 **CHAIRPERSON:** Yes.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: And what made you take this unusual step of seeking an opinion from somebody from the NPA on this occasion?

MAJOR GENERAL MABULA: Because already I was

aware that there was an investigation on the very same premises by IPID.

CHAIRPERSON: Yes.

MAJOR GENERAL MABULA: So I then have question marks to myself, do you go forward and go back?

CHAIRPERSON: Yes.

MAJOR GENERAL MABULA: Because it is possible that if this thing is not properly communicated there might be a reason for people to say you are interfering.

10 **CHAIRPERSON:** Yes.

MAJOR GENERAL MABULA: Because it is more you are on the borderline.

CHAIRPERSON: Okay, okay, you were unsure.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: Whether it would be regarded as proper to proceed.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: And you wanted that kind of backing to know that somebody in the NPA thinks it is fine to do it.

20 **MAJOR GENERAL MABULA:** Right, Chairperson.

CHAIRPERSON: Okay.

ADV HULLEY SC: Now why would Crime Intelligence be involved in the security assessment? Are you aware of that?

MAJOR GENERAL MABULA: Why?

ADV HULLEY SC: Why had Crime Intelligence conducted the security assessment in the first place?

MAJOR GENERAL MABULA: No, I am not aware why.

ADV HULLEY SC: Is that typical, is that usual, is it appropriate for Crime Intelligence to be involved?

MAJOR GENERAL MABULA: No, I cannot answer that one whether it is appropriate but I do not know who they involved.

ADV HULLEY SC: Okay.

10 **CHAIRPERSON:** Just back onto the question I asked you. At this stage when you consulted Advocate Mzinyathi what did you – what information did you place before him for him to give you and informed opinion?

MAJOR GENERAL MABULA: I presented the emails to him, I also shared with him the information that I received not documented in terms of the activities but according to Crime Intelligence their view as such as a security threat.

CHAIRPERSON: Yes.

MAJOR GENERAL MABULA: Yes.

20 **CHAIRPERSON:** And his opinion was it is justified to pursue the investigation here.

MAJOR GENERAL MABULA: Yes, even if we are aware that IPID they are busy with other investigations the other side.

CHAIRPERSON: Yes, okay.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: Alright.

ADV HULLEY SC: You then decided, that is the members of you team, would start with the investigation immediately, is that correct?

MAJOR GENERAL MABULA: Correct.

ADV HULLEY SC: You, as the team leader, what would your role be insofar as the investigation and the future of the investigation was concerned?

10 **MAJOR GENERAL MABULA:** My role would have been statements would be taken, they will be presented to me. Where the team needs any resources in terms of the investigation, I will make sure that I get the necessary resources for the team to work.

ADV HULLEY SC: And were you to return to North West where you were based or were you going to be moving in and out from your base in North West and coming up to Gauteng from time to time?

20 **MAJOR GENERAL MABULA:** I would move from time to time as it requires into North West and Gauteng of the province for the sake of the investigation.

CHAIRPERSON: Prior to you being asked to lead this investigation did you know the then Acting National Commissioner personally as opposed to simply knowing that he is the Acting National Commissioner, is it

somebody you had had any interactions directly with?

MAJOR GENERAL MABULA: Yes, Chairperson, at my position as a Deputy Provincial Commissioner, most of the time you do account as a province to the National Commissioner. So our interaction would be based on that.

CHAIRPERSON: And would that relationship just as a professional level?

MAJOR GENERAL MABULA: Correctly so.

CHAIRPERSON: And that is all that there was?

10 **MAJOR GENERAL MABULA:** Yes.

CHAIRPERSON: Okay.

ADV HULLEY SC: And you – those context where you would interact with the Acting National Commissioner would it be in formal settings? In other words, would you meet at the residence of the Acting National Commissioner or would you meet at an official SAPS site?

MAJOR GENERAL MABULA: Because of the type of work I do, I might not have specific places where I would meet the National Commissioner, not specific to [indistinct]
20 Where the National Commissioner would require me to report, I will.

ADV HULLEY SC: And now take us through the investigation that have conducted. You obviously receiving statements from time to time and presumably, as the team leader, you are not actually conducting any investigations

yourself, your sole purpose is to lead the team and you would receive statements or reports in some form either verbal reports or written reports, is that correct?

MAJOR GENERAL MABULA: Correct.

ADV HULLEY SC: And all the reports that were being sent – were being given to you, would they be verbal reports only or would also be written reports, other than statements now?

MAJOR GENERAL MABULA: Normally it would be verbal
10 reports because if they want to verify certain threats, I am also having access to the case docket.

ADV HULLEY SC: You are also having access to the..?

MAJOR GENERAL MABULA: The case docket.

ADV HULLEY SC: Okay.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: At the early stage, in other words still in 2016 now when the investigation starts, the role that you played as the team leader is to receive the reports and to receive ...(intervenes)

20 **CHAIRPERSON:** You are too far from the mic, Mr Hulley.

ADV HULLEY SC: Pardon me, Mr Chair. Thank you, Mr Chair. Your role is to receive reports and to receive the statements and then you have got to make decisions presumably based on what you are reading and the reports that are being given to you. Would that be fair?

MAJOR GENERAL MABULA: I do receive reports, correctly so.

ADV HULLEY SC: No, no, my question is, do you have to make decisions based upon what you have read in the statements and the verbal communications?

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: And what decisions do you take as a result of the information that has been supplied to you, either in the form of the statements or the verbal reports?

10 **MAJOR GENERAL MABULA:** No because once I receive the reports you can interact with the team to say can you go and obtain certain statement despite the fact that remember this was a prosecutorial guided investigations but you go through the reports and then, for example, where you need some forensic reports you intervene. Where the team has got – when you go through the reports you see there they are lacking, you supply them with the necessary resources to complete their investigation.

20 **ADV HULLEY SC:** And this particular investigation you are obviously the team leader but you yourself had to report to somebody else, you fall under somebody else's jurisdiction.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: In this case you fall under the Provincial Commissioner.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: It is [indistinct] jurisdiction.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Are you reporting to her on this matter or are you reporting to somebody else?

MAJOR GENERAL MABULA: I report to the person who appoints us.

ADV HULLEY SC: And who is that?

MAJOR GENERAL MABULA: Which is Acting Divisional
10 Commissioner of Crime Intelligence.

ADV HULLEY SC: Okay, so this particular investigation resides under the Acting Divisional Commissioner, so you are reporting to her.

MAJOR GENERAL MABULA: Correct.

ADV HULLEY SC: So all the reports that have been given to you, you communicate those reports to her.

MAJOR GENERAL MABULA: Correct.

ADV HULLEY SC: Now at the – by the time you have started doing these investigations is there an agreement
20 that you would report to her in writing or simply verbally?

MAJOR GENERAL MABULA: I never reported in writing, I reported verbally to her.

ADV HULLEY SC: So in your statement you have attached – marked NJN1, it appears at LEA26, that is bundle LEA26, at page 35.

MAJOR GENERAL MABULA: Page...

CHAIRPERSON: Have you got the right bundle, Major General Mabula? To see whether you have the right bundle you must look on the spine of the bundle.

MAJOR GENERAL MABULA: I have got the ...[intervenes]

CHAIRPERSON: You have got the right bundle?

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: Okay. Is it the one we have been using?

10 **ADV HULLEY SC:** It is the one that we are using, Mr Chair.

CHAIRPERSON: Oh, okay.

MAJOR GENERAL MABULA: Yes, I have got it.

ADV HULLEY SC: Now this particular document at page 35, can you tell us what this document is, where did you get this document from?

MAJOR GENERAL MABULA: The mandate to conduct to investigation security threat against Acting National Commissioner, counter and security intelligence inquiry.
20 So what was the question?

ADV HULLEY SC: What is this document and where did you get it from?

MAJOR GENERAL MABULA: This document is the one that I got from the Acting Divisional Commissioner via the office of the Provincial Commissioner.

ADV HULLEY SC: So the Provincial Commissioner's office gave it to you but you understand that it came from the Acting Divisional Commissioner?

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: So when you went to this briefing session with the Acting Divisional Commissioner did you take this document with you or did you receive this document afterwards?

MAJOR GENERAL MABULA: Afterwards.

10 **ADV HULLEY SC:** And the purpose of this document, if I understand correctly, is as the heading indicates that it is a mandate.

MAJOR GENERAL MABULA: Correct.

ADV HULLEY SC: In other words, this is the document that has empowered you to conduct the investigation that you were conducting.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: It says here under the first item, Background, it says that:

20 "On the 16 October 2016 the Acting National Commissioner's private dwelling was accessed unlawfully by as yet unknown individuals who allegedly unlawfully accessed documentation and other material which is presumed to compromise the safety of the Acting National Commissioner and his

immediate family.”

Is that correct?

MAJOR GENERAL MABULA: Correct.

ADV HULLEY SC: Now I just want to understand firstly, this date over here of the 16 October 2016, what investigation has been conducted over here? What are they referring to? Is this the incident with Mr Paul O’Sullivan?

MAJOR GENERAL MABULA: I think this is the incident in
10 terms of the vehicle that I spoke to.

ADV HULLEY SC: And this particular vehicle that you spoke to, does this vehicle – this incident with the vehicle, does that relate to Mr Paul O’Sullivan or are we talking about two different incidents?

MAJOR GENERAL MABULA: Ja, I said the vehicle, when it was screened, it belonged to Mr Paul O’Sullivan.

ADV HULLEY SC: Okay.

MAJOR GENERAL MABULA: Yes because they gave registration number of the vehicle.

20 **ADV HULLEY SC:** And the information about the screening by which I understand you to mean that you had done a check on the registration number?

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: So when they did – when they gave you information about the screening at the briefing

session, they already knew that that vehicle belonged to Mr Paul O’Sullivan, is that correct?

MAJOR GENERAL MABULA: Yes, they said the vehicle belongs – according to the screening, according to the registration numbers, yes.

ADV HULLEY SC: Okay. And then you get this letter which is sent to you after the event. In other words, after you have returned from Crime Intelligence where the briefing was held.

10 **MAJOR GENERAL MABULA:** H’m.

ADV HULLEY SC: And in this letter they are saying to you that:

“An incident took place on the 16 October.”

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: And they say that:

“His private residence was accessed unlawfully by as yet unknown individuals.”

Now I am trying to understand whether this incident that has been referred to over here is the same incident as the
20 one that they gave you a briefing about relating to Mr Paul O’Sullivan.

MAJOR GENERAL MABULA: It is the same.

ADV HULLEY SC: So I am just trying to understand why they would say it was unknown individuals when in the briefing session they have already told you that the people

were Paul O’Sullivan and a white female, two black males, why are they saying in this letter that it is unknown individuals?

MAJOR GENERAL MABULA: Do you want me to answer that?

ADV HULLEY SC: I would like to know, yes.

MAJOR GENERAL MABULA: Well, my opinion – because now I have to give my opinion because I cannot answer on their behalf.

10 **CHAIRPERSON:** If you do not know you can say you do not know.

MAJOR GENERAL MABULA: I do not know, yes.

CHAIRPERSON: We are at half past three, I do not know how, Mr Hulley, you may be pacing yourself in terms of important issues, so I want you to just bear that in mind.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: So that you ...[intervenes]

ADV HULLEY SC: I will keep eye on the...

20 **CHAIRPERSON:** Ja, keep an eye so that we get to the important aspects of his evidence.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: Do you have a sense of how much time you think you need?

ADV HULLEY SC: Probably another hour, Mr Chair.

CHAIRPERSON: Let us see how – where we are in the

next 30 minutes.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: But try and look for those important features on his evidence.

ADV HULLEY SC: Thank you, Mr Chair. So there it says in the following line, it says paragraph 2:

“Appointment of team to conduct investigation. Here they appoint the following members to conduct the investigations and to report the findings and recommendations to my office.”

10

Now we know that there was no written report that was provided. Was a verbal report ever given?

MAJOR GENERAL MABULA: Verbal report?

ADV HULLEY SC: Okay and were there also recommendations that were given?

MAJOR GENERAL MABULA: No there was no recommendations because the investigation was not finalised.

ADV HULLEY SC: Then paragraph 3, the objective of the investigation;

20

“the attorneys requested to conduct an investigation and to obtain all necessary statements from witnesses, collect evidence regarding – sorry and to collect evidence regarding threat against the Acting National Commissioner.”

On the following page;

“The investigation will commence on 30 November 2016 and will continue for a period of two months with a possibility of further extension”.

Was a further extension granted after a two-month period?

MAJOR GENERAL MABULA: It was communicated yes, but it was not communicated in writing.

ADV HULLEY SC: No, no, I’m asking – so there was an extension granted?

10 **MAJOR GENERAL MABULA:** Yes.

ADV HULLEY SC: Who granted the extension?

MAJOR GENERAL MABULA: As I was giving the reports, it was impossible for us to finalise this, so the acting Divisional Commissioner whom we were giving feedback to, he agreed to say we must – we can extend.

ADV HULLEY SC: And sorry what did you [indistinct] she?

MAJOR GENERAL MABULA: Yes.

20 **ADV HULLEY SC:** Okay and you say all resources will be provided by the North West Province, in other words your Province will be responsible for all the resources that are provided to this investigation.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: “The investigation team will report all progress concerning the investigation to the acting

Divisional Commissioner Crime Intelligence and meetings will be conducted at the request of the team leader”,

Is that correct?

MAJOR GENERAL MABULA: Correct.

ADV HULLEY SC: Now, other than verbal reports you say that there were no written reports that were ever given and there was never a recommendation given.

MAJOR GENERAL MABULA: To the acting Divisional
10 Commissioner?

ADV HULLEY SC: Was a recommendation given to anybody?

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: To whom was the recommendation given to?

MAJOR GENERAL MABULA: I think just rephrase again?

ADV HULLEY SC: I asked you, other than the written reports – sorry other than the verbal reports was there a recommendation that had been given to anybody – sorry to
20 the Divisional Commissioner, pardon me, I said was there a recommendation that was given and I understood your previous answer to be, no there was no recommendation given. Now, you’ve now made a qualification on that, you said not to the Divisional Commissioner then my next question is, did you give such a recommendation to

anybody?

