

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

11 APRIL 2019

DAY 81

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PROCEEDINGS HELD ON 11 APRIL 2019

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody.

ADV PAUL JOSEPH PRETORIUS SC: Morning Chair.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Chair the...

CHAIRPERSON: Are you ready?

ADV PAUL JOSEPH PRETORIUS SC: Proposed order of business today is firstly to deal with the matter relating to the evidence of the witness to be called Mr McBride who is present. The second will be a relatively brief opening statement introducing the evidence to be given regarding Law Enforcement Agencies as you were informed last week two witnesses will be called before the Eastern break and then after certain other evidence the Law Enforcement Agency evidence will be resumed and I will outline the nature of that evidence and give some background to that evidence after we have dealt with the matter related to the evidence of Mr McBride. Chair so to deal with the first issue first may I hand up to you a bound copy of the documentation forwarded to you last night which is relative to this matter?

CHAIRPERSON: Thank you. Yes.

ADV PAUL JOSEPH PRETORIUS SC: Chair the witness to be called for the remainder of this week at least is Mr McBride. He will testify to a range of matters and a range of disciplinary hearings as well as inquiries. One of those inquiries was chaired by Mxolisi Zuma who is your younger brother.

CHAIRPERSON: Zondo.

ADV PAUL JOSEPH PRETORIUS SC: Oh Zondo sorry Chair.

CHAIRPERSON: Not Zuma.

ADV PAUL JOSEPH PRETORIUS SC: I actually wrote that. My apologies Chair. In

any event Zondo Junior is your younger brother; he chaired an inquiry involving a person other than the witness but who is implicated or not implicated involved in the chain of evidence that Mr McBride will give. The issue then arises Chair as to whether you as Chair should in those circumstances hear the evidence of Mr McBride or whether he should hear that part of the evidence implicating Mr Zondo Junior. Given those circumstances Chair of which you were made aware you directed that all persons involved be given notices that this issue would arise. Notices were then given to Mr Zondo Junior; were given to Mr McBride and to Mr Sesoko who was the subject of the investigation and disciplinary matter chaired by Mxolisi Zondo. All of those three

10 responded to state that they had no objection to you Chair hearing the relevant evidence. So there is no issue raised let alone objection raised by any person directly involved in this evidence any potential outcome of the evidence that you will hear. In your bundle Chair just behind the divider you will see the response to the notice given by Mxolisi Zondo.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: At page 2 of that notice or the response to the notice rather in paragraph 3. Mxolisi Zondo says:

20 “I believe that the commission would in the end be in a position to evaluate the evidence of Mr McBride or any other witness in the totality of all the other relevant evidence at its disposal and draw its conclusions. Whatever McBride or any other witness might say about me in connection with my role as Chairperson in Sesoko’s disciplinary hearing must be considered in the light of the official record of the disciplinary inquiry to which I have absolutely nothing to add as the record ought to speak for itself.”

In short Mxolisi Zondo's response to the notice given to him and to the issues outlined to him is there is a full record that record can be judged objectively; that record speaks for itself. He is not going to come as he says in his next paragraph to cross-examine Mr McBride or any other witness at the commission. He is not going to apply to seek to give testimony and he says therefore that the issue of conflict of interest does not even arise. There is a record; you Chair can read the record and you can draw your own conclusions on the basis of the record. You will not be weighing up the credibility of the testimony of one or other witness. Mr McBride will give his views of what happened, the record stands for its objective assessment by yourself. So what Mr Zondo Junior

10 concludes; he says:

“Neither will I apply or seek to give testimony myself”

Having said he will not seek to cross-examine and he concludes:

“In my respectful view the potential conflict of this – of interest in this regard with therefore be completely vitiated and any necessity for submissions on the correct process to apply where there is a conflict of interest would thus become academic and of no consequence at all.”

And then he reserves his rights in regard to evidence to be led by Mr McBride but in unrelated potential proceedings.

20 **CHAIRPERSON:** Hm.

ADV PAUL JOSEPH PRETORIUS SC: So whilst that is not decisive of the issue clearly Chair it is a factor that in determining the way forward you will take into account.

CHAIRPERSON: Hm, hm.

ADV PAUL JOSEPH PRETORIUS SC: After that Chair are two communications from Mr McBride and Mr Sesoko respectively. Mr McBride says:

“I have full trust and confidence in Judge Zondo to Chair the proceedings of the commission.”

And he has no objection whatsoever to you Chair hearing all the submissions and a similar communication comes from Mr Sesoko the National Head of Investigations in IPID the Independent Police Investigative Directorate.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: So from those directly involved there is no issue raised at all. On the contrary the statement is made that the issue of conflict does not really arise at least in the view of Mr Mxolisi Zondo.

10 **CHAIRPERSON:** Hm.

ADV PAUL JOSEPH PRETORIUS SC: However Chair because this is matter not only of personal interest to those involved it is a matter of public interest.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: The legal team through one of its members made a thorough investigation into the applicable law and the applicable facts and that submission is before you which you have no doubt had an opportunity to read. May I just refer you Chair to the first part of the submissions which are the submissions of the legal team as mandated by the team to the drafter of this document but not unanimous and I will give you an alternative view in due course. The first few pages deal with the law in relation to bias or perception of bias when that should arise and when it should be dealt with. The authorities relied on here deal with matters where a judge sits as a judge. A judge that will determine rights finally and I will deal with that issue again in due course. But in paragraph 9 on page 6 the proposition is made in this memorandum.

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“Later the court sets out the following principled approach which

proposition must find application even where a judge presides at
a commission or tribunal.”

And this is the South African Rugby Football Union case of which you are doubt aware
Chair. And the quote at paragraph 9 is:

“The question is whether a reasonable objective and informed
person would on the correct fact reasonably apprehend that the
judge has not or will not bring an impartial mind to bear on the
adjudication of the case. That is a mind open to persuasion by
the evidence and submissions of counsel.”

- 10 And I stress that part is apart from the objective nature of the assessment to be made
the question is whether the Chair in this case will retain a mind open to persuasion by
the evidence and the submissions of counsel. The evidence in this case being a fixed
record; opinions on the evidence you are free to deal with on your own or having regard
to the submissions of counsel to you. So the question is raised whether the close
relationship between the Chair and Mxolisi Zondo requires a recusal.

CHAIRPERSON: Hm.

- ADV PAUL JOSEPH PRETORIUS SC:** That could happen in one of two manners
Chair. Either the recusal if considered could be for the whole of the Law Enforcement
Agency evidence, it could be for the evidence of Mr McBride or just that portion of the
20 evidence involving Mr Mxolisi Zondo which is one paragraph. In fact a few lines in one
paragraph Chair.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: The point is stressed in paragraph 14 on page
8 that:

“The closer the relationship the closer the degree of intimacy the

greater the need to consider the issues.”

But may I draw your attention to page 9. There is a quote from a criminal court well a judgment in a criminal matter rather State versus Dubey where the remark is made:

“If it is not feasible for a recusal to replace yourself with someone else to hear part or all of the relevant evidence then an alternative route is proposed. If it is not feasible then the relationship must be brought to the attention of the parties and their consent canvassed before the commencement of the hearing. If such consent is given it must be entered into the record.”

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Now those parties directly implicated in relation to the issues which are before you Chair.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: Have stated their position clearly and they range from an expression of faith in your hearing the matter and making whatever findings you need to make to the contention raised by Mr Mxolisi Zondo that because there is a written record the matter does not arise. So the alternatives – having said that Chair the matter is one of public interest and a way must therefore be found of leaving the door open for anyone who can claim an interest in this issue nevertheless and notwithstanding present circumstances still to come forward and we will deal with that issue in a moment as well Chair.

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CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: So there are really three options Chair. Does the Chair recuse himself from presiding over the hearing when Mr McBride and Mr Sesoko testify? Secondly does the Chair recuse himself from that portion of the

evidence that deals with the disciplinary hearing over which Mr Mxolisi Zondo presided? The third option should you recuse yourself at all given the attitude of the effected parties none of whom seek his recusal? The proposal that having considered all the submissions made that are before you is somewhat of a compromise between the second and the third and I will come to that in a moment. Then Chair there is a technical examination of the legal framework. The conclusions reached certainly after examination of all involved are that given the legal framework governing the commission you Chair do not have power to substitute yourself. Your appointment and any substitution is beyond your jurisdiction Chair. The suggestion is then made that

10 possibly the regulations should be changed by the President to allow the President to substitute for that one paragraph of evidence. That in my view is not an appropriate solution it is just too complex and too drastic a remedy to deal with the issue of one paragraph of evidence of Mr McBride. And then the third is to hear given the – given the response of those directly involved; their submissions; the other factors that I will mention in a moment is to hear it subject to one caveat and I will present that to you now Chair.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: Chair considering the nature of the evidence. The nature of the evidence is an opinion about conduct of Mr Mxolisi Zondo in a

20 disciplinary inquiry where he chaired that inquiry. That record is available. That hard evidence is available. The nature of the evidence to be given by Mr McBride is an opinion. Those facts can be tested and conclusions can be drawn. The second is that the proportion of that evidence to the evidence of Mr McBride as a whole it is minuscule.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: It is not something that is essential to the – in our submission Mr McBride may differ but in our submission it is not something that is essential to the points that Mr McBride wishes to make before you Chair.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: There is no objection to you hearing that portion of the evidence or stated apprehension of bias and importantly Chair you sit as an investigator. You do not sit as a judge. You make recommendations in accordance with your mandate. It is not a final determination of rights. It may affect reputation importantly but that is the extent to which it goes.