MAJOR GENERAL MABULA: There were no recommendations that were sent to anybody but what I can say, there were some reports that were forwarded to the – because after General Phahlane was put aside there was a new acting National Commissioner who came, he requested us to submit progress report and understand what kind of investigation we're doing, that was General Mothiba and General Sithole, the current sitting National Commissioner,
10 when he took office, the same applied as well, we did submit that kind of report to him.

ADV HULLEY SC: And were those written reports?

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Okay, now the mandate that had been given to you here by the acting Divisional Commissioner, was this mandate ever extended or broadened?

MAJOR GENERAL MABULA: No, it was never – it remained as it is there's no other mandate that we received except this.

20 **ADV HULLEY SC:** So, all the investigations that were being conducted by you and your team were conducted pursuant to this mandate?

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: What – there were, of course, subsequently, I think it was on the 4th of January, you

opened a case docket through Kameeldrift Police Station, is that right?

MAJOR GENERAL MABULA: Correct.

ADV HULLEY SC: And that was on the 4th of January of 2017. Has there ever been a criminal case that has been opened relating to a threat on the life of the acting National Commissioner?

MAJOR GENERAL MABULA: The charges that was opened, it was intimidation, a person impersonating this
10 IPID members and fraud, out of the investigation that we conducted.

ADV HULLEY SC: So, I take it that your answer to my question is, no, there was never any criminal investigation or criminal charges that were instituted relating to a threat to the life of the acting National Commissioner?

MAJOR GENERAL MABULA: What I call intimidation that is up to the Chairperson to decide, whether it's aligned to – as part of that threat.

ADV HULLEY SC: So, you say that there was a charge of
20 intimidation...[intervenes].

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Against the acting National Commissioner?

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Under which case docket was that?

MAJOR GENERAL MABULA: Against who?

ADV HULLEY SC: The acting National Commissioner.

MAJOR GENERAL MABULA: No there was not intimidation...[intervenes].

CHAIRPERSON: It could not be against the acting National Commissioner.

MAJOR GENERAL MABULA: No, it won't be.

ADV HULLEY SC: The threat against the acting National Commissioner, so not the – the charges are not against the
10 acting National Commissioner. Were there any charges that were laid, against anybody, in respect of the intimidation against the acting National Commissioner?

MAJOR GENERAL MABULA: Yes, not against – maybe you don't understand.

CHAIRPERSON: Ja, no I think – now I understand. He is saying, you were – you conducted an investigation because it was alleged that there had been a threat to the acting National Commissioner.

MAJOR GENERAL MABULA: Yes Chairperson.

20 **CHAIRPERSON:** So, he's question is, arising out of that investigation was there any charge of intimidation against anybody that was preferred?

MAJOR GENERAL MABULA: There was.

CHAIRPERSON: Yes okay.

ADV HULLEY SC: Now the charges were brought,

obviously against Mr Paul O’Sullivan, is that right?

MAJOR GENERAL MABULA: Correct.

ADV HULLEY SC: And there were charges that were brought against Ms Trent.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Later on, there were charges that were brought against two IPID officials.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Now, what I’m asking you is, of all
10 those charges that were brought against the different people, Ms Trent, Mr O’Sullivan and the two IPID officials, which charge related to intimidation by any of them of the acting National Commissioner, which one of them had intimidated the acting National Commissioner?

MAJOR GENERAL MABULA: Well, I don’t want to get much into the merits of the cases...[intervenes].

CHAIRPERSON: Well, I think what he is saying, what he is asking is, when you say there was a charge of intimidation was it against one of the persons that we have
20 mentioned or was it against more than one, if so, say who – who it was.

MAJOR GENERAL MABULA: Ja, now if memory serves me well it might be against one of them, it might be two but as far as I understand...[intervenes].

CHAIRPERSON: As far as you recall.

MAJOR GENERAL MABULA: It's one.

CHAIRPERSON: And who was it...[intervenes].

MAJOR GENERAL MABULA: Paul O'Sullivan.

CHAIRPERSON: Okay, alright.

ADV HULLEY SC: So, you're saying that Mr Paul O'Sullivan, one of these charges relates to his intimidation of the acting National Commissioner?

MAJOR GENERAL MABULA: Ja, if memory serve me well, in terms of that.

10 **ADV HULLEY SC:** Now, these other charges that had been brought, there were charges of fraud, there were charges of impersonation of an IPID official, there were subsequently charges that had been brought of racketeering, charges relating to the national investigations relating to the National Credit Act, breaches of the National Credit Act, all those charges, how did that relate to the mandate that you had been given?

MAJOR GENERAL MABULA: Well, I can't answer that, I'm not in a position.

20 **CHAIRPERSON:** Maybe, let's – let me ask the question in this way. These other charges that Mr Hulley has mentioned to you, did they arise from the investigation that you conducted?

MAJOR GENERAL MABULA: Yes, Chairperson.

CHAIRPERSON: Yes, did you conclude, in your

investigation, that such charges should be preferred?

MAJOR GENERAL MABULA: We, as a team.

CHAIRPERSON: We as a team, ja.

MAJOR GENERAL MABULA: No.

CHAIRPERSON: You did not and you did not make a recommendation?

MAJOR GENERAL MABULA: No, we didn't.

CHAIRPERSON: That such charges should be included.

MAJOR GENERAL MABULA: Yes, yes.

10 **CHAIRPERSON:** Okay, so I presume you prepared the report after the investigation, is that right?

MAJOR GENERAL MABULA: That's correct.

CHAIRPERSON: Yes, and you just placed facts as you understood them?

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: And left it to whoever had to make a decision as to what charge to prefer?

MAJOR GENERAL MABULA: Yes.

20 **CHAIRPERSON:** You made no recommendations as to what charge should be preferred?

MAJOR GENERAL MABULA: Correct Chairperson.

CHAIRPERSON: Okay.

ADV HULLEY SC: Now, according to a certain Mr – if you will turn with me to Bundle LEA23, if you will turn with me to page 42.1.

MAJOR GENERAL MABULA: 42?

ADV HULLEY SC: Yes, that's right, page 42.

MAJOR GENERAL MABULA: Did you say page 42?

ADV HULLEY SC: Page 42 Bundle LEA23, if you would go to page 42.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Now this is a statement – sorry 42, now if you will turn to the following page, to page 42.1.

MAJOR GENERAL MABULA: The following page?

10 **ADV HULLEY SC:** Pardon me – there must be a page 42.1 in that Bundle, are you looking at the top left-hand corner?

MAJOR GENERAL MABULA: Ja, I'm looking here.

ADV HULLEY SC: Mr Chair, my junior can just assist. Thank you, Mr Chair, my apologies for that, do you have the document sir?

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Now, this is a statement of a – that was taken from a person named Stefanus Hermanus Heiner
20 [spelt into record] and it's dated the 25th of July of 2017 and I want to read to you what he says, he says that on the 30th of November, starting at the top paragraph,

“I received a telephonic instruction from Brigadier Moyane to instruct Lieutenant Colonel Hennie Kruger and Captain Coetzee to investigate a

security breach at the complex where Lieutenant General Phahlane stays. He indicated to me that O'Sullivan and others went to the complex where Lieutenant General Phahlane stays and asked questions relating to his house and security arrangements. I was informed the same day that it was confirmed that it was O'Sullivan together with IPID members visited the place and asked various questions related to Lieutenant General Phahlane.

10 I phoned Brigadier Moyane then the early evening on the 30th of November 2017 and informed him of our finding and forwarded a written report to him on 1 December 2017. I do not know about the briefing session the investigation team was having at Crime Intelligence and was not part of it. I did not work with the team, I did not supply any information to them. I have never attended any meeting at the office of Lieutenant General Phahlane regarding this investigation and did not report to him on any

20 of our findings. With the investigation, no security breach was found and instead it was found that O'Sullivan was with IPID investigation at the complex to investigate allegations against Lieutenant General Phahlane",

Now, assuming this to be correct, when you met

with Brigadier Moyane, he communicated the exact opposite and said that a finding had been made or an assessment had been made that there was a security breach, is that correct?

MAJOR GENERAL MABULA: He communicated that to us, yes.

ADV HULLEY SC: So, if I understand that, you say, correctly that – either this statement is incorrect or his statement is incorrect.

10 **MAJOR GENERAL MABULA:** Well I can't talk on his statement I can talk only on the briefing that I received from Brigadier Moyane, this person, I don't even know him.

ADV HULLEY SC: Now subsequently, if you'll just bear with me, there was a statement that was taken from you in a criminal investigation that had been – or was being conducted by IPID, is that correct?

MAJOR GENERAL MABULA: Correct yes.

ADV HULLEY SC: And you gave a statement in those proceedings, is that correct?

20 **MAJOR GENERAL MABULA:** Can I ask, when was it?

ADV HULLEY SC: When was the statement given?

MAJOR GENERAL MABULA: Yes, when I gave the statement, I just want to...

ADV HULLEY SC: Your statement was given on the 11th of December of 2017.

MAJOR GENERAL MABULA: Okay.

ADV HULLEY SC: Now in the statement, and I'd like you to turn with me to Bundle LEA23 and I'd like you to turn to page 59.

MAJOR GENERAL MABULA: 59?

ADV HULLEY SC: That's correct and will you turn to page – hold that page open and turn to page 66.

MAJOR GENERAL MABULA: I'm at 59.

ADV HULLEY SC: Ja hold the page 59 open with your left
10 hand, keep your left hand there and then turn to page 66,
is that...

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Is that your signature?

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Okay, and if you go back to page 59 it says that this is the warning statement of Ntebo Jan Mabula.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Is this the statement that you gave to
20 IPID?

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Now this statement was given to IPID after you had been – after you had, had an opportunity to consult with your attorneys, is that correct?

MAJOR GENERAL MABULA: Correct.

ADV HULLEY SC: You say, on page 60 at paragraph 5.1.

MAJOR GENERAL MABULA: 60 Neh?

ADV HULLEY SC: That's correct.

MAJOR GENERAL MABULA: Let me go to it, 5.1 I don't see it.

ADV HULLEY SC: You see paragraph 5.1 at the bottom of the page?

MAJOR GENERAL MABULA: On page 60?

ADV HULLEY SC: That's right.

10 **MAJOR GENERAL MABULA:** I don't see.

ADV HULLEY SC: Page 60 top left-hand corner.

MAJOR GENERAL MABULA: Ja, here's page 60...[intervenes].

ADV HULLEY SC: Bottom of the page.

MAJOR GENERAL MABULA: Yes, 28.

ADV HULLEY SC: You'll see that there's paragraph 5 and then below paragraph 5, there's a 5.1, you see that?

MAJOR GENERAL MABULA: Hang on, yes.

20 **ADV HULLEY SC:** I think the bundle next to you is Bundle LEA23.

CHAIRPERSON: Have you moved to another Bundle from ...[intervenes].

ADV HULLEY SC: It's Bundle LEA23.

CHAIRPERSON: 23?

ADV HULLEY SC: 23 Mr Chair.

CHAIRPERSON: Ja, isn't that the one we have been having all along?

ADV HULLEY SC: I thought it was but I think the witness has moved it to the side.

MAJOR GENERAL MABULA: No, I haven't moved.

ADV HULLEY SC: Oh, my apologies.

CHAIRPERSON: Okay but is that the one you have now, is it the right one?

MAJOR GENERAL MABULA: LE23.

10 **ADV HULLEY SC:** That's correct.

CHAIRPERSON: Okay, alright, you must always just look on the spine to see if it's the right Bundle, that's where it's written LEA23, okay, page 60, is that right Mr Hulley?

ADV HULLEY SC: That is correct Mr Chair.

MAJOR GENERAL MABULA: I've got...[intervenes].

ADV HULLEY SC: At the bottom of that page, paragraph 5.1, you see that?

MAJOR GENERAL MABULA: Yes.

20 **ADV HULLEY SC:** You say,
"I became aware thereof since my involvement in this matter at the end of November 2016 that Crime Intelligence conducted a security breach investigation around November 2016 on the former acting National Commissioner of SAPS, Lieutenant General Phahlane",

On the following page, you say,

“I also became aware thereof since my involvement, that as a result of the investigation by Crime Intelligence a report was submitted under reference CSI Inquiry 2/10/16, in this report it was conveyed as follows. Report: possible security breach acting National Commissioner Lieutenant General Phahlane, paragraph 4, comments and recommendations, sub-paragraph 4.1, the
10 Intelligence gathered, clearly indicated that this action is spearheaded by Mr Paul O’Sullivan and he’s using IPID as background players. 4.2 your further instruction in this regard is awaited, and then it says, signed Section Commander Counter Intelligence, Colonel S.H. Heiner, date 30 November 2016. Below that, comments, this is a serious breach of the security of the acting National Commissioner and criminal case to be investigated on the matter, this must be conducted ASAP, signed
20 acting head, Counter and Security Intelligence, Criminal Intelligence and Security Intelligence, Brigadier T. Moyane, date 30 November 2016”,

Now you put that in inverted commas, I imagine that this is a quote that has been taken from somewhere, is that right?

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Now what is this quote been taken from, where did you get this information?

MAJOR GENERAL MABULA: I think, this one, I can't – I don't know how it came in here, I can't remember.

CHAIRPERSON: Sorry?

MAJOR GENERAL MABULA: I can't remember how this one came because my knowledge was saying, I never received the report.

10 **CHAIRPERSON:** Oh, yes okay.

ADV HULLEY SC: And according to this, you're saying that the report that – according to the statement, this report which is quoted verbatim, indicates that there was a serious threat against the life of the acting National Commissioner, correct?

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Oh, well it says, rather, the breach of the security of the acting National Commissioner and it's signed by Mr Heiner, you see that, according to this quote?

20 **MAJOR GENERAL MABULA:** Ja, according to it but me, I can't remember this one.

ADV HULLEY SC: And you never have provided the Commission with this document, in other words the report that you're referring to over here, you never provided it to this Commission.

MAJOR GENERAL MABULA: I'm not sure as well it was provided.

ADV HULLEY SC: What we're trying to understand is, where is this report, everybody is searching for this report and I certainly haven't seen it and I understand that – it may not be for your account, but I understand that it can't be located and yet you obviously had it, according to what you've said in your statement.

MAJOR GENERAL MABULA: No, I don't have the report
10 with me.

ADV HULLEY SC: The question is...[intervenes].

CHAIRPERSON: I'm sorry, did you ever have, in your possession, such a report or ever see it?

MAJOR GENERAL MABULA: No.

CHAIRPERSON: You never saw it?

MAJOR GENERAL MABULA: No, I never saw the report.

CHAIRPERSON: So, the quotation that Mr Hulley referred to, how did you come to have that quotation in your statement, if you didn't see such a report?

MAJOR GENERAL MABULA: Chair, the only – what I can
20 remember is, we were briefed as I've previously said but the report, I can't remember whether I did see the report myself.

CHAIRPERSON: Or was this a letter, I see in – what you were reading Mr Hulley is, what is at page 62 isn't it?

ADV HULLEY SC: 61 Mr Chair.

CHAIRPERSON: 61?

ADV HULLEY SC: Page 62 refers to something different.

CHAIRPERSON: Oh, okay, well page 5 – I mean 5.1 says,

10 “I became aware thereof since my involvement in
this matter at end of November that Crime
Intelligence conducted a security breach
investigation around November 2016 on the former
acting National Commissioner. 5.2 I also became
aware thereof since my involvement as a result of
this investigation by Crime Intelligence. A report
was submitted under reference CSI Inquiry, in this
report it was conveyed as follows”,

And then you quote but you couldn't – you wouldn't
have quoted if you didn't see that.

MAJOR GENERAL MABULA: Yes, I can't recall because I
tried to – before the Commission I tried to read just to
check how did we – because my understanding was like, it
was actually presented verbally to me.

20 **CHAIRPERSON:** But if it was presented verbally to you it
would be strange that you would quote it the way you have,
isn't it?

MAJOR GENERAL MABULA: I do agree sir.

CHAIRPERSON: Yes, when one looks at the way you
have quoted it, one would imagine that you had seen the

report.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: But you say you don't know whether you did see it, you don't know whether you did not see it.

MAJOR GENERAL MABULA: No, I don't recall that, yes.

CHAIRPERSON: But would it be correct to say you would not quote something that you haven't seen?

MAJOR GENERAL MABULA: No, not possible you can't quote something...[intervenes].

10 **CHAIRPERSON:** Yes, you can't quote something you have not seen.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: So, we – it's fair to say, you must have seen it...[intervenes].

MAJOR GENERAL MABULA: I might have seen it yes.

CHAIRPERSON: If it existed.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: And if it didn't exist, of course, that would be something else.

20 **MAJOR GENERAL MABULA:** That's something I can't quote on.

CHAIRPERSON: Ja, okay, Mr Hulley.

ADV HULLEY SC: Thank you Mr Chair. Now, putting that issue aside, just temporarily, that Mr Heiner that you're referring to over there seems to be the same person who's

statement I read out to you a moment ago, who, in fact, says the opposite.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Are you, now, given what you've already quoted, are you in a position to assist us as to how Mr Heiner is saying something which is the exact opposite to what you have, in a previous statement indicated that you had a report which said something which is exactly the opposite of what Mr Heiner is saying?

10 **MAJOR GENERAL MABULA:** I can't respond to that because I'm also – in my mind I'm trying to check, how did this thing come into play.

CHAIRPERSON: Well, of course, Mr McBride gave his evidence last year.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: And I would have imagined that after he gave evidence and you applied for leave to cross-examine him, you would have checked documentation that you have and that you might need and obviously this would have
20 been in the content report.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: Yes, have you tried, over the past year or so to find that report, with other people who might have known about it?

MAJOR GENERAL MABULA: There was a crime intelligence

also there was – we tried to find out whether it was that. We never got.

CHAIRPERSON: So you have tried to locate it.

MAJOR GENERAL MABULA: There was this issue of the bodies missing. We heard there was this the ones who were doing the investigation.

CHAIRPERSON: As we speak are you in a position to say you over the past year since Mr McBride gave evidence you know that you have tried everything to try and get it or are
10 you saying you have not tried everything?

MAJOR GENERAL MABULA: No I have not tried.

CHAIRPERSON: You have not tried everything?

MAJOR GENERAL MABULA: No.

CHAIRPERSON: Ja why did you not try everything to get it?

MAJOR GENERAL MABULA: Sorry?

CHAIRPERSON: Why did you not try everything to try and find it?

MAJOR GENERAL MABULA: Because I could not – I did not remember whether the report was in my possession.

20 **CHAIRPERSON:** Yes but obviously it is quite an important
[00:00:56].

MAJOR GENERAL MABULA: Yes it is but also...

CHAIRPERSON: And –

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: And I would keep arguing that you want to

challenge Mr McBride's evidence that you would want to do your homework, get whatever documents you may have based your investigations on.

MAJOR GENERAL MABULA: Yes but the – Chair the documents according to me it was supposed to be Crime Intelligence. Crime Intelligence said they do not have the document – it is misplaced.

CHAIRPERSON: Hm yes. But you say you have not tried everything to try and find it?

10 **MAJOR GENERAL MABULA:** No from our side because I did not receive the – I did not have it in my possession. I from the other side of Crime Intelligence who are actually the compiler of the document. It is where to make some enquiries from them they could not give the document to us.

CHAIRPERSON: Hm. But – but you – do you say you never had it in your possession because even seeing it maybe somebody allowed you to see it but said do not take it away. Or are you saying I actually do not know whether it exists?

20 **MAJOR GENERAL MABULA:** I – I tried to find out among the team members but we could not find out actually how this – we could not come with answers.

CHAIRPERSON: So as you sit there are you able to positively say such a report did exist or did not exist?

MAJOR GENERAL MABULA: I cannot tell you. I cannot safely say

CHAIRPERSON: You cannot safely say.

MAJOR GENERAL MABULA: Because I do not have it with me.

CHAIRPERSON: Yes.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: Okay.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: We are at five past four maybe we should take a short break. You – I take it you are not far from
10 finishing your ...

ADV HULLEY SC: I still have to deal with the – the issue relating to General Booysen.

CHAIRPERSON: Ja.

ADV HULLEY SC: But I need to round up some of the issues relating to this.

CHAIRPERSON: Ja. When – when – we will take a short break.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Well let – let us try and have some
20 agreement first. We will take a short break now maybe for up to twenty past and then we will come back. What you – we were dealing with now may have been important. You say how much more time do you think you need? You had initially indicated I think an hour which would – which should expire at half past four. Where – what do you think how

much time do you think you need?

ADV HULLEY SC: I think the evidence relating to General Booyesen that would go a lot quicker. The – this evidence ...

CHAIRPERSON: But in terms of time? How much time?

ADV HULLEY SC: Probably about...

CHAIRPERSON: Because I think – I think I would like that...

ADV HULLEY SC: Between half an hour.

CHAIRPERSON: Mr McBride be cross-examined insofar as Counsel for regarding Major General Mabula may need to
10 cross-examine him. So I would like that to be done today if possible.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: But I do not want us to sit here forever.

ADV HULLEY SC: No indeed not. I would like to finalise just this section probably only about another ten or fifteen minutes relating to this section and then I will get onto General Booyesen.

CHAIRPERSON: And that part would need about how much time?

20 **ADV HULLEY SC:** Probably about forty minutes or so.

CHAIRPERSON: Hm. Mr Joubert we normally stop at four but we – we are going beyond that. From your side is that fine?

ADV JOUBERT: It is in order Mr Chairperson.

CHAIRPERSON: Yes okay.

ADV JOUBERT: I will not be that long.

CHAIRPERSON: It is in order. Where is Counsel for Mr McBride? What is your situation and your client's situation? Yes do you have an idea how long – in terms of those commitments what is the latest he might wish to leave here? Oh okay alright. Okay alright let us take a ten minutes break.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: And then we will come back and resume.

10 **Mr Joubert** what is your estimate of how long you might be with Mr McBride?

ADV JOUBERT: I do not anticipate to be longer than twenty minutes.

CHAIRPERSON: Okay alright. Okay. Thank you. We will take a short adjournment we will resume at twenty past.

ADV HULLEY SC: Thank you Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 **CHAIRPERSON:** Good afternoon, Mr Notshe.

ADV NOTSHE SC: Good afternoon, Chair.

CHAIRPERSON: I apologise to Mr Hulley and to counsel for Major General Mabula and their clients because we interposing while we are having another matter to just deal with this urgent matter.

I understand from the discussions that there are challenges with proceeding on Monday with the evidence that are supposed to be led on Monday.

ADV NOTSHE SC: Yes, there are. There are problems. The affidavits that should have been are not yet complete and therefore the witness that was to testify on Monday is unable to testify before seeing these affidavits and respond to those affidavits.

As I was saying that the matter should not be... should
10 we sit on Monday, should be postponed with another date. And then Chair, the arrangement we have reached is that the two affidavits should be filed within two weeks.

One witness has promised to file the affidavit by end of next week. The other one, we are hoping in two weeks' time. So and that ...[intervenes]

CHAIRPERSON: Why so long?

ADV NOTSHE SC: Well, Chair the one for next week, he wanted some extension from which we have received now and he said it will not take him more than a week now to
20 finalise that.

CHAIRPERSON: I think more attempts should be made to have them all of them filed by end of next week if possible and only if really it is impossible should we go the week after because ...[intervenes]

ADV NOTSHE SC: Chair, actually when you look at what

they need to consider ...[intervenes]

CHAIRPERSON: Ja.

ADV NOTSHE SC: ...it should not be... it is not long affidavits.

CHAIRPERSON: Ja.

ADV NOTSHE SC: A week should be enough.

CHAIRPERSON: Yes.

ADV NOTSHE SC: And then the legal representatives of the witness who was going to testify next week, it will also take
10 about a week to respond to those.

CHAIRPERSON: Ja.

ADV NOTSHE SC: And then the matter will be then right for hearing.

CHAIRPERSON: Ja, okay.

ADV NOTSHE SC: And also the... remember Chair, it was also the hearing of the evidence of a witness and cross-examination of two witnesses who have testified.

CHAIRPERSON: Ja.

ADV NOTSHE SC: The legal representatives of also of
20 those two witnesses are here.

CHAIRPERSON: Ja.

ADV NOTSHE SC: And then ...[intervenes]

CHAIRPERSON: Let them place themselves on record but finish what you need to do so that I do not have to come back to you about what you might have to say.

ADV NOTSHE SC: Yes.

CHAIRPERSON: If there is anything further you want to say before they come on record.

ADV NOTSHE SC: No, Chair there is nothing else Chair.

CHAIRPERSON: Ja, okay alright. Alright. Let them come on record. Oh, I think they must sanitise before you... they must just sanitise the place before you use it.

MR WILLIS: Good afternoon, Mr Chair.

CHAIRPERSON: Good afternoon. Good afternoon.

10 **MR WILLIS:** [Indistinct]

CHAIRPERSON: Yes.

MR WILLIS: My name is Willis. I appear for Mr Wakeford.

CHAIRPERSON: Yes.

MR WILLIS: Who is the witness who would give evidence before you and ...[intervenes]

CHAIRPERSON: Last year?

MR WILLIS: That was when he last appeared. So we confirmed what Mr Notshe has submitted to you Chair.

20 **CHAIRPERSON:** Yes. Yes, okay. Okay. Thank you. Did you want to...[intervenes]

MR WILLIS: Mr Wirtz who appears for Mr Agrizzi.

CHAIRPERSON: Yes, okay. No, that is fine. The arrangement about your postponement is agreed?

MR WILLIS: It is. The intention is to secure ...[indistinct] or two days in the very near future ...[intervenes]

CHAIRPERSON: Ja.

MR WILLIS: ...just as soon as the various other administrative aspects can be finalised ...[intervenes]

CHAIRPERSON: Yes.

MR WILLIS: ...in relation to the other affidavits.

CHAIRPERSON: I am aware about the wish to look at two days. I am not... I have not made up my mind but I am aware of the suggestion. But when the next date is determined, I will apply my mind whether it should be two
10 days.

I know that Mr Notshe also seems to think that we should do that but we will see. We even have evening sessions now.

MR WILLIS: Yes, Chair.

CHAIRPERSON: Because we are running against time. So but I will apply mind to that when I set it down again.

MR WILLIS: Yes, but it is generally two days we would finalise the matter. One other aspect Mr Chairman is the correspondence that we have to address to you.

20 There are three questions on which we require your direction. We will await those.

CHAIRPERSON: Yes.

MR WILLIS: But everything else will be sooner. We can ...[intervenes]

CHAIRPERSON: Yes, I am aware. It is just that I think

there are two letters.

MR WILLIS: Indeed so.

CHAIRPERSON: The first one reached me after it had reached other people first and then so I was the last one to get it. And then within a few days I got the next one.

One, in terms of the procedure as to whether cross-examination will start or whether your client will first give evidence, I propose to decide that on the first day on the day.

10 Obviously, I have seen that you have made representations in your letter.

MR WILLIS: Indeed.

CHAIRPERSON: But I think what you ought to do is simple be ready for either situation, you know.

MR WILLIS: Indeed.

CHAIRPERSON: If it goes your way, then all the better. But just be ready so that we do not have to adjourn because maybe ...[intervenes]

MR WILLIS: Indeed so.

20 **CHAIRPERSON**: Ja.

MR WILLIS: Indeed so.

CHAIRPERSON: Ja, I think that was the one. There was the other one I remember about leading your witness.

MR WILLIS: There is to lead, yes.

CHAIRPERSON: That one I would... if you want to address

me on that day, I will let you do that. But if you what you have written, you believe it is enough, I can make... announce my decision then as well.

MR WILLIS: On that day.

CHAIRPERSON: Ja.

MR WILLIS: Chair, I will be ready to... whichever you decide.

CHAIRPERSON: Ja. And then I cannot remember the third one.

10 **MR WILLIS**: The third aspect relates to the... I think the answer to that one is the consolidation of the evidence but I believe that be of assistance to you in any event.

CHAIRPERSON: Yes, I think that probably, it should be done so that, if at all possible, maybe there is one common bundle.

MR WILLIS: Yes, the bundles will be ...[intervenes]

CHAIRPERSON: I think that is what you wanted.

MR WILLIS: The bundles will be common.

CHAIRPERSON: Yes.

20 **MR WILLIS**: The other one is just a matter of consolidating his evidence.

CHAIRPERSON: I think that will be convenient.

MR WILLIS: Instead of working through the various affidavits.

CHAIRPERSON: Yes.

MR WILLIS: Placing one affidavit before we ...[intervenes]

CHAIRPERSON: I think that will be convenient.

MR WILLIS: And that, we believe so too.