10 **CHAIRPERSON:** Hm.

ADV PAUL JOSEPH PRETORIUS SC: And then finally for what it is worth you will hear the submissions of the legal team and you will decide whether to be guided by those submissions or not. So the proposal that we make before Chair having regard to the extensive research and presentation done on behalf of the legal team which I have gone through briefly with you and which you have no doubt have had an opportunity to peruse last night is you hear the evidence. That you make no findings on that particular portion of the evidence at this stage.

CHAIRPERSON: Hm.

20 **ADV PAUL JOSEPH PRETORIUS SC:** That at a stage either prior to or after the evidence has been given you invite any concerned person of the public because it is the public now that may have an interest to make submissions to should they be so minded and then you make a final decision on what should be done about that piece of evidence that you will have heard thereafter but if it is to be adjudicated by someone else that will not have cause any prejudice to any person.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: So subject to an invitation to the public to make submissions to you Chair at any stage regarding the propriety or otherwise of you hearing the evidence we submit that you hear the evidence but make no findings on it until that process has been concluded.

CHAIRPERSON: Hm. The other aspect which may be needs consideration may be whether before I make any decision if I have to make a decision whether the President who has the power generally speaking to amend the terms of reference whether if he is apprised of this issue and the facts whether it might be within his power to decide whether he amends the terms of reference in such a way that I do not deal with that
10 issue. I just mention that because subject to what I will say just now ordinarily the President would have the power to amend the terms of reference of a commission at any time. And the current terms of reference specially have a provision that says; I hope my recollection is correct; it says the terms of reference may be varied or amended. Now I think there is something to that effect in the terms of reference. I hope I am not confusing it with the regulations. Of course in certain respects this commission is not a normal commission in the way of how it came about. Ordinarily a commission comes about because the President makes a decision on his or her own based on whatever information has been placed before him or her to make a decision to establish a commission. But in this case the then President as far as I recall was not
20 just against the commission being established but the courts had to be approached to compel him to appoint a commission and the idea of a commission did not come from the President it came from the former Public Protector and the former Public Protector in her remedial action effectively prescribed how the commission should be established in the sense that she said the Chairperson must be appointed by the Chief Justice. One of the issues I had to consider after I was appointed was that ordinarily I would

have preferred to sit with other people and not alone and be in a panel for a matter such as this. But there was a complication because the question would arise how those people would be appointed because if they were simply appointed by the President you could have a situation where the President appointed two other people whose decisions could be a majority if we did not agree and I could be the minority and then the public could have certain concerns because the Public Protector did not say anything about other members being appointed. So there were some complications so the question may arise also whether if any appointment is to be made how it is to be made of anybody. Is it a matter that should the current Public Protector have a say as

10 the successor to the previous Public Protector? Should the Chief Justice have a say? Should he not have a say? So it is not all very easy. So there are those issues but while not decisive the fact that the two persons who are directly affected oh well actually three have all said they have absolutely no problem that I hear all the evidence. That is an important factor. But as you say it might not be decisive. It may well be that given the fact that one this commission has very limited time to complete its work and the evidence of Mr McBride and the evidence relating to Law Enforcement has been adjourned two times it may be that one should look at a practical way of dealing with this and it appears to me that the suggestion you make may well be a useful one and the practical one. Namely that I do not make any decision – final decision now but I do

20 hear the evidence and maybe as you say maybe invite you know the public and maybe I could consider maybe in writing legal professional bodies to brief counsel to come to address this issue so that I hear other submissions but it may well be that a consideration also should be given whether there is any role that should be played by the President in regard to the issue. So – so I am inclined to once say I am not making any final decision that I might have to make earlier if it is really necessary. But two, I –

we continue I hear the evidence and in due course an announcement maybe would be made as to exactly what is to be done in relation to inviting the public to make submissions and or the GCB or the Law Society or all – and other legal professional bodies to maybe make some submissions and then we take it from there. I – what do you say to that, is that ...?

ADV PAUL JOSEPH PRETORIUS SC: Chair just a few remarks.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Firstly the issue at stake regarding the disciplinary inquiry conducted by Mxolisi Zondo is at best and Mr McBride may disagree
10 but in our assessment is that best a collateral issue. It may be Chair that in the course – due course you decide you do not need to make any finding because it is not central to the terms of reference of the commission. The purpose from the legal team's point of view of Mr McBride giving evidence is not an assessment of the correctness or otherwise of the findings.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: That is the first issue. The second issue Chair which you highlight now is the legal framework under which we are operating. It is complex and it is unique. The Commissions Act which governs the operations of this commission as well as the regulations are one set of legal issues. The other set is the
20 report of the Public Protector and the judgment of the full bench of the High Court in Gauteng – North Gauteng which determined the manner in which this commission was to be managed and the manner of your appointment in particular was dealt with in that judgment Chair. Now to – there are two issues that arise there. Firstly a general proposition of law bearing in mind all the legal framework under which this Commission operates is that one cannot divide up. You have been appointed Chair to Chair the

Commission, it cannot be divided up between various judges let alone one appointed by yourself to substitute for you in assessing the evidence in regard to that collateral issue.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: But the – despite the very thorough research contained in the memorandum it maybe that.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: It would not be within the powers of the President to amend the terms.

10 **CHAIRPERSON:** Hm.

ADV PAUL JOSEPH PRETORIUS SC: Of reference or regulations to contradict the court judgment.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: Because that is decisive in the manner in which you are appointed. So it is a very complex matter Chair.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: And obviously it is a matter around which no error can be made.

CHAIRPERSON: Hm.

20 **ADV PAUL JOSEPH PRETORIUS SC:** So there idea that it be carefully considered.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: That any interested party particularly.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: One of those parties that had been involved in similar litigation.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: In the past who may have been involved in the High Court matter be given an opportunity.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: To comment should they so wish.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: It may be they do not wish Chair.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: So they so wish.

10 **CHAIRPERSON:** Hm.

ADV PAUL JOSEPH PRETORIUS SC: But in the meanwhile we proceed.

CHAIRPERSON: Hm. Okay, thank you. I know that there is legal representation for one of the persons – one of the [indistinct] mentioned. I assume that they have not indicated any desire to make any contribution.

ADV PAUL JOSEPH PRETORIUS SC: To this debate, no Chair.

CHAIRPERSON: Yes, okay.

ADV PAUL JOSEPH PRETORIUS SC: But in fairness.

CHAIRPERSON: But Mr Ngcukaitobi.

ADV PAUL JOSEPH PRETORIUS SC: They – they are not aware of this issue.

20 **CHAIRPERSON:** Oh, they are not aware of it?

ADV PAUL JOSEPH PRETORIUS SC: No Chair.

CHAIRPERSON: Okay. Maybe let us hear Mr Ngcukaitobi, do you – you were still anyway to place yourself on record. You can take this opportunity.

ADV TEMBEKA NGCUKAITOBI: Yes.

CHAIRPERSON: And say whether you have any contribution or you have anything to

say or whether it is something you have not considered.

ADV TEMBEKA NGCUKAITOBI: Thank you Mr Chair. My name is Tembeka Ngcukaitobi. I am with Ms Hanna Taouk. We act for Werksmans Attorneys.

CHAIRPERSON: Yes.

ADV TEMBEKA NGCUKAITOBI: It is the first time we have got to know about the topic.

CHAIRPERSON: Yes.

ADV TEMBEKA NGCUKAITOBI: And we would obviously like to make a contribution to assist the Commission.

10 **CHAIRPERSON:** Yes.

ADV TEMBEKA NGCUKAITOBI: But not at this stage Mr Chair.

CHAIRPERSON: Yes. Not at this stage, okay.

ADV TEMBEKA NGCUKAITOBI: Thank you.

CHAIRPERSON: Not that is fine. Thank you.

ADV PAUL JOSEPH PRETORIUS SC: There are other Counsel present Chair.

CHAIRPERSON: Oh.

ADV PAUL JOSEPH PRETORIUS SC: I have not been informed of that, but I am now informed that there are two other Counsel present. I do not know if they are directly representative of the interests of the parties directly involved in this issue.

20 **CHAIRPERSON:** Oh *ja*, because on the – it might be that it is a limited number.

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair.

CHAIRPERSON: Well maybe let us – we – because I will continue and hear the evidence for now until I have made a decision if I need to until some other time when the matter has received more consideration and maybe heard from other parties – other parties as well. I do not think that there can be – I think one could have a situation

where one hears as long as you have not made any decision. I am sure that you can always if you become convinced that you should not make a continued change or make a decision that you are not going to proceed to the stage of making any finding. So I think I would go along with the suggestion that we will – I will hear the evidence and the matter will continue to receive attention and at some stage I will announce what is to happen.

ADV PAUL JOSEPH PRETORIUS SC: Yes. Chair and on that basis then the submissions made and the research done which informs the memorandum before you from the legal team will remain of relevance.

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

ADV PAUL JOSEPH PRETORIUS SC: Chair the next matter for today is a brief opening statement.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Which will introduce issues relevant to the cluster of evidence and the group of witnesses who will testify in regard to Law Enforcement Agencies.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: And we would like to take the opportunity to introduce that evidence to you.