CHAIRPERSON: Ja. No, no. I think that one would be convenient for everybody. It should be done, ja.

MR WILLIS: It will be done. Thank you, Chair.

CHAIRPERSON: No but thank you very much. The hearing of Ms Wakeford's evidence and the cross-examination of Mr Agrizzi and Mr Vosloo, I think, that was scheduled for
10 Monday is postponed to a date that is still to be determined.
Thank you very much.

MR WILLIS: As you please.

CHAIRPERSON: Thank you. Thank you. You are excused.

MR WILLIS: Thank you, Chair.

CHAIRPERSON: Okay alright. Oh, I am sorry. Counsel for Mr Agrizzi. I got the impression that you had not... you go to the podium. That is why I have not allowed you to say anything.

ADV WIRTZ: Thank you, Chair. Advocate Wirtz. W-i-r-t-z.
20 I confirm that I appear on behalf of Mr Agrizzi, as well as Mr Le Roux relating to the matter on Monday. My learned friend, Advocate Notshe did phone me and told me there is a problem - not from our side or from Mr Wakeford's side - certain documents and affidavits that are outstanding which are needed by all the parties.

So we are waiting for those affidavits. He has undertaken, as soon as they are given and as soon as Mr Wakeford's counsel has responded, we will be able to respond within a day or two.

So we are not going delay it. We all area ready. Mr Agrizzi was ready, Mr Le Roux was ready, and/or any others that might be needed that we represent. And we have agreed that it can be postponed to a date to be fixed.

In regards to the days and the procedure, I am not sure
10 whether you have received the correspondence from my
instructing attorney

CHAIRPERSON: Yes.

ADV WIRTZ: And we have taken a certain stance and we will abide by the directives and by your decision.

CHAIRPERSON: Yes.

ADV WIRTZ: We are not going to address you any further.

CHAIRPERSON: Yes.

ADV WIRTZ: And we will abide from our side.

CHAIRPERSON: Okay.

20 **ADV WIRTZ**: That is our position. Thank you, Chair.

CHAIRPERSON: Yes.

ADV WIRTZ: And if we can then be freed and also thank you to yourself and my learned friends who did indicate ...[intervenes]

CHAIRPERSON: Yes.

ADV WIRTZ: ... the matter you are busy with and to let us impose so that we did not have to wait.

CHAIRPERSON: Yes.

ADV WIRTZ: So we apologise and we thank them.

CHAIRPERSON: Yes, yes.

ADV WIRTZ: Thank you very much.

CHAIRPERSON: Thank you very much.

ADV WIRTZ: Thank you.

CHAIRPERSON: Thank you. Thank you, alright. Mr Hulley,
10 we can proceed. They will sanitise first the podium. And then Major General Mabula can come back. Mr Hulley, are you tempted to give you five instead of ten minutes to finalise the questions relating to Mr McBride? Do you think that is too harsh?

ADV HULLEY SC: It may well be Mr Chair.

CHAIRPERSON: [laughs]

ADV HULLEY SC: Shall be play it by ear? About to five or ten minutes.

CHAIRPERSON: Ja, okay. No, continue.

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

CHAIRPERSON: Okay and then after you have done that then, of course, go straight to the questions that relates to Mr Booyesen.

ADV HULLEY SC: Booyesen.

CHAIRPERSON: Okay.

ADV HULLEY SC: Thank you, Mr Chair. Now, according to – and we have a report that is in Bundle LEA23 at page 236 – according to the analyses of the cell phone records.

GENERAL MAJOR MABULA: Okay.

ADV HULLEY SC: Page 236, LEA23.

GENERAL MAJOR MABULA: So I just wanted to just request to the Chair.

CHAIRPERSON: Yes?

MAJOR GENERAL MABULA: Chair, I want to apologise.

10 **MAJOR GENERAL MABULA:** When I came here, I was busy refreshing on my statement that I submitted to the Commission.

CHAIRPERSON: Yes.

MAJOR GENERAL MABULA: This, actually, came as a surprise.

CHAIRPERSON: Yes.

MAJOR GENERAL MABULA: Now what I did during the break, I tried to go through the whole statement.

CHAIRPERSON: Yes.

MAJOR GENERAL MABULA: This warning statement.

20 **CHAIRPERSON:** Yes.

MAJOR GENERAL MABULA: It changed my mind now how this ...[indistinct] was. I really want to apologise for that.

CHAIRPERSON: Oh, okay.

MAJOR GENERAL MABULA: Because really, I do not even think of this.

CHAIRPERSON: Oh.

MAJOR GENERAL MABULA: Now when I read here and the warning statement where I submitted those statements because I have submitted lots of warning statements. So I did not know which one it was.

CHAIRPERSON: Yes.

MAJOR GENERAL MABULA: Now I recall very well.

CHAIRPERSON: Yes.

MAJOR GENERAL MABULA: And I think someone can
10 testify on my behalf.

CHAIRPERSON: Yes.

MAJOR GENERAL MABULA: When we...[intervenes]

CHAIRPERSON: Sorry. You are going back to the issue of the report?

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: Yes, okay.

MAJOR GENERAL MABULA: The one of Crime Intelligence.

CHAIRPERSON: Yes.

MAJOR GENERAL MABULA: I want to also to be firm to
20 say, I have never seen the report when we were initially briefed by Crime Intelligence.

CHAIRPERSON: Yes, on the 30th.

MAJOR GENERAL MABULA: On the 30th.

CHAIRPERSON: Ja.

MAJOR GENERAL MABULA: But now I remember. When

IPID approached us, we were represented by an advocate from Pretoria. I cannot recall the name.

CHAIRPERSON: You forgot the name?

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: H'm.

MAJOR GENERAL MABULA: Is there in submitted that statements. Moyane and General Makhele were supposed to be charged as well. On that day when we were consulting with the advocate, this part of their input.

10 **CHAIRPERSON:** The report was part of ...[intervenes]

MAJOR GENERAL MABULA: Was part of Crime Intelligence's input. It was actually connected to my warning statement. I recall now.

CHAIRPERSON: Yes.

MAJOR GENERAL MABULA: I just, when I read through these things, I read though and I said but something.

CHAIRPERSON: Yes.

MAJOR GENERAL MABULA: So but, in fact, I did not have in my possession but in the beginning, we did not had it
20 because it was ...[indistinct] from the report has into my warning statement.

CHAIRPERSON: Oh, okay.

MAJOR GENERAL MABULA: So I want to apologise because I was just thinking.

CHAIRPERSON: Yes, yes.

MAJOR GENERAL MABULA: Yes. So I ...[intervenes]

CHAIRPERSON: So you are in a position to say, you do remember that you saw it?

MAJOR GENERAL MABULA: Yes, Advocate Joubert.

CHAIRPERSON: Yes.

MAJOR GENERAL MABULA: Advocate Joubert. Not this Joubert but the other one in Pretoria.

CHAIRPERSON: Yes.

MAJOR GENERAL MABULA: Yes.

10 **CHAIRPERSON:** Okay.

MAJOR GENERAL MABULA: [Indistinct]

CHAIRPERSON: Yes, okay.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: So you are able to say such a report did exist?

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: You saw it.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: And Mr Moyane had it?

20 **MAJOR GENERAL MABULA:** Yes. And then the advocate extracted the same information from that then.

CHAIRPERSON: From that report.

MAJOR GENERAL MABULA: But I never had it in my possession.

CHAIRPERSON: Yes.

MAJOR GENERAL MABULA: It is only afterwards.

CHAIRPERSON: Okay.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: Okay.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: Alright.

ADV HULLEY SC: Sorry, let me just it understand it. You extracted it from ...[intervenes]

10 **CHAIRPERSON:** When he quoted from. It means he quoted from it.

MAJOR GENERAL MABULA: Yes. Yes, the advocate quoted it from that document.

ADV HULLEY SC: But where was the document? How did he come in possession of the document.

GENERAL MAJOR MABULA: Brigadier Moyane – when we were called – I think all us, we are supposed to be charged.

ADV HULLEY SC: Okay?

20 **GENERAL MAJOR MABULA:** Now he brought... we were consulting to that advocate in one room. So as we were deliberating, that document was produced there. It is where now it was quoted from here. That is why then I cannot because I never actually possessed it.

ADV HULLEY SC: I see.

GENERAL MAJOR MABULA: It was read.

ADV HULLEY SC: Okay.

GENERAL MAJOR MABULA: So because I was just said that, how do I say I never saw it but I call it here? But when the Chair adjourned, he gave me an opportunity to go through. Then I find my senses.

ADV HULLEY SC: So when you consulted with Advocate Joubert, not the present Advocate Joubert, you... he would have had access to the document.

GENERAL MAJOR MABULA: Yes.

10 **ADV HULLEY SC:** Because other people were in that meeting.

GENERA MAJOR MABULA: Yes.

ADV HULLEY SC: Also had access. So who ...[intervenes]

GENERAL MAJOR MABULA: Yes, because ...[intervenes]

ADV HULLEY SC: Sorry.

GENERAL MAJOR MABULA: H'm.

ADV HULLEY SC: But you yourself did not see the document?

20 **GENERAL MAJOR MABULA:** No. Obviously, once it is quoted here, I would have seen it because I signed the document.

ADV HULLEY SC: Okay.

GENERAL MAJOR MABULA: Yes.

ADV HULLEY SC: Now that... who were the other people that you were within that meeting?

GENERAL MAJOR MABULA: It was almost the whole team.

ADV HULLEY SC: Who?

GENERAL MAJOR MABULA: Brigadier Ncube was there. Kgorane was. Colonel Reddy was there. Dawood was there. General Makhele was there and Brigadier Moyane was there. I am not sure of DM, whether he was there. This other guy who was present when did the briefing.

ADV HULLEY SC: So General Makhele was present in that meeting?

GENERAL MAJOR MABULA: Yes.

10 **ADV HULLEY SC:** And who produced the report?

GENERAL MAJOR MABULA: Ja, Brigadier Moyane if my memory serves me well. Because I have just made a mistake. A big, big mistake. Because I could not understand how.

CHAIRPERSON: Well, obviously, if the report does exist and it is found, it clarifies at least something about the fact that it existed. So do you know whether you can, now that you remember, who had it that you have good chances of getting a copy of it?

20 **MAJOR GENERAL MABULA:** I can talk to this gentleman here who I am referring to if he has got a copy with him.

CHAIRPERSON: Ja, okay.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Very well. Was General Makhele present in that meeting as well?

GENERAL MAJOR MABULA: Yes, if I recall very well. Yes.

ADV HULLEY SC: You see, in her statement – if you will turn with me to page 65.

GENERAL MAJOR MABULA: Page 65.

ADV HULLEY SC: Sorry, this is Bundle LEA23, by the way.

GENERAL MAJOR MABULA: This here?

CHAIRPERSON: Did you say 56?

ADV HULLEY SC: Five, six Mr Chair.

CHAIRPERSON: Five, six.

10 **GENERAL MAJOR MABULA:** Yes. Yes. Ja.

ADV HULLEY SC: She, other than to talk, in terms about the fact of the report, are the security breaches assessment that have been obtained. She does not refer to the content of that report. Are you able to comment on that?

CHAIRPERSON: Sorry, what is the question?

ADV HULLEY SC: Sorry. If you look at page 56. Let me just try and find it first. Page 56 to 58 is the statement of Major General M Agnes Makhele. Do you see that?

GENERAL MAJOR MABULA: Yes.

20 **ADV HULLEY SC:** Now if you turn to paragraph P at that statement on page 57, she says that:

“On the 30th of November 2016, I have received a report of a security breach assessment of the Acting National Commissioner of SAPS, Lieutenant General Phahlane conducted by Counter and Security

Intelligence Crime Intelligence and the investigation under reference SCI 2/10/2016.

It was clear through the security assessment that there was a serious security breach that warranted a criminal investigation...”

So what I am saying is that in her affidavit or her statement she does not refer at all to the report that has been received.

GENERAL MAJOR MABULA: Yes.

10 **ADV HULLEY SC:** And I am asking you, if you are in a position to comment on it? You had never seen that report before this meeting, according to your testimony.

GENERAL MAJOR MABULA: Yes.

ADV HULLEY SC: Makhele would have received that report. Moyane ought to have receive that report and yet neither one of them... Makhele does not refer to the report and Moyane does not... sorry, does not quote the report.

CHAIRPERSON: Is the report that she refers to in paragraph 3 at page 57 a different report?

20 **ADV HULLEY SC:** It seems to be it is the same report because this is the security breach assessment that has been conducted, she says, by Counter and Security Intelligence Crime Intelligence.

CHAIRPERSON: Yes.

ADV HULLEY SC: So she is referring to the same report.

CHAIRPERSON: Yes. So what is the question?

ADV HULLEY SC: The point I am making is that there is no... the two people that one would expected to produce the report and to refer to it, two people who had previously apparently had sight of the report, they do not refer to that report in their... they do not quote the report in their statements.

CHAIRPERSON: Ja but how is Major General Mabula going to explain why they choice not to quote it?

10 **ADV HULLEY SC:** Well, I am asking him if he is able to assist us on that because ...[indistinct]

CHAIRPERSON: I do not understand. He quoted the report and he now says he does remember that the report did exist and he saw it. The comment to this affidavit, Makhele in paragraph 3 talks about the same report. So she is aware it existed. The fact that she might not quote it ...[intervenes]

ADV HULLEY SC: Well, taken a stand. Why ...[intervenes]

CHAIRPERSON: It does not mean any problems for him.

20 **ADV HULLEY SC:** But I am trying to understand why it was decided specifically for him to quote the report who has never seen the report before that day, when the two people who had seen the report, their statements ...[intervenes]

CHAIRPERSON: I do not understand why that is important. He... they were consulting with counsel. One of them had, namely Mr Moyane had the report, counsel quoted it in his

statement. This deponent refers to the report, does not quote it, probably because she does not see the need. I am not sure that I understand why that part is important.

ADV HULLEY SC: Well, it was part of the decision that was taken in the consultation. I just want to understand from him why he is...[intervenes]

CHAIRPERSON: No, he cannot help you on that. He cannot help you.

ADV HULLEY SC: Thank you, Mr Chair. With regards to the
10 attorney that represented you in this matter, who was the attorney who represented you at this stage?

GENERAL MAJOR MABULA: Advocate Joubert.

ADV HULLEY SC: Ja, I know he is the advocate. Who is the attorney? Did you have an attorney?