20 **CHAIRPERSON:** Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Chair for the benefit of the public we may just say at the outset that the Law Enforcement regime in South Africa is both vast and complex and in order for the evidence to be understood in its proper context it is necessary to describe for the purposes of the Commission - yourself Chair and for the public – how Law Enforcement is constructed and how it is intended to operate in this

country post 1994. Chair we [intervenes].

CHAIRPERSON: What happened Mr Pretorius?

ADV PAUL JOSEPH PRETORIUS SC: We are dealing with.

CHAIRPERSON: [Intervenes].

ADV PAUL JOSEPH PRETORIUS SC: Technically issues Chair.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: Which caused the delay in starting at 09:30 in the first place.

CHAIRPERSON: Yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** But hopefully they have been dealt with. We can go to page 1. Chair the – do you have a copy of the?

CHAIRPERSON: This is now EXHIBIT 1?

ADV PAUL JOSEPH PRETORIUS SC: Presentation before you? No, it is a – it is not in that file Chair.

CHAIRPERSON: Oh, okay.

ADV PAUL JOSEPH PRETORIUS SC: It is that document there.

CHAIRPERSON: Yes, I have got it.

20 **ADV PAUL JOSEPH PRETORIUS SC:** On page 2 of the document by way of introduction we outline the institutions which operate under the general rubric category description of Law Enforcement and the institutions that have been established to combat corruption in South Africa directly are the following. Firstly there is the South African Police Services. There is the Directorate for Priority Crime Investigation. That is the Hawks. There is a unit called the Special Investigations Unit which I will deal with in due course. Three is the National Prosecuting Authority, perhaps the most well-known of the Law Enforcement and Corruption Investigation Units and prosecution

units. There is the State Security Agency and there is the Asset Forfeiture Unit. Those institutions are supported by a number of other institutions and what is before you Chair is illustrative not necessarily complete in all its facets, but there is the Auditor-General an body which will investigate accounts, finances, various Government – Government related institutions. There is the Department of Public Administration which plays its role. There is the Public Service Commission. There is the Public Protector's Office, State Attorney and there are others as well. The next slide may seem complicated and it will be broken up in due course, but the point for the moment Chair is there is an elaborate and comprehensive network of interrelated institutions whose intention was in

10 their establishment and in the execution of their duties to detect, combat and prosecution – prosecute corruption. Those all operate under the auspices ultimately of the Presidency. Parliament plays its oversight role. The Department of Justice is a separate department under which for example the National Prosecuting Authority and the Special Investigations Unit operate. The police to the left is again a comprehensive and complex set of structures and institutions which involve a number of sub categories of organisation that I will deal with in a moment. Governance, finance and the intelligence services are also intended to play their role in detecting, preventing and combatting prosecuting corruption. So Chair for the moment it is not necessary to understand this complex diagram. It is there for one simple purpose. That the statutory

20 and constitutional framework within which vast – vastly resourced and vastly people bodies operate to deal with corruption is a matter of fact and I will deal with the various sections of that in a moment, because ultimately Chair the question will be asked this vast organisational structure funded and peopled as it is why is it necessary for this Commission to be here in the first place if that system in all its resources and complexity was operating properly, we would not be here and that is the question that

we will address. Whether that is a valid statement to make in due course. We could deal with the next slide Chair which breaks down that overall picture. If one deals with the police under the authority of the Minister of Police and the Deputy Minister of Police you have the South African Police Services. Interposed between the South African Police Service and the Ministry is the Commissioner of the South African Police Services. He is assisted by Deputy National Commissioners and Provincial Commissioners. Crime intelligence is something different from the other intelligence agencies of which we will talk in due course. Crime intelligence falls within the police. We will give evidence about the operations of crime intelligence in due course. It is

10 separate from the South African Police Service but still within the framework of organisations that reside under the Commissioner of Police. There are various institutions or organisations which reside under the South African Police Service heading. Those involve crime investigation services. That is the general detective services. Commercial crime, organised crime, specific investigations and family violence and child protection. Those units all reside under the South African Police Service. Also under the police category is the Directorate for Priority Crime Investigation. The DPCI or commonly known to the public as the Hawks. They conduct serious commercial crime investigations. They deal with serious organised crime. They deal with priority crimes, specialised investigations. The SIU – I am corrected is

20 the Special Investigating Unit and not the Special Investigations Unit but I will come to them in a moment Chair. Now at a stage there existed an Anti-Corruption Task Team. I will deal with that in a moment but that for the moment was organisationally in the position that it is there under the DPCI or the Hawks. That became dysfunctional at a stage. Precisely why will be interrogated and evidence will be led before you. Prior to 2012 then on the right hand side of the screen was an institution called the – I think it

was called the Independent Complaints Directorate. Anyway it is no longer and was replaced by the organisation which you will hear about in due course – IPID, the Independent Police Investigation Directorate. That organisation Chair resides under an Executive Director which reports in limited facets only to the Minister of Police. I will come to oversight in a moment but is essentially independent. Its functions like the DPCI or the Hawks have been a subject of two Constitutional Court judgments which will be referred to evidence – in evidence in due course. Essentially the purpose of the legislation which governs the Hawks and IPID stresses their independence and the relevance of that and how this has come to affect the evidence that you will hear will be

10 dealt with in due course. Again if one regards this organisational structure as merely a part – just go back one – as merely a part of the overall Law Enforcement governing structure of our post – well our democratic Constitution, organisation, structures all residing under the Constitution and the legislation which I will also deal with in a moment one will see that the structures we have just dealt with under the heading police are but a part of the overall Justice and police structures meant to deal with amongst other things of course corruption. If we may then go to the justice slide. Again a vast organisational structure residing under the Minister of Justice and Constitutional Development and at another level it is Director-General. Perhaps I better go back

Chair to deal with oversight specifically in relation to the police. IPID in particular is

20 subject to the oversight of Parliament in various committees. Crime intelligence also residing under the police is subject to the oversight of the Inspector General of Intelligence which in turn is subject to the oversight of Parliament. So not only is there a hierarchy of authority governing crime intelligence, the South African Police Service, the Hawks and IPID which reports then to the Minister of Police, but there is also provision for Parliamentary oversight and other oversight. That is the system that will

be interrogated in evidence. We may return to Justice then. There are two principal bodies which reside in the Department of Justice. The first is the Special Investigations Unit. Chair I will deal with a number of specific bodies in due course. For the moment just the overall picture. The Special Investigating Unit – Unit resides under the Minister of Justice and Constitutional Development and his or her Director-General. The NPA – the National Prosecuting Authority – similarly resides within the Justice framework. Originally as you will know Chair there existed a Directorate of Special Operations, the Scorpions which was disbanded in 2009. We will deal with that issue in due course in evidence as well. It was reported into or was part of the National Prosecuting Authority.

10 Notionally at least, but not organisationally the Hawks replaced but we have dealt with them in the previous slide. The NPA is headed by the National Director of Public Prosecutions. There is a dotted and a direct reporting line to the Minister of Justice and Constitutional Development. Now the NPA and I may deal with this in more detail in due course is peopled by some 4 500 investigators and staff. Under the Directorate of National Public Prosecutions one has a Specialised Commercial Crimes Unit, a Sexual Offences and Community Affairs Unit, a National Prosecuting Service and a Priority Crimes Litigation Unit. I am going to deal in some detail and not for a long time but in some detail with the PCLU because it will be the subject of direct evidence in due course. The National Director of Public Prosecutions is organised principally on a
20 regional basis and the authority – I am told – for making decisions in relation to prosecutions in particular – particular prosecutions devolves in the Provincial Directors of Public Prosecutions. The Asset Forfeiture Unit resides within the National Prosecuting Authority. Again a vast way resourced. Perhaps not as well-resourced as it wishes to be - it is in fact understaffed – financed organisation specifically intended to deal with crime and to deal amongst other things with corruption. I will come back to

some aspects of that slide in due course. Then the next slide deals with the intelligence part of the overall framework. The intelligence structures reside under the Minister of State Security. There is a State Security Agency which is an organisation or entity that comprises the two previous entities which were dissolved in 2009 and merged into the State Security Agency. That is the National Intelligence Agency on the one hand and the South African Secret Service on the other. The State Security Agency is accountable to the Inspector General of Intelligence and subject to Parliamentary oversight. There is a domestic branch to the State Security Agency and there is a foreign branch. Its operations too will come under scrutiny in the evidence to

10 be put before you. Then collateral to that structure of course one cannot ignore the finance structures in Government and in the Executive residing under the Minister of Finance where we have the accounted General. We have the South African Revenue Services and we have importantly about which evidence will be given the Financial Intelligence Centre. Of course at some level the governance in employment administrative and the discipline at least insofar as disciplinary prescripts and framework is concerned reside elsewhere in the organisational structure and then finally at the top in oversight role and an accounting role we have the Presidency and Parliament. Reporting into Parliament and to the National Assembly we have the Auditor-General and the Public Protector and we have also Parliamentary Oversight

20 Committees to whom for example the Inspector General of Intelligence would report. Chair if I may before I go on just deal in a little more detail with the Special Investigations Unit. Now the role and function of the Special Investigation Unit is not always clearly understood. It is not a prosecuting arm of Law Enforcement Agencies. It is an investigative unit. Its primary mandate is to recover and prevent financial losses to the state caused by acts of corruption, fraud and maladministration. Its role in the

main we are told is to investigate and recover losses to the state as a result of fraud and corruption. Where criminal activities are uncovered in these investigations those are then referred on to the National Prosecuting Authority or if necessary elsewhere. Sometimes to the Hawks. The SIU is staffed as an investigation unit by lawyers, forensic investigators and experts maybe called upon from time to time assist it. Engineers, quantity surveyors and the like but its investigations feed into civil recovery and feed into prosecutions on the basis of referrals out. So the SIU is really an investigative unit investigating fraud and corruption. It is peopled we are told and the – this may be subject to some correction by approximately 500 legal and forensically skilled personnel. If I may mention the PCLU, if we can go back to the slide please where the PLCU appears and if I may just ask – bear with me Chair. It is necessary to.

CHAIRPERSON: Well I have found it, but the page on which it is, is not marked. So I cannot tell you what page it is.

ADV PAUL JOSEPH PRETORIUS SC: Yes, I am sorry. The page numbers are not here in this version, but it is the Justice slide Chair.

CHAIRPERSON: Hm. Yes.

ADV PAUL JOSEPH PRETORIUS SC: The Priority Crimes Litigation Unit is an interesting unit because its role and function relevant to the matters being investigated by this Commission are of some importance.

20 **CHAIRPERSON:** Hm.

ADV PAUL JOSEPH PRETORIUS SC: It resides within the National Prosecuting Authority. It is one of the principal structures there. This unit came into existence by way of a proclamation under the then President Mbeki on 24 March 2003. If I may just quote from that proclamation.

“Its intention was in particular to manage and direct the

investigation and prosecution of crimes contemplated in the implementation of the Rome Statute of the International Criminal Court at 2002. It was to deal with serious national and international crimes which include acts of terrorism and sabotage committed under the Internal Security Act, high treason, sedition, foreign military crimes committed by mercenaries or such other priority crimes to be determined by the National Director.”

So clearly Chair this unit was set up to deal with a specific category of crime.

10 **CHAIRPERSON:** Hm.

ADV PAUL JOSEPH PRETORIUS SC: As described in the proclamation of an international flavour informed by international statute. However we know and you will hear evidence in this regard that the Priority Crimes Litigation Unit was peopled under the authority of the National Director of Public Prosecutions at the time with a number of prosecutors and investigators and it was this unit that investigated and sought to prosecute the Minister of Finance at the time, Mr Pravin Gordhan.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: For the payment – the pension pay out payment.

20 **CHAIRPERSON:** Huh-uh.

ADV PAUL JOSEPH PRETORIUS SC: The previous Deputy Commissioner, Mr Ivan Pillay. Mr van Loggerenberg, all of SARS, Mr Robert McBride whom you will hear about of IPID in, Innocent Khuba of IPID, Matthews Sesoko of IPID, a previous state prosecutor Glynnis Breytenbach, Paul O’Sullivan and the secretary of Paul O’Sullivan.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: They were all prosecuted or sought to be prosecuted.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: Or investigated under the rubric of the International Security Crimes described in the proclamation. We will investigate whether this was a deliberate manipulation and distortion of the mandate of the PCLU and a misuse of that body.

CHAIRPERSON: Hm.

- 10 **ADV PAUL JOSEPH PRETORIUS SC:** To conduct investigations for which it was not intended and we will ask questions around that and seek to address the issues arising out of that.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: That is one example of the type of evidence that we will be leading in due course.

- Before going on to the slide we're dealing with personnel beginning with the arrangements under President Kgalema Motlanthe I would like us to deal with two other issues of some importance ultimately. Our country is signatory to two international United Nations prescripts, the one is the United Nations Convention against Corruption,
- 20 by which we are bound because we're a signatory constitutionally to that. That Convention against Corruption was adopted by the General Assembly of the United Nations on 31 October 2003, and South Africa became a signatory to that Convention and therefore bound by it in 2003 where it was formerly ratified then on 22 November 2004. In addition there are others but these are the two which we wish to mention now, there's the United Nations Convention against Transnational Organised Crime to which

South Africa is also a signatory and which has been ratified on 14 December 2000 and 20 February 2004 respectively that is a Convention that was entered into in November 2000 by the United Nations. The legislation that we will deal with Chair to one degree or another in relation to the police is the South African Police Service Act, the NPA, National Prosecuting Authority is governed by the National Prosecuting Authority Act, there's a separate Act governing IPID the Independent Police Investigative Directorate Act, there's the Witness Protection Act, there's the Intelligence Services Act, there's the Financial Intelligence Centre Act and the Asset Forfeiture Unit is dealt with by a separate legislation. If I may just give some preliminary numbers to illustrate – if we can

10 go back the first slide please, second slide, this vast network is as I've stated, well resourced and well populated. Visible policing is managed by approximately 103 000 members of the South African Police Service there are 40 000 detectives in the South African Police Service, the Hawks DPCI comprise approximately 2 500 personnel, Crime Intelligence approximately 9 500 personnel and Protection Services 7 000, the National Prosecuting Authority approximately 4 500 personnel and the Independent Police Investigative Directorate 400 personnel. So it is not small not incomprehensive and not under-resourced although not ideally resourced on our instructions, and Chair we return to the basic question and we'll come to that in a little more detail later why is this Commission necessary to be sitting and why has it been able to do what it has

20 been able to do in eight months of its evidence thus far when we've had this framework, resourced and peopled as it is for over 10 years, in fact up to 20 years in different forms. That is the essential question that we will be addressing in a little more detail.

If I may go then to, just identifying individual persons in authority with in this structure at various periods of time. These slides are not put up at this stage, at least, to draw any conclusions, let alone any negative conclusions but merely to place people

in particular positions and particular lines of authority when you hear them refer to evidence in due course. The Minister of Safety and Security under the presidency of President Kgalema Motlanthe between 2008 and 2009 was Minister Nathi Mthethwa, he occupied that position at that time. At the same time the Minister of Justice and Constitutional Development was Minister Radebe and the Minister of Intelligence about whom some evidence will be led was, at the time, Minister Siyabonga Cwele. The next slide deals with the position under President Zuma and again like with other evidence questions will be raised around appointments and dismissals and their significance, if any to what occurred under the watch of the various Ministers but between May 2009 and February 2018 one had three Ministers of police, Minister Mthethwa, Minister Nhleko and Minister Mbalula.

The regime under the Minister of Justice and Constitutional Development and the Minister of Justice and Correctional Services, there was a change in 2014 when two departments were merged, Minister Jeff Radebe and Minister Michael Masutha and then the Ministers of State Security in turn, Minister Cwele, Minister Mahlobo and Minister Bongo. National Commissioners and Directors General then during the same period May 2009 to February 2018 the National Commissioners of Police who will be, at least, referred to in evidence were in those respective periods on the screen Mr Cele, Ms Phiyega, Khomotso Phahlane, Lesetja Mothiba and Khehla Sithole. The National head of the DPCI, and you will ...(intervention).

CHAIRPERSON: I guess that to the extentness of it, it would be more accurate to say some of them were just Acting National Commissioners but others were fully appointed.

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair indeed Moghlane and Mothebe were acting during the periods reflected, thank you. Then the National Head of the DPCI or the Hawks and this is – this list of personnel is directly related to evidence that

will be given over the next few days for the period 2009 to 2014 the position was occupied by Anwa Dramat, he was replaced in an acting capacity by Berning Ntlemeza and later in an acting capacity by Yolisa Matakata and finally by Geoffrey Lebeya who is there in a permanent position at present. The Director Generals of – or Directors General of Justice and Constitutional Development are listed in the next part of that slide, the Directors General of the State Security Agency, some of whom will be giving evidence or at least one of whom has given evidence, that list of personnel includes Mr Makathuka, Mr Dlomo in an acting capacity, Sontho Kudjoe, Arthur Fraser and Yolisa Jafta who is presently occupying the position in an acting capacity.

10 Then the National Directors of Public Prosecutions are listed there, they will also be the subject of direct evidence Chair between 2007 and 2009 Mokotedi Mche, Menzi Simelane between December 2009 and October 2012, Nomgcobo Jiba in an acting capacity 2012 to 2013, Mxolisi Nxasana October 2013 to May 2015, his demise to put it gently will be the subject of evidence in due course, the appointment of Shaun Abrahams June 2015 to August 2018, Silas Ramaite in an acting capacity, August 2018 to January 2019 and the present incumbent of the post of the National Director of Public Prosecution Shamila Batohi. I've just been correct Chair that Mr Ntlemeza, Berning Ntlemeza was appointed as the head of the DPCI during the period 2015 to 2017 in a permanent capacity, I'm told but we can clarify that position in due course.

20 Chair you would have been informed by this very rapid and perhaps too superficial overview of the law enforcement structures which *inter alia* govern investigations into and prosecutions of corruption and fraud that the Scorpions, the Directorate of Special Operations was disbanded in 2009 and its instructive onto look as we will in more detail in due course at the statistics in relation to the Scorpions. Our investigation team inform us that by February 2004 the Scorpions had completed 653

cases comprising 273 investigations which resulted in 380 prosecutions. Of those 380 prosecutions 349 ended in convictions representing an average conviction rate of 92%, that was the record of the Scorpions from inception to 2004. It is a matter of record, and this comes from official documentation, Chair, that during 2007 alone the Scorpions achieved a conviction rate of 94% on 182 cases brought to court. In the first half of 2008, shortly before its demise the Directorate of Special Operations arrested 71 suspects, ceased contra ban to the value of 6.6million rand and compensated crime victims to the tune of 6.8million rand. That organisation comprised of approximately 500 members nationally and was disbanded in September 2009.