GENERAL MAJOR MABULA: No. No, I think fright from the state attorneys we were referred to him.

ADV HULLEY SC: Oh, I see.

CHAIRPERSON: But also Mr Hulley. With the limited time that you asked for that I gave you, I am not sure who the
20 attorney was will really assist us.

ADV HULLEY SC: In terms of obtaining the statement. Sorry, the... that particular report Mr Chair. That is the only thing I am concerned with.

CHAIRPERSON: No, I think you can get it from Mr Moyane.

GENERAL MAJOR MABULA: I will try my best Mr

Chairperson.

ADV HULLEY SC: If we can just move onto an additional point relating to your movement on the 27th of November of 2016.

CHAIRPERSON: Are you moving onto questions relating to Major General Booyesen?

ADV HULLEY SC: Not as... I just want to finalise the question about his movement on the 27th of November.

CHAIRPERSON: Ja, please finalise within two minutes.

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

CHAIRPERSON: Then let us move to the questions relating to General Booyesen.

ADV HULLEY SC: Sorry, Mr Chair I did not catch that.

CHAIRPERSON: Well, I am saying finalise within two minutes so that we can move towards questions relating to Major General Booyesen.

ADV HULLEY SC: Thank you, Mr Chair. Yes, if you would turn with me to LEA23 at page 236.

GENERAL MAJOR MABULA: Page two...?

20 **ADV HULLEY SC:** 236.

CHAIRPERSON: That is LEA23?

ADV HULLEY SC: Correct, Mr Chair.

CHAIRPERSON: And it is page two...?

ADV HULLEY SC: 236.

CHAIRPERSON: 236.

ADV HULLEY SC: Now this is a report that is compiled based on the cell phone records of several people including you and General Phahlane amongst others. What I would like to... according to the report which was part of the docket in CAS I34/05/2015.

You would have in... you would have on the Sunday the 27th of November of 2016, you would have travelled up to Pretoria to meet with General Phahlane. Is that correct?

GENERAL MAJOR MABULA: I would not know the date.

10 **ADV HULLEY SC:** Well, this would have been the day before or few days before you had been appointed to conduct this investigation.

GENERAL MAJOR MABULA: Chair, I cannot confirm and deny. There were instances like exit. Sometimes I had to meet with the National Commissioner. So I cannot deny but I cannot specifically say yes on that day but if the record says that, then I met with him.

ADV HULLEY SC: Now if we could turn to page 238.

GENERAL MAJOR MABULA: 238.

20 **ADV HULLEY SC:** At the foot of the page you will see there, it says on Sunday, the 27th of November and says as per data section of ...[indistinct] of 783169. Now that data relates to your... the movement on your side.

GENERAL MAJOR MABULA: Okay.

ADV HULLEY SC: And then on the following page, page

239, it itemises ...[intervenes]

MAJOR GENERAL MABULA: 239.

ADV HULLEY SC: 239. It itemises all the transactions that took place on your phone until the following page at page 240.

GENERAL MAJOR MABULA: 240, yes.

ADV HULLEY SC: Now it shows that you received a call 12:58 from General Phahlane and it shows that the transaction was record through the Goudkop Tower. Now I
10 understand that you live in that area. Will it be correct?

GENERAL MAJOR MABULA: In Goudkop?

ADV HULLEY SC: Ja, is that correct?

GENERAL MAJOR MABULA: No, I do not stay in Goudkop.

ADV HULLEY SC: Where do you stay?

GENERAL MAJOR MABULA: I stay in...[intervenes]

CHAIRPERSON: I am sorry, Mr Hulley. What is the point with these cell phone records?

ADV HULLEY SC: Well, Mr Chair it shows that the witness would have met with General Phahlane a day before the
20 actual meeting the... sorry, a few days before he was appointed to the team. So we would like to know what the purpose of that meeting was.

CHAIRPERSON: The day before. I mean, he occupies a certain position within the SAPS.

GENERAL MAJOR MABULA: Yes.

CHAIRPERSON: Phahlane was Acting National Commissioner. Is there something that we are pursuing in here?

ADV HULLEY SC: Well, we want to establish whether the... he was, in fact, in that meeting, was the purpose of the meeting to confirm ...[intervenes]

CHAIRPERSON: But is there a factual basis for us to think that there is something important about him having... the two of them having met on the day?

10 **ADV HULLEY SC:** Well, we want to establish whether he was in fact appointed because as the records that show on the Sunday, in other words, three days before he was appointed to team, did he actually meet with the general and was the purpose of that meeting to appoint him to the team. That is what we would like to establish.

CHAIRPERSON: That will be the last question. Please say something.

GENERAL MAJOR MABULA: Chair, I will be the provincial commissioner responsible for all the investigations in North
20 West Province. I am the Deputy to that Provincial Commissioner.

The National Commissioner, whatever he has access to any Deputy Provincial Commissioner if there are official in that particular province.

I have met General Phahlane many times even before

this investigation. Then there were issues that allows me or he needs me to... but I do not know this one specific why I have met with him. It is not a secret.

Every Regional Commissioner has the right and I cannot deny. If it was a complaint or whatever task he wanted to give in terms of the position that I have, I am not to do that.

CHAIRPERSON: Ja.

ADV HULLEY SC: Okay. Now in relation to General Booyesen. If we can move onto his ...[intervenes]

10 **CHAIRPERSON:** I will give you twenty minutes rather than thirty minutes. We are at ten to five so we have got to ten past five then let us see whether within twenty instead of thirty minutes you cannot make it.

ADV HULLEY SC: Thank you, Mr Chair. Now General Booyesen, you went to Kwazulu-Natal to investigate allegations relate – or to conduct an investigation into the Cato Manor hit squads, is that correct?

MAJOR GENERAL MABULA: Yes.

20 **ADV HULLEY SC:** Who was part of that team that accompanied you to conduct that investigation?

MAJOR GENERAL MABULA: Yoh, it is a long time ago. In the [indistinct] I think he said he was part of it, there was Brigadier Dukwana, it was General Mokoena who is now the head of the Hawks in Mpumalanga. There was also Gola from Gauteng, there was also I think Ramakhosi,

there were a number of them.

ADV HULLEY SC: Yes.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: What – in the investigations that you had conducted and with reference to what you have said in your statement and I am going to try not to go through your statement, given the time limitations, but what did the investigations establish from your perspective, into the death squad, that is, in the Cato Manor case?

10 **MAJOR GENERAL MABULA:** Maybe let me first do it this way so that the Chair can understand. When I was appointed to deal with Cato Manor my mandate was a fact-finding mission in terms of the newspaper article that was printed on the national media.

Then I assembled – I was appointed and the terms of reference that I have said it was exactly like that, we did obtain statements from people and then the reports were sent to General Dramat and then out of that report I think there were certain steps that were taken against those
20 members.

But it does not end up just there, Chairperson. Whilst we were busy with that investigation, even in terms of my statement, IPID was also busy with criminal investigations against the same Cato Manor led by Mr Khubane.

So it was more of parallel investigations but our mandate was not the same but what I did, when I [indistinct] in cases and I make sure because General Dramat gave us instruction to say when you arrive, you go to IPID, you inform IPID that this is what you are busy with again.

But amongst ourselves we had a legal person as well who would also assist us. I think he left the police, Colonel Vassan, if I remember very well.

10 So as we are about to wrap up our fact-finding mission there was this interaction between the then head of IPID, maybe ICD by that time, Mr Beekman, and General Dramat as well as the Acting National Commissioner General Mkhwanazi by then.

In that interaction of them, they then – because by then when we did this fact-finding mission I came to realise IPID long time ago they were already busy with this investigation against Cato Manor but when we give the briefing and there was a decision taken, actually it was a
20 request from IPID IPID request – Mr Shoga(?) part of that, I see he is here as well.

They requested – they delivered to General Dramat. General Dramat, I see your guys are moving faster on this fact-finding mission, would like this team to combine with our team to support them. General Dramat, nè? Without

even my team. General Dramat, there was that kind of an agreement.

Now we have to leave the fact-finding mission, we have to concentrate now on the criminal investigation. We worked together with IPID, that is how – I want to say.

But I also want to highlight this. When I was co-opted with my team into IPID because when they were presenting, we were all there but what – there were certain witness that I identified. I emphasised that while they
10 were doing these cases, they were dragging too long but there was no way where a prosecutorial guided investigation was on - coming on.

They were complaining about the reports, the reconstruction of the crime scene and immediately when we met I spoke to them to say people, we are here to assist as we are instructed by the chiefs of us but I want to know from you, do you have the dedicated prosecutor who deals with this matter? The answer was no.

Then I said, I said it myself, I cannot work with you
20 whilst we do not have prosecutor guided investigations because these were all cases, complicated.

Then I take it upon myself, I said no, I will approach the DPP case again. [indistinct] assigned a dedicated prosecutor for the first time into this team where we were working together with them. I took it upon myself, I did not

know the DPP cases then but later on I realised Mr Mlotshwa was the Acting DPP.

I phoned Mr Mlotshwa. Mr Mlotshwa, here I am, I explained exactly what I have explained to the Commission. But what I see literally here, we do not have a prosecutor who is going to assist this investigation. Then he did not answer me.

He said no, General, I am busy in a meeting can we meet after four? Then we agreed. We never went to his office by the way, he then suggested where can we meet?

Then I did know cases then by then, he said no, I think we agreed, we are going to meet at the provincial headquarters of KZN, the police [indistinct]. We met outside.

Then I presented myself to him. What he told me, he said General, I hear what you say, it is a good thing that you think but I can only tell you these guys, my prosecutors, they are afraid of these Cato Manor people, you are not going to get anything out of them, can I advise you – this is his words, can I advise you? I say yes. He said no, you better – because now we are like a national investigation you need that deals with together with IPID. It is better for you to can maybe make contact with the NDPP.

Then also make an undertaking to say but I have

informed the NDPP to say this is what you request but do me a favour also, make a follow-up the next morning. He gave me the number of the Acting DPP by then. Unfortunately, it was, because this is – it was General Jiba who was the Acting DPP.

The next morning I phoned Advocate Jiba. Advocate Jiba, this is the situation. But when I presented this to him it was like it was not a surprise. No, Mr Mlotshwa has already informed me. What I need, you and
10 the team of IPID, you must make an appointment with my office to come and brief me what resources you need from me. It is what he says.

The next week Mr Angus - because that time, immediately after that conversation they decided IPID to withdraw Kuba, Mr Kuba(?) , because we were not happy with how he led the team. They replaced him with Mr Angus. I then – because I was told strictly as Advocate Jiba said, said you come in. I [indistinct] your colleague to my office. I went with Mr Angus who was actually leading
20 the team of IPID. We went there.

When we arrived in Pretoria, we found Advocate [indistinct]. We then briefed them, this is the situation how we come into IPID investigation. I explained that.

After that then she said to me General, I see this is a very serious investigation, do you have anyone in mind

that you feel you can be compatible working with? I said to him, no, I do not know people in Gauteng, the only person that I know is Advocate Maema.

Then Advocate Maema - then said to me I will talk to Advocate [indistinct] but I am not sure he will release that person because he was a Deputy DPP in North West but on then on the same breath he asked me do you know Advocate Mathenjwa? I said no, I do not know him. He says no, Advocate Mathenjwa is this guy who is dealing
10 with the case of DPP(?) he is one of the best advocates.

Then I said [indistinct] is fine. But then what happened, he nominated six advocates. Three deputy directors, the one is currently in Pretoria ...[intervenes]

CHAIRPERSON: I am sorry, just repeat the previous sentence? When you say – you said [inaudible – speaking simultaneously] Just tell me that again?

MAJOR GENERAL MABULA: Chair?

CHAIRPERSON: I missed something when you said you said you know what happened then you talk about six
20 advocates. I want you to repeat that because I did not catch it.

MAJOR GENERAL MABULA: No, I say what happened, he nominated six advocates.

CHAIRPERSON: That is now Advocate Jiba.

MAJOR GENERAL MABULA: And DPP.

CHAIRPERSON: Yes, Advocate Jiba.

MAJOR GENERAL MABULA: To assist this team. But on the same breath, I do not know why, he said Advocate Maema will be the leader of those advocates. It was – I cannot recall the names but I know only there is Adv Mlotshwa, I think he is the deputy in Free State. Maema is the deputy in North West. Mathenjwa is the deputy in Gauteng and there are other senior advocates. They came. They came, then ...[intervenes]

10 **CHAIRPERSON:** So you asked for one, you got six.

MAJOR GENERAL MABULA: No, no, because I – look, I think [indistinct]. I asked for an advocate.

CHAIRPERSON: Yes, they have been very persuasive.

MAJOR GENERAL MABULA: No, not necessarily, not Chair, maybe they even presented.

CHAIRPERSON: That is what I am saying

MAJOR GENERAL MABULA: Yes, they were represented, he felt maybe this is a big case.

CHAIRPERSON: Okay.

20 **MAJOR GENERAL MABULA:** So these people came down and then from there then Advocate Mathenjwa arrived, it was five of them but he informed us and IPID, we were called, to us and IPID to say we are here at the request of these two colleagues, Angus and General Mabula to assist in this investigation but I made it clear Advocate Maema

will be the leading advocate.

CHAIRPERSON: Who was speaking now, saying ...[intervenes]

MAJOR GENERAL MABULA: It was Advocate Mathenjwa now.

CHAIRPERSON: At the – in Durban now?

MAJOR GENERAL MABULA: In Durban because he came down.

CHAIRPERSON: Okay.

10 **MAJOR GENERAL MABULA:** Yes and they went through all the work.

CHAIRPERSON: So ultimately it was five who came, not six?

MAJOR GENERAL MABULA: Yes, but later, I think two weeks later, Advocate Maema, he knew – I think he was busy with some court cases.

CHAIRPERSON: Oh, okay.

MAJOR GENERAL MABULA: He came down.

CHAIRPERSON: Okay, yes.

20 **MAJOR GENERAL MABULA:** That is how I get involved. I just wanted to clear this thing to the ...[intervenes]

CHAIRPERSON: Yes, no but what you are saying is important to this ...[intervenes]

MAJOR GENERAL MABULA: Yes because it is like, Chair, I am one who just raise hands every time, give me

this thing, give me these things.

But I also want to put it on record as well, when I was removed from DPC, the same like John Booysen, the same like the other people, when [indistinct] came he removed all of us. We were gone. That is why we went back to the detectives.