- 10 Chair for the moment these statistics are illustrative only of a trend and will be researched and presented to you in more detail in due course but the question which will be asked is, firstly, have the law enforcement agencies post 2009 been able to match that statistic in investigation and prosecution and secondly why was it necessary for the Directorate of Special Operations to be disbanded, what was the motive for the disbandment of an apparently functional operation to what may be the result of the evidence replaced by an apparently dysfunctional set of operations. Then we had an important body at one stage, Chair, called the Anti-Corruption Task Team, this was a multi-disciplinary task team established and intended to investigate and deal with, through prosecutions, corruption. It was established after Ngotolo? in January
- 20 2010, it was mandated by the then President that the cluster comprising the Anti-Corruption Task Team, comprising justice, crime prevention and security create such a team to fast track the investigation and prosecution of cases of corruption. It was also mandated to investigate, seize and restrain assets and prosecute approximately 100 people who had accumulated assets through illicit means of at least 500million – 5million sorry 5million rand. A delivery forum was set up to develop, prioritise and

operationalise the plan and the first step was to task the principle stakeholders within the cluster, the Police Services, the DPCI that's the Hawks, the National Prosecuting Authority and the Special Investigation Unit to achieve its aim. Its mandate is specifically dealt with in the next slide there may be evidence about that later but what is interesting about this task team is it ultimately became dysfunctional and was abandoned with very little success at all.

The information that we place before you Chair at a very high level is that, to an extent at least between 2010 and 2014 the task team was indeed achieving its mandate. In 2015 the NPA removed prosecutors from the multi-agency work group, court cases collapsed and there was an exodus of other principle stakeholders. Why and on what basis the National Prosecuting Authority in 2015 stepped out of the task team is a question that we will address in due course in evidence but what is apparent that between 2014 and 2015 again, something that was functional became entirely dysfunctional. Key personnel were redeployed and the presidential mandate, as directed in 2010 fell into disuse. In 2018, however, the Anti-Corruption Task Team was renamed the Serious Corruption Offences Unit and it was dealt with by Serious Corruption Investigation component of the Hawks and that's where it resides in an attempt to resuscitate it at the moment. The next slide deals, Chair with some statistical information, again this is illustrative at best, it doesn't pretend to be final and accurate but it does serve to illustrate trends and to raise questions which the legal team, together with the investigators will be asking and will seek to answer, ultimately when the totality of evidence regarding law enforcement agencies is dealt with.

The Anti-Corruption Task Team between 2010 and 2015 received, we are told, 148 priority cases. The approximate value of the cases received and that value is, one presumes the scope of the alleged crimes involved in money terms. The number of

convictions in priority cases, apparently one and the number of convictions resulting in non-custodial sentences where accused did not go to prison 80. The SIU, Special Investigative Unit matters referred to the NPA, you will recall that, that has been introduced in a previous slide, a total of 686 to the best of our information at present matters were referred to by the Special Investigations Unit to the NPA during the period 2013 to 2018. The approximate value or coverage, monetary coverage of those matters 11billion rand, not one of those have been successfully prosecuted of the 686 cases, to the best of our information and we're subject to correction but for the moment we assert a trend.

- 10 The Financial Intelligence Centre sent 215 suspicious transaction reports as reported to them to law enforcement agencies, there has been one report back from the law enforcement agencies to the Financial Intelligence Centres. The last column deals with corruption cases referred to the National Prosecuting Authority by the Kwa-Zulu Natal Government between 2010 and 2018, this is not an overall statistic, it's a specific statistic which will be dealt with in the evidence. 45 cases referred to the National Prosecuting Authority by the Kwa-Zulu Natal Government in the period 2010 and to 2018 in value in excess of 5million rand and where we are informed by the investigators, the perpetrators or the alleged perpetrators have been identified in very detailed forensic reports, have resulted in zero prosecutions. For the
- 20 moment...(intervention).

CHAIRPERSON: That's quite high isn't it over such a long period?

ADV PAUL JOSEPH PRETORIUS SC: Well Chair, 45 cases referred to the NPA by the Kwa-Zulu Natal Government between 2010 and 2018 no successful prosecutions, we are informed that they were thoroughly investigated supported by detailed forensic reports, at the very least calls for explanation before any final conclusions are drawn.

The Financial Intelligence Centre 215 reports...(intervention).

CHAIRPERSON: So what this means is that at least on what you have been told there were thorough investigations, involving 45 cases during that period 2010 to 2018, they were referred to the prosecution authorities and there's been no successful prosecution at all.

ADV PAUL JOSEPH PRETORIUS SC: Correct Chair, that evidence will be placed before you, it will be subject to investigation, it will be subject to further questioning but that is *prima facie* what the case is and what the evidence will be. For the present, Chair, if one may just summarise the slide – well if we can go back to slide 1 and it's
10 ...(intervention).

CHAIRPERSON: I just wanted to say what this doesn't tell us and probably we will be told in due course, is whether, when it has had a number of successful prosecutions, zero whether we're dealing with a situation when no prosecutions have taken place altogether or whether every prosecution that has happened has been unsuccessful so we'll get to that information in due course.

ADV PAUL JOSEPH PRETORIUS SC: Again I stand subject to correction but my information just gathered is that no prosecutions have taken place, let alone successful prosecutions.

CHAIRPERSON: Okay.

20 **ADV PAUL JOSEPH PRETORIUS SC**: But Chair the – to the extent that this is correct, firstly to the extent that it may indicate a trend if one looks at that organisational structure under our constitution peopled as it is and one looks at the statistics, the outcome of that structure and its operations Anti-Corruption Task Team 148 priority cases, one conviction, the SIU referrals 686 no results, the Financial Intelligence Centre 215 reports, one report back and of course the specific example on the right-

hand slide. So for the present Chair we ask the question, and in fairness to all concerned it is a question, are these statistics accurate, we will place evidence before you, to the extent that they may be slightly subject or subject to slight adjustment, the trend remains. The question is, is that *prima facie* there's a case to be or there's a question to be answered, is this trend not very disturbing and very worrying and is this not a matter that requires the immediate attention of this Commission and perhaps those that can manage the situation in due course. So Chair, for the next few days the evidence of Mr McBride will be given, his evidence will deal principally with IPID, the Independent Investigative Directorate under the rubric of the Police Force. General

10 Booyesen will also give evidence and he will deal with other aspects. Various other members from the National Prosecuting Authority, the Hawks, Crime Intelligence and IPID will be called in due course to address the questions that we've raised in very general terms here. That evidence will relate to a number of sub-topics that will be the removal of persons from positions of authority including investigative heads of units and staff by means of transfer by arrest, disciplinary processes and the use of the media as a means of discrediting certain personnel and that evidence will be given. Whether dismissals, firstly and appointment secondly, were designed deliberately to weaken the structures that have been placed up before you.

Also will be dealt with in evidence is alleged undue and unwarranted

20 promotion of officials including nepotism. Thirdly we will address the issue of whether senior police officials and high ranking political office bearers were, in essence, protected actively and passively through non-prosecution by what happened during 2010 to 2018 and before at the hands of the structure which you have seen. We will talk about the unjustified withdrawal of criminal cases linked to politically associated individuals, we will also deal with the alleged abusive state funds including the abusive

of the Secret Service account for procurement of safe houses, vehicles and overseas travel and other benefits for beneficiaries who were not entitled thereto lawfully and we will also deal with the abuse of the Criminal Investigation Agent Programme. Also dealt with as a sub-category is the means used to classify documents to prevent them ever being used in prosecutions and the refusal to declassify that documentation. That is some of the detail which will be covered in evidence to come but the essential question, if I may refer to it once more in summary Chair is, you've seen the organisational structure in its fullness, the question is whether law enforcement agencies were manipulated deliberately and weakened deliberately to protect high profile persons or persons in high office in government. We will ask that question and seek to answer it and further to prosecute selected persons, government officials or members of the executive to achieve the same end or that, whether that was done in order to further the aims of corruption and state capture. Chair if I may just finally qualify what we have said by way of opening, firstly the statistics put up a provisional subject to correction but in our view they illustrate a very disturbing trend which needs investigation and final assessment by this Commission. Secondly, Chair, at the moment we are asking questions we have not determined that there are any answers except that there appears to be a very disturbing need to ask these questions and to answer these questions. The evidence is subject to scrutiny not only by yourself but by those interested parties who will cross-examine, that by way of opening Chair.

CHAIRPERSON: Thank you Mr Pretorius we are ten minutes before the tea break maybe we should take the tea break now and then we start with the evidence after.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair. Chair before we proceed with the evidence I am told that there are number of counsel who wish to place themselves on record as representing parties.

CHAIRPERSON: Thank you. Let us get them to place themselves on record please?

ADV PHILLIP MAHLTATSI: Good morning Chairperson.

CHAIRPERSON: Good morning.