When I was removed, I then said to General Ntlemeza I am busy with this case, can I please be excused from it because now I have to focus in the provincial work. It was refused. The current head of the Hawks, when he took over, I wrote a letter through the Provincial Commissioner, I do not want to go back to KZN on these cases, I want to focus on the province, I am no longer in DPCI. They refused. I wanted to just make this statement so that people can understand my involvement because it seems as if, you know, I am very much [indistinct] what I said.

ADV HULLEY SC: Sure.

MAJOR GENERAL MABULA: Yes.

20 **ADV HULLEY SC:** The evidence that you have given now – sorry, I am just struggling to find it in your statement. Where did you put all of that about your – the fact that you requested – where in your statement do you deal with the fact that you had requested Advocate Mlotshwa who was dealing with the Cato Manor case?

MAJOR GENERAL MABULA: Mlotshwa?

ADV HULLEY SC: Ja.

MAJOR GENERAL MABULA: Meama.

ADV HULLEY SC: Where do you deal with the fact that you were the one that had a discussion with him and he then suggested to you that you should speak to the National Director of Public Prosecutions because everybody in Kwazulu-Natal was afraid? Where is that in your statement?

10 **MAJOR GENERAL MABULA:** It is not there, that is why I said I want to give the background. I wanted to give the Chairperson – he must have an understanding before you start how I come into picture, it is not there. But people who come and testify will tell the same thing.

ADV HULLEY SC: So when you then met with Advocate Jiba in Johannesburg was at that stage ...[intervenes]

MAJOR GENERAL MABULA: At Pretoria.

ADV HULLEY SC: Sorry, at Pretoria, who at that stage was the Acting National Director of Public Prosecutions,
20 correct?

MAJOR GENERAL MABULA: Correct.

ADV HULLEY SC: You wanted a dedicated Prosecutor to be appointed to deal with the Cato Manor investigation.

MAJOR GENERAL MABULA: Can I rephrase it? I never said I want a dedicated prosecutor from Advocate Jiba, I

said I want a dedicated – the first meeting that I had with Advocate Mlotshwa I wanted a dedicated prosecutor to assist, of which he said he do not think these people would be able to because they were afraid of Cato Manor. That is what he said. What he can do is to arrange – he actually suggested that maybe national must provide because we were actually doing a sort of a national investigation.

When I went to speak to Advocate Jiba I never said
10 to him I want one, but I want what, I presented because I was with Mr Angus. We presented what the current situation is in KZN and how far IPID is. Because remember, I was thinking who, they were already there. The presentation was more reliant on them. So then out of her own discretion she sent six advocates.

ADV HULLEY SC: Okay.

CHAIRPERSON: But as I understood your evidence earlier, the purpose of your meeting with Advocate Jiba was to secure – a prosecutor would be dedicated to the
20 Cato Manor investigation.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: Now when you say you never said you want one, I am not sure that I understand that because you must have said something and you would not – you would either have said we need a prosecutor or we need

prosecutors.

MAJOR GENERAL MABULA: No, I said we want a – we presented.

CHAIRPERSON: Ja.

MAJOR GENERAL MABULA: After we presented because I believe other people were also - there were IC, he already briefed him.

CHAIRPERSON: Yes.

MAJOR GENERAL MABULA: To say we are coming we
10 need this kind of report.

CHAIRPERSON: Yes, yes.

MAJOR GENERAL MABULA: So after we presented, he said, he is General [indistinct] out your presentation I do not think one advocate is enough to deal with what you present to me.

CHAIRPERSON: So are you saying that at that meeting you yourself did not say you want one or two?

MAJOR GENERAL MABULA: No.

CHAIRPERSON: But Advocate Jiba spoke on the basis or
20 spoke as if she had been told that you were looking for one prosecutor.

MAJOR GENERAL MABULA: No...

CHAIRPERSON: Because you say she said I do not think you need one.

MAJOR GENERAL MABULA: No, that is why I am saying

– I am saying this thing because he wanted to know which advocate do you have in mind that can help you to be comfortable with.

CHAIRPERSON: Ja.

MAJOR GENERAL MABULA: Then I said Advocate Maema . It is then that she said no, but I do not think what your presentation that you presented to me, it might not need one. If you want to formalise this matter.

CHAIRPERSON: Okay. But from what you are now saying
10 it seems that even though you might not have said to her we want one.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: But in terms of what you said you were looking for one because in fact which and you said Maema , you did not say Maema and so and so and so.

MAJOR GENERAL MABULA: No, I did not, no.

CHAIRPERSON: And then she said I do not think you need one, you need more.

MAJOR GENERAL MABULA: Yes.

20 **CHAIRPERSON:** Ja, okay.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: So now based on the presentation that you had given – and I take it that it was you, it was Angus and it was who else at this presentation?

MAJOR GENERAL MABULA: Not it was only two of us.

ADV HULLEY SC: Just you.

MAJOR GENERAL MABULA: From the NPA's side it was Advocate Mosini(?) and Advocate Jiba.

ADV HULLEY SC: So it is you and Angus.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: And from the – who was from IPID and Advocate Jiba and who is the other advocate?

MAJOR GENERAL MABULA: Advocate Mosini.

ADV HULLEY SC: Mosini?

10 **MAJOR GENERAL MABULA:** Yes.

ADV HULLEY SC: Okay. Now she asks you, that is Adv Jiba now, asks you, who do you have in mind? Now when she asks that question, what is she referring to, have in mind to do what?

MAJOR GENERAL MABULA: To assist – I understand who have in mind to assist you.

ADV HULLEY SC: Okay.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: And you mention one person.

20 **MAJOR GENERAL MABULA:** Yes.

ADV HULLEY SC: And she ultimately, she says she thinks six people should – six advocates should ...[intervenes]

MAJOR GENERAL MABULA: I do not remember when she said six, whether I am saying he sent six, he says if

maybe because I remember as well he might have said you need more than that, not necessarily to say six but when people are having cases then it was five, outstanding one, which is Advocate Maema.

ADV HULLEY SC: Okay. Now as the investigation unfolded, you would have been party to ...[intervenes]

CHAIRPERSON: On a light note you must have been quite happy with so many.

MAJOR GENERAL MABULA: Because I wanted to finalise
10 the case, to go back home. I did not want to stay in KZN because I had a problem with the language area there.

CHAIRPERSON: You heated that pot, you had six advocates.

MAJOR GENERAL MABULA: Yes, yes.

CHAIRPERSON: Okay, alright.

ADV HULLEY SC: Now the investigation team would have started obtaining statements from various witnesses, is that correct?

MAJOR GENERAL MABULA: Yes.

20 **ADV HULLEY SC:** And you were overseeing that investigation team from the DPCI's side.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Those statements would then be presented to the various advocates for their assessment.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Would you collect the statements yourself? In other words, go and take statements from witnesses and submit them or were you simply overseeing the statements and receiving them from the other investigators?

MAJOR GENERAL MABULA: I would not have taken the statements. People go out and take statement because one, I had the problem, I have got language barrier. So to give people opportunity because some of the team
10 members they understand the Zulu so for me it was – it had no purpose. The same like Angus, he never went out and take statements because he does not – he is not familiar with Zulu. So we are more of managers together with the prosecutors.

ADV HULLEY SC: And you would have considered all those statements that were submitted is that correct?

MAJOR GENERAL MABULA: Not all the statements, remember, because it was IPID this side, it is this side but it is one team.

20 **ADV HULLEY SC:** I see.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: So between the team they came to the conclusion that a criminal case should be instituted against various members of the Cato Manor “hit squad” but including General Booysen, is that correct?

MAJOR GENERAL MABULA: At that stage General Booyesen was not featured, I do not at what – maybe I do not understand you, rather rephrase it.

ADV HULLEY SC: Okay, at what stage did you say ...[intervenes]

CHAIRPERSON: Could you face this side so I can hear you.

MAJOR GENERAL MABULA: Oh, sorry, Chair.

CHAIRPERSON: Okay.

10 **ADV HULLEY SC:** At what stage did you decide and by you I mean, you as the team, to institute criminal prosecution against General Booyesen?

MAJOR GENERAL MABULA: Well, I cannot remember at what stage but remember also it is not my duty to institute criminal investigation, mine is to ensure when the prosecutors have got a certain query a statement must be taken, I must ensure that statement is taken but for me it is a little bit too heavy to say at what stage I decide because that is not a function. I think in my statement you have
20 seen what in terms of Section 205(3) what are the functions of the police but if you are going to suggest to say at what stage do, I charge General Booyesen, I think that is very much unfair. Do not push me to something that I am not privy to.

ADV HULLEY SC: Well, were you not part ...[intervenes]

CHAIRPERSON: Well, it might not have intended the meaning that you are attaching to it but of course he can speak for himself. He might have used the word charge loosely.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: Mr Hulley?

ADV HULLEY SC: Thank you, Mr Chair. At some stage a decision was obviously taken to charge General Booyesen.

MAJOR GENERAL MABULA: Yes.

10 **ADV HULLEY SC:** Now the question that I am really asking you, is there would have presumably been a discussion about that whether we had enough, you would have interacted, do we need more information?

The prosecutors would presumably have requested additional information if they were unhappy with the information that was already in existence. They might have sent you back to go and get further statements if they felt that were certain things that the witnesses had given were unclear, is that correct?

20 **MAJOR GENERAL MABULA:** Okay.

ADV HULLEY SC: Now you would have been part of that process of deciding – part of the process of either receiving instructions to obtain further information or part of the process of obtaining the further information.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: And at some stage a decision was taken that sufficient information was available in order to institute a case against General Booysen.

MAJOR GENERAL MABULA: Okay.

ADV HULLEY SC: Now you yourself would not, as a police officer or as a member of the DPCI at the time, you would not have taken that decision yourself but together with the team and specifically the team of prosecutors that were available, would you not have sat and conferred with
10 them about that decision?

MAJOR GENERAL MABULA: Look, I do not take decision, I do not input on NPA's decision.

CHAIRPERSON: Maybe let us deal with it this way. You gave evidence earlier on with regard to the investigation.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: Relating to the threat or alleged threat against General Phahlane.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: And you said you conducted the
20 investigation but you make no recommendations as to who should be charged and what charge should be preferred against them.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: You remember you said that?

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: In regard to the Cato Manor investigation did you make any recommendations as to who should be charged and with what they must be charged?

MAJOR GENERAL MABULA: No.

CHAIRPERSON: No.

MAJOR GENERAL MABULA: No, Chairperson.

CHAIRPERSON: Yes. You did not ...[intervenes]

MAJOR GENERAL MABULA: In [indistinct] yes.

CHAIRPERSON: Of any discussion where maybe other
10 people express such views?

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: You were? You say you were?

MAJOR GENERAL MABULA: No, I was not ...[intervenes]

CHAIRPERSON: Or you were part?

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: Okay.

MAJOR GENERAL MABULA: Because the good thing
also, Chairperson.

CHAIRPERSON: Ja.

20 **MAJOR GENERAL MABULA:** You have six advocates.

CHAIRPERSON: Yes.

MAJOR GENERAL MABULA: When you come in because
there is too many brains.

CHAIRPERSON: Well, they might value your opinion
because you have been in the police for a long time. They

might say Major General Mabula, what do you think, is there enough evidence and you might say I do not think so or you might say yes, I think so, but you are the lawyers, you must make up your mind.

MAJOR GENERAL MABULA: But the Chairperson was correct to say I had a luxury, it was for the first time to have that kind of luxury to scratch my head.

CHAIRPERSON: Yes.

MAJOR GENERAL MABULA: Because they were there,
10 why should I?

CHAIRPERSON: Ja.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: So you never expressed any view.

MAJOR GENERAL MABULA: No.

CHAIRPERSON: Or recommendation?

MAJOR GENERAL MABULA: No.

CHAIRPERSON: Okay, alright.

ADV HULLEY SC: Now all the evidence that had been gathered, you had obviously received some of the evidence
20 or presumably all the evidence, you were the head of the investigation team, there was the prosecution that had been sent there to assist you. You must have looked at the evidence and assessed it for yourself.

MAJOR GENERAL MABULA: Not all of them because remember I said it was a joint team. Mr Angus was on a

equal – I put him – even if we had that cooperation, it did not give me a licence really to get deeper into what he is because our team also had – we only had – maybe, for example, when the prosecutors would address to say we need this statement, must be taken, we need these things, we have one another in terms of resources because the issue was to finalise this matter. That would suggest that I had not.

CHAIRPERSON: Mr Hulley...

10 **ADV HULLEY SC:** Yes?

CHAIRPERSON: We are four minutes away from the time that you had asked for, it was 30 minutes, so...

ADV HULLEY SC: Thank you, Mr Chair. Now this particular investigation, if I understand correctly, you were part of a team that was conducting specifically an investigation into the Cato Manor hit squads but I do not want to focus on that for time being, I want to focus on General Booysen.

MAJOR GENERAL MABULA: Yes.

20 **ADV HULLEY SC:** Based on what you are saying now, it seems to me that between the two of you, that is between you and Mr Angus.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: You had – you were not necessarily sitting together and taking decisions jointly. Do I

understand that correctly?

MAJOR GENERAL MABULA: I hear what you say. I am not sure whether I understand correctly.

CHAIRPERSON: Well, do you want to say what decisions you are talking about?

ADV HULLEY SC: Well, decisions in relation to the investigation and whether sufficient information has been obtained insofar as the investigation is concerned.

CHAIRPERSON: So whether the investigation had been
10 completed?

ADV HULLEY SC: Correct, Mr Chair.

CHAIRPERSON: So you are asking whether they
...[intervenes]

ADV HULLEY SC: Whether they were taking this jointly.

CHAIRPERSON: You are asking the two of them.

ADV HULLEY SC: That is right. Were you meeting with each other to discuss?

CHAIRPERSON: He is asking whether you and the leader
20 of the IPID's teams discussed jointly, whether at a certain stage the investigation was complete.

MAJOR GENERAL MABULA: Obviously because we were supporting them.

CHAIRPERSON: Yes.

MAJOR GENERAL MABULA: Yes, there was that kind of an interaction.

CHAIRPERSON: Ja.

MAJOR GENERAL MABULA: Like I have said, resources wise, what we needed - for example, I have to get people from – because reconstruction of the crime scene, I had people from forensics to assist.

CHAIRPERSON: Ja, okay.

MAJOR GENERAL MABULA: So we helping one another.

ADV HULLEY SC: But in terms of what had to be presented obviously between the two of you, you had to
10 make sure that everything was covered.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: So the two of you would have sat together to take joint decisions presumably otherwise the risk, there is a real risk that one person will not cover a particular issue.

MAJOR GENERAL MABULA: That was the understanding, we were working together. That is why they requested our support.

ADV HULLEY SC: And ultimately would you have taken
20 decisions jointly as to whether the investigation is complete?

CHAIRPERSON: I think he said so. I understood Major General Mabula to say with regard to whether the investigation was finalised, that is something that they discussed.

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: Is that right?

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: Yes.

ADV HULLEY SC: I am going one further step and my question is, did they take a joint decision ...[intervenes]

CHAIRPERSON: Ja.

ADV HULLEY SC: That is had been finalised?

CHAIRPERSON: Well, how is that different from I said
10 that he agrees that he has said that they talked to each other to reach agreement that the investigation is now complete.

ADV HULLEY SC: What I am trying to understand is whether there is – not whether they spoke about – not whether they spoke about it but whether as a fact they agreed, that's my question. I don't him to necessarily be saying that.

CHAIRPERSON: Or you want to see whether they were unanimous ...[intervenes]

20 **ADV HULLEY SC:** Correct.

CHAIRPERSON: ...the investigation at a certain point was complete.

ADV HULLEY SC: That is correct Mr Chair.

CHAIRPERSON: Major General Mabula?

MAJOR GENERAL MABULA: Yes we did.

CHAIRPERSON: You were agreed?

MAJOR GENERAL MABULA: Yes.

CHAIRPERSON: Okay.

ADV HULLEY SC: And after that decision or agreement had been reached was there any – anything from the Prosecutor's side, to suggest – did they suggest to you that there was additional evidence that were literally gathered?

MAJOR GENERAL MABULA: Look Chairperson those
10 advocates on a daily basis they were with us.

CHAIRPERSON: Mmm.

MAJOR GENERAL MABULA: So whatever this would have made they were just on the same of whom, but our issues was whenever they raised any queries to go on statement, we ensured that happens. If IPID they don't have the transport to go to a point A we would give because it was a joint investigation. It was not a matter of we are we or what, because even when these people come back in the afternoon to the briefing session the
20 prosecutors are there to say what you are required to do or done is one, two, three.

CHAIRPERSON: Yes, yes. The next two questions will be the last ones?

ADV HULLEY SC: That is correct Chair. Now of course you are aware of the fact that the decision to prosecute

General Booyesen was ultimately reviewed and set aside by the High Court.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: And according to the findings of that Court there was in fact no evidence or – to support the charges against him.

CHAIRPERSON: Okay I am listening.

ADV HULLEY SC: So what I am trying to understand is you obviously having become aware of the fact that there
10 was a High Court order or a High Court judgment which said that there was no evidence, you must have gone back to investigate the question of how the Court had come to such a conclusion given the fact that you had been involved and had taken a decision that there was enough evidence.

CHAIRPERSON: Well he said he never made any decision or expressed a view about whether there was enough evidence for any charge.

MAJOR GENERAL MABULA: Yes.

20 **CHAIRPERSON:** He said they conducted an investigation and reached a point where they said this investigation is now complete and the prosecutors were to take a decision whether or not the evidence was sufficient for any charge.

ADV HULLEY SC: Well my understanding is that you were in agreement that the investigation was complete, correct?

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Now that being the case what I am trying to understand once the High Court judgment came out the High Court judgment shows that there was insufficient evidence to prosecute.

MAJOR GENERAL MABULA: Yes.

ADV HULLEY SC: Now from your side once you became aware of that judgment did you go back and see what the shortcomings in the investigation that you had conducted.

10 **MAJOR GENERAL MABULA:** Unless Chair if I had got specific interest, I said it in terms of Section 2053 what are my functions and I am sure NPA they do have certain functions.

CHAIRPERSON: Yes.

MAJOR GENERAL MABULA: So I don't want to be dragged in some other department. So that is my answer.

CHAIRPERSON: Yes, I think he has made it clear that he did not express any view about whether the evidence was sufficient or anybody should be charged or not, he left that
20 to the lead prosecutors to decide.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Okay.

ADV HULLEY SC: Now you ...[intervenes]

CHAIRPERSON: You have done your two questions.

ADV HULLEY SC: Thank you Mr Chair, I am in your

hands.

CHAIRPERSON: Yes. Is there any important feature of Major Booyesen's evidence that has not been covered? Is there any particular point?

ADV HULLEY SC: His arrest and the circumstances of the arrest.

CHAIRPERSON: Sorry?

ADV HULLEY SC: I am saying the arrest and the circumstances of his arrest, I understood that the – when
10 he was arrested there was a specific decision taken that he should be taken – that Major General Booyesen should be paraded past the media.

CHAIRPERSON: But you – are you suggesting that Major General Mabula made that decision?

ADV HULLEY SC: Well that's – that was the information by General Booyesen.

CHAIRPERSON: Major General Mabula did you get involved in a decision about his arrest?

MAJOR GENERAL MABULA: No.

20 **CHAIRPERSON:** Thank you.

MAJOR GENERAL MABULA: He has I think General – Brigadier Mubi is the one, there were a number of teams that arrested him, I was not part of the arrest, when he was arrested.

CHAIRPERSON: Hmm, yes.

ADV HULLEY SC: But whether you were part of the team did you get instructions about how the arrest should be conducted? That is the question.

MAJOR GENERAL MABULA: I don't have the reason to give instructions because I was dealing with very experienced investigators who knows what is expected of them during the arrest. So I did not need really to have done that, I wouldn't.

CHAIRPERSON: Mmm.

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

CHAIRPERSON: Okay, is there any e-examination you wish to do Mr Joubert? Somebody must sanitise the podium.

ADV JOUBERT SC: Just three questions please.

CHAIRPERSON: Sorry?

ADV JOUBERT SC: Just three questions.

CHAIRPERSON: Ja, okay.

ADV JOUBERT SC: General to come back to the report in your warning statement I want to refer you to page 19 of
20 Exhibit LE23.

MAJOR GENERAL MABULA: 19?

ADV JOUBERT SC: So 19 and 20.

CHAIRPERSON: Which bundle?

ADV JOUBERT SC: LEA 23.

CHAIRPERSON: Okay and what page?

ADV JOUBERT SC: 19, from page 19 to 21 but more specifically on page 20 paragraph 8.

CHAIRPERSON: Okay.

ADV JOUBERT SC: Now General this is an affidavit by Brigadier Moyane, LEA 23. You are in the wrong bundle, LEA 23, just check.

MAJOR GENERAL MABULA: LEA23?

CHAIRPERSON: Bundle LEA 23,

MAJOR GENERAL MABULA: It is not this one.

10 **CHAIRPERSON:** It is that one.

MAJOR GENERAL MABULA: Yes, but ...[intervenes]

ADV JOUBERT SC: Page 19, one nine.

MAJOR GENERAL MABULA: I don't have 19.

CHAIRPERSON: Have you got it?

MAJOR GENERAL MABULA: No.

CHAIRPERSON: Page 19 on the black numbers.

MAJOR GENERAL MABULA: Let me see, maybe I've got, maybe I didn't – okay 19, yes.

20 **ADV JOUBERT SC:** That is a statement by Brigadier Moyane.

MAJOR GENERAL MABULA: Yes.

ADV JOUBERT SC: Now if you turn over the page to page 20 in paragraph 8, he makes the following statement. He says the investigators came to the conclusion that the access to the former Acting National Commissioner's

dwelling was spearheaded by Mr Paul O’Sullivan as it was also indicated that they initially acted as police officials, and then he says the following, and I think that goes back to your statement, they say I made a recommendation to the Acting Divisional Commissioner that the matter needs to be investigated further as it was a security breach.

MAJOR GENERAL MABULA: Yes.

ADV JOUBERT SC: So Mr Chair it appears that if this witness is called, he will confirm that because if one looks
10 at that – that quotation it is a recommendation by Brigadier Moyane for further investigations.

CHAIRPERSON: Mmm, okay, ja.

ADV JOUBERT SC: Then further General will you confirm that from the outset of your investigations on the 30th of November 2016 this – the investigation and what flowed there from was at all relevant times directed and controlled by the office of the DPP Pretoria?

MAJOR GENERAL MABULA: Correct so Chairperson.

ADV JOUBERT SC: And what in the investigation flowed
20 there from and whatever charges was subsequently instituted against the suspects was the decision of the DPP Pretoria?

MAJOR GENERAL MABULA: Correct Chairperson.

ADV JOUBERT SC: And then did you confirm that you and your team as police officers simply investigated a

docket and placed the relevant information before the office of the DPP?

MAJOR GENERAL MABULA: Correct Chairperson.

ADV JOUBERT SC: There was no reason to push any agenda of whatever sort?

MAJOR GENERAL MABULA: That is correct Chairperson.

ADV JOUBERT SC: Thank you Mr Chairperson.

CHAIRPERSON: Thank you. Thank you very much Major General Mabula, you are now excused – oh your counsel
10 might ...[intervenues]

ADV JOUBERT SC: Just on the – did you at any stage influence any person and more specific Mr Sibisiso William Zongu to change any evidence to implicate General Booyesen in any matter?

MAJOR GENERAL MABULA: Not at all Chairperson.

ADV JOUBERT SC: That was just the one aspect.

CHAIRPERSON: Yes, okay thank you. You are excused Major General Mabula. Mr Hulley? Your mic.

ADV HULLEY SC: Thank you Mr Chair. The next witness
20 will be called to be cross-examined, he is Mr Robert McBride.

CHAIRPERSON: Ja, thank you. Thank you very much. Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MR McBRIDE: Robert John McBride.

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

MR McBRIDE: No Chair.

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

MR McBRIDE: Yes I do.

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

MR McBRIDE: So help me God.

ROBERT JOHN McBRIDE [d.s.s.]

CHAIRPERSON: Thank you Mr McBride. Thank you. Mr Joubert? Mr Joubert the cross-examination will be on behalf of both Brigadier Ncube and Major General Mabula?

ADV JOUBERT SC: Yes, yes Chair.

CHAIRPERSON: Okay, alright. You may go ahead.

ADV JOUBERT SC: Mr McBride I want to be as brief as possible. You confirm that you were suspended for
20 various reasons, as IPID head as from 24/25 March 2015 to 6 September 2016, a period of 18 months, is that correct?

MR McBRIDE: Just a correction, until 19th of October on effect yes.

ADV JOUBERT SC: 19 October.

MR McBRIDE: And it wasn't various reasons, it was

related to an allegation that we had changed a report, the recommendation.

ADV JOUBERT SC: Very well, you formed certain views about the North West team that investigated the security breach, which they investigated of General Phahlane?

MR McBRIDE: Indeed yes.

ADV JOUBERT SC: So your view is based that they pushed some or other agenda to either eliminate IPID in their investigation?

10 **MR McBRIDE:** Well I have heard the Brigadier and General's evidence, and there is one aspect that is not covered, which is the aspect relating to the fact that there was investigations by IPID against many of the members of the team on some serious offences before and it seemed out of the ordinary Chair that indeed out of all the detectives and investigators that the team that had been investigated by IPID the majority of them are the ones that are coming to investigate the ...[intervenes]

CHAIRPERSON: The alleged security breach?

20 **MR McBRIDE:** Yes, so ...[intervenes]

CHAIRPERSON: I am sorry, the alleged threat?

MR McBRIDE: The alleged security breach and later on were issuing warning statements to one of the investigators who indeed investigated them, so it is on the basis of the choice of the team which was of concern for

me, the circumstances surrounding – in my view they should have in particular General Mabula should have recused himself from the process at a certain stage at least. I also think that General ...[indistinct] knowingly had a say in who is the team, but I cannot prove that.

ADV JOUBERT SC: Ja, well since their investigation commenced in November 2016 the investigation by IPID against their unit was revived, because a lot of old cases from about 2012/2013 which was really let's say either –
10 did not result in any firm decisions, thus all of the seven revised by IPID in 2017, is that correct?

MR McBRIDE: No that is not correct sir, let me correct you on that. So there was a case for example a case on – that was investigated against several of the members of the – well regarded as the North West team and it was over a number of areas within the North West. I think Rustenburg was one area and Klerksdorp was another. A number of members appeared in court and there was a decision to prosecute Chair and the matter was
20 provisionally moved for the purpose of centralising the case and that is where it stood.

Later a number of enquiries about it did not yield any results as to the reason for its non-resumption, so it wasn't that it suddenly received more energy, there were investigations that were taking place, and there was some

subsequent evidence that was brought to IPID and other people came forward, including policemen who made certain allegations against the North West team.

ADV JOUBERT SC: Is it fair to state objectively, only objectively, that in mid-2017 there was a far more serious effort, let's put it no wider than that, by IPID and more specific Mr Rapesho, to re – to give more attention to matters of theirs and for decisions to prosecute them, because as an objective fact that can be established?

10 **MR McBRIDE:** I would agree with you except for I don't know what amount of effort went in when it was still ICD investigating by so I cannot compare the efforts that were put in, but certainly there was effort put in.

ADV JOUBERT SC: Ja, but in comparison let us say with the previous efforts all of a sudden in mid-17 there was a renewed effort. Is that a coincidence, because that is after they investigated, which culminated in the arrests in February of your two IPID members, Mr Mahlangu and ...[indistinct] and Sarah-Jane Trent and O'Sullivan, Mr
20 O'Sullivan.

MR McBRIDE: I think I have answered already that I cannot compare the effort that was put in, but certainly more witnesses Chair came forward, or complainants and other additional evidence was received. Some of the evidence was received before I went on suspension and

then suddenly disappeared and then re-emerged subsequent to my return.

ADV JOUBERT SC: Ja, would you then also agree that the toing and froing in the investigations between IPID and the police of each other culminated in the eventual application and decision before the Honourable Judge Tuchten in the High Court in June 2018, where he remarked that you now either side or both sides should not investigate matters where they have a personal interest.

10 **MR McBRIDE:** Indeed, that actually was brought by IPID, so just to give a clearer picture, the issue was then that IPID provisions, there's provision made for removal where there is a conflict, where investigators conflict and the Tuchten judgment said that there was an absence of such a provision in the SAPS Act, and that needed to be rectified.