ADV PHILLIP MAHLTATSI: My name is Phillip Mahltatsi from the Johannesburg Bar. I hold my rooms at Pitje Chambers in Johannesburg. Chairperson this morning I am
10 appearing or representing Mr Shaun Abrahams who is the former National Director of Public Prosecution. Chairperson he indicates that he only received the Rule point – the Rule 3.3. Notice yesterday so as a result we have not been able to properly consult. So as matters stand obviously everything will then be dependent upon the evidence that will be led during these proceedings from which then we will make an election whether or not we choose to apply for cross-examination because I have only had a perfunctory reading of the affidavit of Mr McBride at this stage obviously without having consulted with my client I have not made an election as to what happens next.

CHAIRPERSON: Okay. Okay. You may or may not have heard the – what was said on Monday when an application was made for the adjournment of the hearing of Mr
20 McBride's evidence to today but your client will have the period prescribed in the rules within which to make an application for leave to cross-examine should he choose to apply and all attempts are being made to make sure that every implicated person will be afforded enough time to assist their situation and apply for leave to cross-examine should they wish to do so. So the fourteen days mentioned in the rules is not shortened at all and where people are not able to make their applications within that

time they do have the opportunity if they have got reasons for not having been able to do it within that time to apply for condonation and such applications will be considered on their merits. So every attempt will be made to make sure that every implicated person is treated fairly.

ADV PHILLIP MAHLTATSI: Thank you Chair for your indulgence. In fact before I then stood here I spoke to my colleague Mr Pretorius SC.

CHAIRPERSON: Yes.

ADV PHILLIP MAHLTATSI: Who has given assurances to the effect?

CHAIRPERSON: Yes thank you.

10 **ADV PHILLIP MAHLTATSI:** Thank you Chairperson.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Chair if I may just add one small piece of information on behalf of the secretariat who issued the notices there was an earlier email that was indeed sent but somehow it did not reach its destination. I am not sure why it may be that it was an outdated or incorrect email address.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: But I will at that and try and address the issue accordingly.

CHAIRPERSON: Okay, no that is fine.

20 **ADV PAUL JOSEPH PRETORIUS SC:** The witness in the – Chair down there at least – oh I am told that there is another councillor who wishes to put himself on record I was not informed of that before but...

CHAIRPERSON: Ja okay alright.

ADV PAUL JOSEPH PRETORIUS SC: But if you can afford the opportunity Chair.

CHAIRPERSON: Okay let us do that.

ADV JOHAN EKSTEEN: Good morning Chair.

CHAIRPERSON: Good morning.

ADV JOHAN EKSTEEN: My name is Johan Eksteen from the firm BDK Attorneys.

We are here to represent quite a few of the implicated persons Chair.

CHAIRPERSON: Yes.

ADV JOHAN EKSTEEN: The first one is Lieutenant General Phahlane.

CHAIRPERSON: Yes.

ADV JOHAN EKSTEEN: The former acting commissioner. The current provincial commissioner of the North West Lieutenant General Motswenyane.

10 **CHAIRPERSON:** I am sorry the North West one is?

ADV JOHAN EKSTEEN: Lieutenant General Phahlane the former acting commissioner.

CHAIRPERSON: Yes I got that one.

ADV JOHAN EKSTEEN: And then the current provincial commissioner Lieutenant General Motswenyane

CHAIRPERSON: Motswenyane?

ADV JOHAN EKSTEEN: That is correct Chair.

CHAIRPERSON: Okay.

ADV JOHAN EKSTEEN: As well as Major General Mabula.

20 **CHAIRPERSON:** Yes thank you.

ADV JOHAN EKSTEEN: And Brigadier Ncuba.

CHAIRPERSON: Yes.

ADV JOHAN EKSTEEN: It is also during the implications of General Mabula there is various members of the North West team that has been implicated who have not been received any notices but we are here to ...

CHAIRPERSON: Yes.

ADV JOHAN EKSTEEN: To represent them.

CHAIRPERSON: Yes.

ADV JOHAN EKSTEEN: There was just one aspect Chair that I brought this morning to the secretary's attention that the notice that was issued to Lieutenant General Motswenyane.

CHAIRPERSON: Yes.

ADV JOHAN EKSTEEN: Was indeed defective because it was issued to her husband.

CHAIRPERSON: Oh okay.

10 **ADV JOHAN EKSTEEN:** It was only realised after it was served on him.

CHAIRPERSON: Yes.

ADV JOHAN EKSTEEN: That it is not for him but for her.

CHAIRPERSON: Oh okay.

ADV JOHAN EKSTEEN: So there is an undertaking they will rectify.

CHAIRPERSON: Okay.

ADV JOHAN EKSTEEN: Because the problem here is Chair is that all of these persons that we represent needs to approach the state attorney.

CHAIRPERSON: Yes.

ADV JOHAN EKSTEEN: For authorisation.

20 **CHAIRPERSON:** Yes.

ADV JOHAN EKSTEEN: That they be represented by us and by council.

CHAIRPERSON: Yes.

ADV JOHAN EKSTEEN: At a later stage.

CHAIRPERSON: Yes.

ADV JOHAN EKSTEEN: And if there is a defective notice clearly that would not be

granted.

CHAIRPERSON: Ja. Yes.

ADV JOHAN EKSTEEN: So therefore I – were here on Monday as well.

CHAIRPERSON: Yes.

ADV JOHAN EKSTEEN: I know about the indulgence that...

CHAIRPERSON: Yes.

ADV JOHAN EKSTEEN: The Chair has explained.

CHAIRPERSON: Yes.

ADV JOHAN EKSTEEN: This was brought under the attention of the ...

10 **CHAIRPERSON**: Secretariat.

ADV JOHAN EKSTEEN: Implicated persons; they are satisfied with that and we will abide by it.

CHAIRPERSON: Okay. No thank you, thank you very much. Steps will just have to be taken by the legal team and the secretary to correct whatever errors or defects that may have – that some of the notices may have suffered from. Yes thank you.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair. Just to add to that. I am not sure whether any correspondence or communications have been addressed to this secretariat.

CHAIRPERSON: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC**: In regard to these issues.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: But I have made a note of them.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And I will raise them with the secretariat and deal with them accordingly.

CHAIRPERSON: Yes, yes. And maybe to the extent that it may be necessary maybe the legal team for these people Mr Eksteen maybe they can formalise by way of a letter send something to the secretary if they have not already done so to say these are the issues.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: That we would like to be rectified.

ADV PAUL JOSEPH PRETORIUS SC: I certainly to the best of my knowledge at least have not received any communication.

CHAIRPERSON: Yes.

10 **ADV PAUL JOSEPH PRETORIUS SC**: Of that sense but...

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: Given the administrative burden that the secretariat has to deal with those communications are useful so they can be dealt with timeously.

CHAIRPERSON: Ja okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: Chair may Mr McBride be sworn?

CHAIRPERSON: Thank you. Registrar.

REGISTRAR: Please state your full names for the record?

MR ROBERT JOHN McBRIDE: Robert John McBride.

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

MR ROBERT JOHN McBRIDE: No.

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

MR ROBERT JOHN McBRIDE: Yes.

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

help me God.

MR ROBERT JOHN McBRIDE: So help me God.

REGISTRAR: Thank you.

CHAIRPERSON: Well before we start Mr McBride I just want to say to you I thank you for coming forward to assist this commission when you have knowledge of matters that you believe fall within the terms of reference of this commission. As you know as everybody knows I have been appealing to heads of departments, government departments, heads of parastatals past and present and heads of various sections or units to please come forward and other people and I appreciate that you came forward.

10 You might not have needed any appeal to be made you may well have intended to come with or without an appeal but I thank you that you have come forward and to assist the commission. Thank you very much.

MR ROBERT JOHN McBRIDE: Thank you Chair.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Mr McBride before you and for the benefit of the Chair you have Exhibit Y. Exhibit Y is made up of four bundles Exhibit YA, YB, YC and YD. Your statement is contained if you could just get it please in Exhibit YA.

MR ROBERT JOHN McBRIDE: Yes I have it Chair.

20 **ADV PAUL JOSEPH PRETORIUS SC**: Right if you would go to page 33 please? Do you have it?

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Whose signature is that on page 33?

MR ROBERT JOHN McBRIDE: It is

CHAIRPERSON: There are two signatures there I guess you mean the one above his

name?

ADV PAUL JOSEPH PRETORIUS SC: Yes.

MR ROBERT JOHN McBRIDE: It is my signature Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right and you on the face of it attested to this affidavit on the 13 February 2019, is that correct?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Since then your status has changed but we will deal with that in a moment. If you would go back to page 1 please of that document? Is this your affidavit?

10 **MR ROBERT JOHN McBRIDE:** That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Are you satisfied that the contents are true and correct subject to some minor amendments which we will make in due course?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: The amendments Chair of minor nature but they will be included as is the current practice in a supplementary affidavit.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Which we will seek to deal with...

CHAIRPERSON: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Such matters as are necessary and may emerge in evidence.

CHAIRPERSON: Okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: Mr McBride your statement says that you are or were in February at least the Executive Director of the Independent Police Investigative Directorate?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Your status has since February changed what is the position now?

MR ROBERT JOHN McBRIDE: The process which involved Parliament on the non-extension of contract has been taken on review but in the meantime I have been considered for employment in another department.

ADV PAUL JOSEPH PRETORIUS SC: Okay. Your curriculum vitae is attached. We need not go there insofar as the Chair may wish to ask you questions. He may but it is known that you do have political affiliations historically, what is the relevance because I know you hold strong views about this for the purposes of your evidence, what is your
10 attitude to the relevance of your political affiliations to your history with IPID and your evidence today?

MR ROBERT JOHN McBRIDE: Yes I am – I have been all my life and still I am a member of the ANC but in the position of Executive Director of the Independent Police Investigative Directorate I had to exercise my tasks independently without consideration of political affiliations.

ADV PAUL JOSEPH PRETORIUS SC: Would you tell the Chair a little of IPID the Independent Police Investigative Directorate? What is its function?

MR ROBERT JOHN McBRIDE: In essence Chair the IPID is there to exercise oversight and investigative oversight over the police services and the municipal police.
20 It is established through Section 206(6) of The Constitution and also by Act 1 of 2011 which is the IPID Act which came into effect on the 1 April 2012.

ADV PAUL JOSEPH PRETORIUS SC: Is it governed by any legislation?

MR ROBERT JOHN McBRIDE: Indeed Chair it is the Independent Police Investigative Directorate Act and all other relevant acts including issues related to most aspects of the Public Service Administration Act, Public Finance Management Act and all relevant

Acts for government entities and departments.

ADV PAUL JOSEPH PRETORIUS SC: Under which Ministry notionally at least does IPID fall?

MR ROBERT JOHN McBRIDE: Chairperson it falls under the Ministry of Police at present.

ADV PAUL JOSEPH PRETORIUS SC: Now the powers of the Minister of Police and powers afforded by the constitution or the constitutionality of the powers afforded by legislation have been the subject of some litigation which recently came before the constitutional court we will deal with that in a moment but very briefly the constitutional court we will learn in a matter in – of which you certainly have knowledge and were
10 involved. The powers afforded by the constitution and legislation of the Minister of Police are limited.

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And the constitutional court has we will see and we will refer to that judgment in due course emphasise the independence of IPID?

MR ROBERT JOHN McBRIDE: Indeed Chair.

ADV PAUL JOSEPH PRETORIUS SC: Under your watch how important was it and why is it important that IPID be independent?

MR ROBERT JOHN McBRIDE: Well essentially the investigative oversight over the
20 South African Police Services and Municipal Police deals with their conduct and holding them to account for their conduct both in terms of misconduct and alleged criminal activities. And very often there is an automatic natural tension between the intentions of the Minister which is to get – to provide policy and direction for the police service so they can carry out their work effectively and at the same time with the work that IPID does very often we expose and take to court or to take to disciplinarians after the

gathering of evidence information which would throw the police in a negative light including issues relating to criminality or misconduct. That necessarily puts the Minister and the Executive Director of IPID with some kind of institutional tension in the way it is established. On previous occasions we have – there has also been interference and undue interference and the results of various court cases which culminated in the constitutional court including those that relate to DPCI are inter-connected to what independence means; what is the extent of the independence and it has been more recently defined with the corrupt – more recently defined; more acutely with the corruption watch judgment from the constitutional court on matters relating to the

10 National Director of Public Prosecutions.

ADV PAUL JOSEPH PRETORIUS SC: Apart from the uncertainty related to your present status, for what period were you the Executive Director of IPID?

MR ROBERT JOHN McBRIDE: Chair it was for – I was nominated and confirmed by the Minister and confirmed by Parliament for a period of five year which is linked to the legislation as it stands now.

ADV PAUL JOSEPH PRETORIUS SC: Oh is that from 2014 to 2019?

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: How – during your watch how large or what was the staff compliment of IPID?

20 **MR ROBERT JOHN McBRIDE:** At all relevant times Chair the staff compliment was between 380 and 400 depending on people leaving a vacancies. So roughly in that range 380.

ADV PAUL JOSEPH PRETORIUS SC: And of that staff how many investigators were there?

MR ROBERT JOHN McBRIDE: Of that Chair is about 260 to 270 investigators at all

relevant times.

ADV PAUL JOSEPH PRETORIUS SC: And I understand that the staff compliment including investigators of IPID are spread and located in all provinces?

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And the head office of IPID is in Pretoria?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Alright. To whom would you as an Executive Director report both strategically and functionally? If you could explain the distinction between the two reporting lines of which we are now aware to the Minister of Police on
10 the one hand and to Parliament on the other?

MR ROBERT JOHN McBRIDE: Strategically and administratively it would be to the Minister of Police and in terms of accountability and expenditure of funds and oversight and accountability on how we carried out our functions it would be to Parliament. In terms of accountability also we have the Auditor General, Public Service Commission, Public Service and Administration.

ADV PAUL JOSEPH PRETORIUS SC: SCOPA? The Select Committee on Public Accounts?

MR ROBERT JOHN McBRIDE: Absolutely Sir. And in fact in any committee of the – Parliament could call us in to – to account to them.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Is there a Portfolio Committee to which you report?

MR ROBERT JOHN McBRIDE: There is a Portfolio the Parliamentary Committee and Police.

ADV PAUL JOSEPH PRETORIUS SC: And how often are you required to report to that committee?

MR ROBERT JOHN McBRIDE: I would estimate at least twice a month from experience off the top of my head but quite often.

ADV PAUL JOSEPH PRETORIUS SC: The IPID Act if we may refer to it as such came into effect I understand on the 1 April 2012?

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Is your budget accounted for separately from that of the police budget?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And IPID succeeded the former Independent
10 Complaints Directorate, am I correct?

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Would you for the benefit of the Chair and other interested parties just try and give some practical examples of the work that IPID is mandated to do?

MR ROBERT JOHN McBRIDE: Thanks Chair. Under Section 28 there are number of misconduct / criminal aspects which gives specific mandate to us which includes assault by a police officer. Includes death whilst in detention, death by police action, rape by a police officer, rape whilst in custody, that is in police custody, corruption and then there is Section 28(2) which deals with systemic corruption and there is a Section
20 under 29(1)H which makes provision for investigations to be initiated upon complaint from the Minister or a MEC or initiated on the instance of the Executive Director on any matter. So 28(1)H allows for IPID to initiate investigations.

ADV PAUL JOSEPH PRETORIUS SC: Alright if we may then turn to Exhibit Y Annexure A on page 34 of bundle YA. Page 35 that is the Independent Police Investigative Directorate Act. For the sake of completeness I would like to refer to you

certain sections of that Act and as your responsibilities will become the subject matter of your evidence in due course if we could refer to Section 7.

MR ROBERT JOHN McBRIDE: I have it here.

ADV PAUL JOSEPH PRETORIUS SC: That highlights or stipulates rather the responsibilities of the Executive Director. Section 7.2 what does that provide?

MR ROBERT JOHN McBRIDE: The Executive Director's responsible for the appointment of Provincial Heads of each province as contemplated in Section 22.1

ADV PAUL JOSEPH PRETORIUS SC: And Section 3A/

MR ROBERT JOHN McBRIDE: The Executive Director must appoint such staff as may
10 be necessary to enable the Directorate to perform its functions in terms of this act.

ADV PAUL JOSEPH PRETORIUS SC: If we could just pause there because it is important in relation to the independence of IPID. Who appoints the Executive Director?

MR ROBERT JOHN McBRIDE: The Executive Director is appointed ultimately by Parliament but he is nominated at this stage by the Minister

ADV PAUL JOSEPH PRETORIUS SC: Alright. And apart from the appointment of the Executive Director all appointment subordinate to the Executive Director are made by whom?

MR ROBERT JOHN McBRIDE: By the Executive Director ultimately.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And I take it that that is one of the mechanisms utilised to ensure the independent of IPID from other Law Enforcement Agencies and particularly the South African Police Service?

MR ROBERT JOHN McBRIDE: That is correct Sir. In Section 4.2 of the Act it is quite clear that IPID is separate from the South African Police Services.

ADV PAUL JOSEPH PRETORIUS SC: Perhaps we should go there because it is

relevant. Section 4 of the IPID Act reads:

“The Directorate functions independently from the South African Police Services.”

And 4.2 reads:

“Each organ of state must assist the Directorate to maintain its impartiality and to perform its functions effectively.”

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Those provisions are relevant to the Constitutional Court judgment to which we will refer later. Then Section 7.4 having
10 conducted its investigations in relation to conduct of members of the South African Police Service what happens to the investigation and who determines the outcome of the investigation?

MR ROBERT JOHN McBRIDE: Ultimately the decision to prosecute or not prosecute rests with the National Prosecuting Authority but after investigation and accumulation of evidence it would then – is then handed directly to the National Prosecuting Authority.

ADV PAUL JOSEPH PRETORIUS SC: Section 7.4 then reads:

“The Executive Director must refer criminal offences revealed as a result of an investigation to the National Prosecuting Authority from criminal prosecution and notify the Minister of such referral.”

20 Now firstly the import of that particular section and the duty placed expressly on the Executive Director becomes relevant later in your evidence I understand?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And it seems that there should be a record of all such notifications to the sitting Minister of Police of any referrals from IPID to the NPA. Correct?

MR ROBERT JOHN MCBRIDE: That is correct sir.

ADV PAUL JOSEPH PRETORIUS SC: If we can go then to Section 24. Section 24 deals with the investigative powers. Again these will become relevant later in evidence. Would you perhaps please read Section 24.1 and two onto the record and make any comment you wish in relation to those sections?