ADV JOUBERT SC: Ja.

MR McBRIDE: So it was also a law-making judgment.

ADV JOUBERT SC: Ja, the Judge was very disappointed in the conflict between the SAPS and IPID and in
20 paragraph 13 he *inter alia* remarked as follows, and it is a short quote, he says:

“The very serious allegations on both sides deserves to be fairly and thoroughly investigated and dealt with according to the law. Until the law has spoken nobody is entitled to cry victory.”

And that was his finding.

MR McBRIDE: Yes.

ADV JOUBERT SC: There is a lot of disappointment against you, Mr McBride, because they say subsequent to this judgment you try to elevate it in the press to a much higher standard, that there was in actual fact a victory for IPID rather than the police. So – if I may just finish. So my instructions are that you created specifically the impression in the press to paint the members of the SAPS
10 in this unit in the worst possible light that you could.

MR McBRIDE: If I can put it this way, the concerns of Judge Tuchten were also shared by me about from a national security point of view, and as I testified last year I requested the former Director General of State Security to call a meeting with all the relevant players and that included the NDPP, General Pashlane, General Ntlemeza but he didn't turn up and General Moyane and we had a series of meetings to discuss how we manage the differences of the investigations that we have.

20 So to the extent that I might have expressed prior to a newspaper, I don't recall it, possibly specifically but it is possible that I did indicate such in the heat of the moment and what I perceived that was going on.

ADV JOUBERT SC: Very well. Mr McBride are you prepared to accept that their investigation, that is from the

30th of November was at all relevant times under the prosecutorial control of the DPP in Pretoria, more specifically Advocate Mashoega who was immediately in court after the arrests and before Nemaorane who guided them in their prosecutorial guided investigation?

MR McBRIDE: When I heard the evidence and I am unable to deny Chair I came to relevant people who gave direction, perhaps should be called, without being prescriptive, but ...[intervenes]

10 **ADV JOUBERT SC:** Ja, if that is so will you then accept for purposes of this inquiry that they were at all relevant times monitored and that they did not push their own agenda?

MR McBRIDE: Well I would not go that far here, I am not convinced Chair but I am not in a position to deny their positions that they testified to.

ADV JOUBERT SC: Who was the complainant in the investigation IPID commenced against General Pashlane?

20 **MR McBRIDE:** It was two-fold, it was POPCRU and it was Paul O'Sullivan.

ADV JOUBERT SC: Paul O'Sullivan and Paul O'Sullivan, if I look at his affidavit, and I may be mistaken, he decided as I understand his explanation to this Commission, he decided that he want to pay more attention t General Pashlane and he commenced to do his own what we call a

lifestyle audit.

MR McBRIDE: He has been involved in investigations previously and he should testify about his motives and what he did, but indeed and I can even go further and say he assisted IPID with lots of investigations.

ADV JOUBERT SC: But in this instance he had a more personal interest, he is the complainant.

MR McBRIDE: I think it is his *modus operandi* when he deals with someone in high office to provoke them to make
10 mistakes and I believe General Pashlane Chair made such a mistake because the provocations and incessant emails should be normal in a constitutional democracy but it does irritate some people and they respond perhaps and there is an element of overreach, but that is his way, he seems to succeed every time.

ADV JOUBERT SC: Ja, there is an old saying which says that he who angers you controls you and I think he pushes that agenda very effectively because when you anger people you control them in his view.

20 **MR McBRIDE:** I don't want to comment on ...[intervenes]

ADV JOUBERT SC: That was just a – Mr McBride your agreement must have been that as a result of the wide tyres IPID investigators have, or they should do their investigations and which are very important, primarily against police officers who don't always toe the line,

should do that independently, transparently and objectively.

MR McBRIDE: Indeed.

ADV JOUBERT SC: Ordinarily complainants don't get involved in that investigations, because they should lay their complaint, they should make an affidavit under oath, a docket or an inquiry docket should be opened and from there on it is the duty of your investigators to do their work or their job in accordance with the transparent protocol.

10 **MR McBRIDE:** Indeed, complainants do assist in investigations sometimes, and perhaps Mr O'Sullivan was more helpful than others.

ADV JOUBERT SC: Now in reading all the allegations I find it very hard to understand why was it necessary for Mr O'Sullivan and Ms Sarah-Jane Trent to accompany the two investigators when they decided to visit the house of General Pashlane in Stable Hills? From an objective point of view there just appear to be no reasonable and acceptable explanation for them to work so closely
20 together to IPID investigators, because they didn't need a pointing person, they didn't need to point out a house, all that information could have objective obtained by the two IPID] investigators.

MR McBRIDE: Well if I can just explain I am aware of two affidavits with annexures made to this Commission by the

two investigators, that explains the circumstances in which they arrived there and I think it is only fair that they testify on that and the exact circumstances and it wouldn't be correct and as you mentioned the word objective for me to comment on more reasons.

ADV JOUBERT SC: Okay, that's ...[intervenes]

MR McBRIDE: I was three times removed from the investigation on the ground.

ADV JOUBERT SC: Again, looking at it from an outsider's
10 point of view there just appears to be no reasonable explanation for both Mr O'Sullivan and Ms Trent to have been involved so closely and consistently and even drafting statements of witnesses. Ordinarily complainants don't do that Mr McBride.

MR McBRIDE: If I can put it this way, perhaps that question should be directed to them. If I testify here today a reasonable explanation should be based on what I had been told Chair. I am not – I am not a person who knows.

CHAIRPERSON: I think what Mr Joubert maybe doing is to
20 seek your comment on a proposition that says when one looks at the role that they played in this investigation it seems to have been too active – they seem to have been too active or more active than they should have been. They should not have allowed to be. Maybe the investigators should have said, well we know that you – you are available

to assist us but we are in control of this process. We will tell you if we need anything if you are going to be with us as we go to that place just listen to us. So – so that you do not appear like you in charge of this process. I think that is the proposition in which he would like you to hear what you have to say about that.

MR MCBRIDE: Well there have been instances where I have had to intervene and it was an uncomfortable situation because they had provided assistance. But in fairness to the
10 investigators and to O’Sullivan and Trent there is an explanation which they give in their affidavits as to how they came to be together in one car at that specific time. So I think once I acknowledge that there was perhaps too much assistance if I can put it that way, they have explained the circumstances in which this – in which this happened. So to – I mean from the outside view there has been and some people have commented the over involvement and too much assistance.

CHAIRPERSON: Ja.

20 **ADV JOUBERT**: Well...

CHAIRPERSON: So maybe just to complete that point speaking generally would you accept that their involvement seemed to seemed – seems to have been more than normal but whether in the particular case it was justified is something you leave to the investigators to deal with?

Would it be fair to say that is how look at it generally and in – and on the particular circumstances?

MR MCBRIDE: Chair I would agree with you except to add that in this particular case the police themselves the complainants against Mr Phahlane had gone to O’Sullivan first.

CHAIRPERSON: Hm.

MR MCBRIDE: And had made statements O’Sullivan already have statements from police officers.

10 **CHAIRPERSON**: Hm.

MR MCBRIDE: And as early as 2013 long before I arrived at IPID he had received statements I think it is – off the top of my head I think it is Munsamy.

CHAIRPERSON: Hm.

MR MCBRIDE: Colonel Munsamy I think he is in East London now.

CHAIRPERSON: Hm.

20 **MR MCBRIDE**: And there was even an article in the newspapers in the Sowetan during that period. So the issue was and then O’Sullivan became the complainant and he was a complainant with most of the information. And the complaint was laid in my absence and upon my return he decided to ask where is the complaint?

CHAIRPERSON: Hm.

MR MCBRIDE: And the person who investigated was initially

was Mandla Mahlangu and other people I cannot remember who it was.

CHAIRPERSON: Hm.

MR MCBRIDE: And so the case was given to Mandla to handle. At that stage one must remember that Mr Sesoko was not there. He was still suspended. Mr Khuba was not there. And I relied on them a lot for some of this specialist investigations.

CHAIRPERSON: Hm.

10 **MR MCBRIDE:** So yes O’Sullivan and his team assisted a lot. The key reason is not – is more than just specific aspects related to this case. It is an issue of funding. If you want IPID to be independent make independent – make sure it has enough funding. So it is not forced to rely on anybody else. The alternative to other help is actually asking help from the police which denudes the idea of independence. So one has to look at those situational problems.

ADV JOUBERT: Yes.

CHAIRPERSON: Okay.

20 **ADV JOUBERT:** Well the more concerning on just to follow on that and complete that point Mr McBride is that their involvement from the statements of witnesses be it now factually correct or incorrect to interrogate witnesses. To draft statements for them. On just those two levels it is totally unacceptable because a complainant should not get

involved on that level especially when they investigate a very high-profile member of the police like IPID did. Do you not agree? It actually boils down to – to a pre-trial or investigative irregularity because it is uncalled for and it should not be tolerated or done.

MR MCBRIDE: Well there is a few things you have put your – in one shot so I will try and deal with them one at a time.

ADV JOUBERT: But that is a summary ja.

MR MCBRIDE: So Chair if it is the – the issue is indeed
10 there was a user perception of over reach and over involvement. But the reason they do provide explanations and again I say in fairness and in reaching the truth of the matter is important to hear them out. But it is an aspect on those allegations it is early in 2017 when these matters arose it is when Mr Khuba and Mr Sesoko returned from – from being out of IPID and Mr Khuba was specifically tasked to deal with this issue and in addition to that Chair we requested assistance of DPCI so that any element of bias from our side is removed from the equation and General –
20 and Colonel Roelofse was brought in to assist IPID in this investigation and he is still helping with this investigation. Indeed, it is the investigation which has actually brought General Phahlane to court on charges of corruption and O’Sullivan had and his team had nothing to do with that investigation whatsoever. So as we are aware that General

Phahlane and I think four other generals are actually on trial at the moment.

ADV JOUBERT: Yes. Look Mr McBride there is always in the important work the police have to do a right way to do things and the wrong way and in between there should not be any – any leeway. Because police and IPID specifically are indeed mandated to fulfil very important functions in this country.

MR MCBRIDE: Yes.

10 **ADV JOUBERT:** And they gather evidence that evidence must go eventually and stand the test of – of constitutional admissibility and admissibility in courts. So that is the reason why the institutions are required to do the work correctly in the right way and not the wrong way.

MR MCBRIDE: Indeed, also the perception of bias must be removed.

ADV JOUBERT: Correct. Because and then just the last final aspect of – of the inappropriate it appears the relationship between IPID and these two complainants when
20 one objectively analyse it appears the information that was shared between the IPID members and the two investigators that the commission can find in Exhibit LE19 from page 255 to 416 that if you do an analysis again I would submit in all fairness you would agree that for these two complainants...

CHAIRPERSON: I am sorry I think Mr McBride wants to

have a look at the particular page. If you are going to ask him [00:09:13]

ADV JOUBERT: There is many – many pages Mr Chair and I – let me do – put it as a summary because...

CHAIRPERSON: Yes.

ADV JOUBERT: If one Mr McBride if one does an analysis or an analysis of the information and the type of sensitive information that was shared against – or between members of IPID and Mr O’Sullivan and Ms Trent on whatsapp and in
10 sms’s then that is indeed also inappropriate. Do you agree and the reason for serious concern?

MR MCBRIDE: Well as I explained earlier, they will explain but the issue – a lot of the information required is public information and it is information that ordinarily we would have the facilities ourselves. Because of budgetary problems we do not have the facility and indeed it is the budgetary problems that force us to seek assistance outside. So to answer your question in ideal circumstances or more improved circumstances that situation would not arise.

20 **ADV JOUBERT:** Yes. Most probably it would not have ended even there – if Mr O’Sullivan and Ms Trent did not accompany the IPID members to Sable Hills to commence their investigation.

MR MCBRIDE: Well the issues they were assisting with the investigation from what I hear were – I think it is important

that you speak to the investigators themselves. O’Sullivan and Trent themselves.

ADV JOUBERT: Ja. So in all fairness will you then concede that to paint the members of the police in the worst possible light is not fair upon them in this commission because you can only cast assertions and make assumptions that or appears not to be corroboration. Well that has to – the function of the commission eventually to establish

MR MCBRIDE: Well look I am in a position of authority to
10 discuss the state of the police services.

ADV JOUBERT: Well I do not think that – that it – that is the – all the criticisms that maybe or can be validly levelled at them is not for purposes of what we are currently here for.

CHAIRPERSON: Well I am not sure I followed the question. Do you want to repeat the question so I can evaluate it but I know you are talking about criticism?

ADV JOUBERT: Ja. My Lord ag – Mr Chair I do not think it is necessary.

CHAIRPERSON: Ja okay.

20 **ADV JOUBERT:** I think I have made a point what happened in this instance that ...

CHAIRPERSON: Yes.

ADV JOUBERT: That the members investigated the matter. The DPPA got involved and they found many irregularities and they eventually decide to prosecute people on that. And

it was not on the insistence of the members of the North West police.

CHAIRPERSON: Yes.

ADV JOUBERT: Will you accept that Mr McBride?

MR MCBRIDE: I responded to your question Chair. I mean I responded to the question.

CHAIRPERSON: Yes. Okay.

ADV JOUBERT: Thank you Mr Chair.

CHAIRPERSON: Okay. Thank you. Thank you – thank you
10 very much Mr McBride.

MR MCBRIDE: Thank you.

CHAIRPERSON: Thank you for coming to make yourself available. Thank you to everybody for staying until late so that we could complete what we can. I take it that Mr Joubert you had no question – you did not seek to pursue any cross-examination of Major General Booysen?

ADV JOUBERT: Yes Mr Chair I can put in record.

CHAIRPERSON: Yes okay.

ADV JOUBERT: We do not have any questions for Major
20 Booysen.

CHAIRPERSON: Okay alright. Thank you very much Mr McBride you are excused. Thank you.

ADV HULLEY SC: Thank you Mr Chair that then brings us to the end of today's' proceedings.

CHAIRPERSON: And that is the end of a long day.

ADV HULLEY SC: End of a long day.

CHAIRPERSON: Okay we are going to adjourn for the sake of those who may be watching or listening and the public we will not have a sitting tomorrow and on Monday but I think on Tuesday we will have a sitting. Thank you very much to everybody for staying on until this time. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURN S TO 25 AUGUST 2020