MR ROBERT JOHN MCBRIDE: Okay. 24.1:

10 “An investigator may subject to the control and direction of the
Executive Director or the relevant provincial head exercise
such powers and must perform such duties as are conferred or
imposed upon him or her by or under this Act or any other law
and must obey all lawful directions which he or she may from
time to time receive from a person having authority to give such
directions under this Act.”

And in terms of 24.2:

20 “An investigator has the powers as provided for in the Criminal
Procedure Act, Act 51 of 1977 which are bestowed upon a
Peace Officer or a police official relating to the investigation of
offences, the ascertainment of bodily features of an accused
person, the entry and search of premises, the seizure and
disposal of articles, arrests, the execution of warrants, the
attendance of an accused person in court.”

ADV PAUL JOSEPH PRETORIUS SC: To summarise although IPID is there to exercise oversight over members of the South African Police Services.

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Investigators who are seconded to IPID or who

are employed by IPID have police powers in terms of the Criminal Procedure Act?

MR ROBERT JOHN MCBRIDE: Indeed that is.

ADV PAUL JOSEPH PRETORIUS SC: If we could go then to Section 28 which is on page 46 of Annexure A. Section 28 delineates the matters of the type of matters that are to be investigated by IPID. You have mentioned some. The complete list is there in Section 28. Would you read those onto the record please?

MR ROBERT JOHN MCBRIDE: Thank you. In terms of 28.1A:

10 “The Directorate must investigate a, any deaths in police custody, deaths as a result of police action, any complaint relating to the discharge of an official firearm by any police officer, rape by a police officer whether the police officer is on or off duty, rape by any person while that person is in police custody, any complaint of torture or assault against a police officer in the execution of his or her duties, corruption matters within the police initiated by the Executive Director on his or her own or after the receipt of a complainant from a member of the public or refer to the Directorate, by a Minister, an MEC or the Secretary as the case maybe.”

The Secretary here being the Secretary for Police.

20 And then H:

“Any other matter referred to as a result of a decision by the Executive Director or if so requested by the Minister and MEC or the Secretary as the case maybe.”

And then Section 28.2:

“The Directorate may investigate matters relating to systemic

corruption involved in the police.”

ADV PAUL JOSEPH PRETORIUS SC: Before we move to the regulations insofar as they may be relevant do any or does any other Law Enforcement Agency have the power or does any Minister particularly the Minister of Police have the power to control or exercise any influence over IPID investigations?

MR ROBERT JOHN MCBRIDE: Absolutely not Chairperson.

ADV PAUL JOSEPH PRETORIUS SC: In paragraph 7 you say that there are regulations which govern amongst other things the duties of investigators. Would you tell the Chair please what investigators must do in relation to investigations and the reporting of the outcome of their investigations please? Again this is a matter relevant to your evidence.

MR ROBERT JOHN MCBRIDE: In – in terms of the regulations the investigator must submit the relevant evidence to his supervisor which ultimately will become the Provincial Head of the Executive Director before it is signed off to the National Prosecuting Authority.

ADV PAUL JOSEPH PRETORIUS SC: If I may refer you to page 61 of Annexure A to your statement. Sorry it is Annexure B now. We have moved to Annexure B which is apparent from page 57 are the regulations governing the operation of IPID. Do you see that on page 57?

MR ROBERT JOHN MCBRIDE: Yes, I have it.

ADV PAUL JOSEPH PRETORIUS SC: We can go to page 61. Regulation 5(3)(i), if you would just read that onto the record and make any comment you wish to in that regard. I suppose we should read the introductory portion of the previous page next to the number three. This is Regulation 4(3) which reads:

“An investigator designated in terms of Sub Regulation 2 must

as soon as is practicable but within 24 hours of designation.”

And then we get to (i).

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: If you could just deal with that please.

MR ROBERT JOHN MCBRIDE: Thank you Chair and it reads as follows:

10 “After collection all evidence statements and technical or expert
reports if applicable submit a report on the investigation of the
death containing recommendations regarding further action
which may include disciplinary measures to be taken against a
member of the South African Police Service or the Municipal
Police Service or criminal prosecution of such a member to the
Executive Director or the relevant Provincial Head as the case
maybe.”

ADV PAUL JOSEPH PRETORIUS SC: Now this deals specifically with deaths, but in
relation to other matters investigated by IPID do similar provisions apply/

MR ROBERT JOHN MCBRIDE: Absolutely.

ADV PAUL JOSEPH PRETORIUS SC: So if an investigator conducts an investigation
what is the reporting line and brief?

20 **MR ROBERT JOHN MCBRIDE:** It is to the – if it is within a province and it is initiated
in a province or delegated to a province to deal with it would be the Provincial Head
who then signs it off for submission to the National Prosecuting Authority. If it is
initiated at National or in certain circumstances covers more than one province it would
come to the Executive Director ultimately and signed off for submission to the National
Prosecuting Authority.

ADV PAUL JOSEPH PRETORIUS SC: Before we leave these general matters there is

another matter about which I would like to ask and obtain information for further evidence that will be led. We know that Crime Intelligence falls within the South African Police Service organisation?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And we know that IPID may investigate conduct within the South African Police Service?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Am I correct that IPID has the power to investigate conduct within Crime Intelligence.

10 **MR ROBERT JOHN MCBRIDE**: Absolutely sir.

ADV PAUL JOSEPH PRETORIUS SC: We will lead evidence in due course concerning conduct within Crime Intelligence but in the course and conduct of your duties as Executive Director of IPID did you come across any particular problem with relation to your investigations into Crime Intelligence and if you could tell the Chair briefly about that please?

MR ROBERT JOHN MCBRIDE: Thank you. Chair to be accurate any request for information from Crime Intelligence except for a brief period is generally met with resistance and very often Crime Intelligence will resort to speeches, classifications of documents in Contravention of the Policy on Minimum Information Security Standards

20 which forbids the usage of classification to cover up maladministration or criminal conduct and as an example I can give. In an investigation of abuse of state resources a senior officer who was not entitled to make use of an official SAPS vehicle made use of such a vehicle and it was reported to us and we investigated. Upon the investigators requesting the log book of the vehicle to ascertain the days and number and stated purpose of usage it immediately became a classified document. As to who classified

the document for what purpose and when upon query telephonically investigators were told well that is also classified and this has resulted in a matter which on classification which is before the High Court to deal with this issue once and for all because this issue will bedevil future investigations including investigations where there are Commissions of inquiry. As legislation and penalty and sanction for spurious classifications will go – continue to go unpunished.

ADV PAUL JOSEPH PRETORIUS SC: Mr McBride was this an isolated example? Was it more than isolated? In other words could you just give the Chair some indication of how often this occurred?

- 10 **MR ROBERT JOHN MCBRIDE:** Chair it is not isolated. It is the general pattern including even cooperation. For a brief period there was cooperation from the Acting Division Commissioner of Crime Intelligence Mokushane who had instructed people to cooperate with us in terms of the law but that was only for a few months. Generally there is a problem and to – there is actually what we call in IPID a “blue curtain” which I think firstly the – the South African Police Services one of the oldest organisations in South Africa if not the oldest and as such it has old customs, traditions and practices and that generally makes any organisation resistant to any change. In particular for a long time there was – there was not any effective oversight over the South African Police Services in its various forms and developments. The result is that there is an
- 20 instinctive resistance to any oversight or query or to hold account. It is particularly so within Crime Intelligence which has part of their mandate as with other countries the cultivation of sources, informers and in the context of dealing with organised crime who are generally secretive to be able to infiltrate these criminal syndicates that they are required to have some element of secrecy. That is – is understandable and that is the purpose of the usage of the Secret Service Account of Crime Intelligence. More often

than not even before my appointment to IPID there is evidence and history of cases where there has been rampant abuse and a sense of impunity in the exercise of the usage of the Secret Service Account of Crime Intelligence and that also goes towards the classification. So there is what is termed in auditing “limited assurance” or “no assurance” given to how funds are spent, whether there is value for money, whether they spent correctly or they have been abused fraudulently. It is – it is not transparent at all. There are a number of cases which were initially handled by DPCI and then jointly between ourselves and DPCI and one of those cases off the top of my head is involving a case where a prosecution of the Former Divisional Commissioner of Crime
10 Intelligence had to be stopped midway because there was a refusal to declassify documents. What is ironic about that and indicates the frivolity of that decision is the fact that the same evidence that was suddenly classified for the criminal case was used in a disciplinary to get one of the co-conspirators dismissed. So the evidence has been – it is out there in public but it is for a technical matter. On a number of cases we have even written to the Minister – the present Minister - to assist with the declassification process upon which we were sent to the Inspector General of Intelligence who has the mandate to look at any document and [intervenes].

ADV PAUL JOSEPH PRETORIUS SC: This is the point I wanted to get to. I am sorry for interrupting you.

20 **MR ROBERT JOHN MCBRIDE:** My apologies.

ADV PAUL JOSEPH PRETORIUS SC: To deal with that particular aspect of evidence. Were these reported to your oversight institute that is the Director General of Intelligence and what happened as a result thereof?

MR ROBERT JOHN MCBRIDE: Yes. Thank you Chair. In terms of the lack of clarity or if I can venture to say the wilful lack of clarity and classification and resistance to

oversight the IPID and Inspector General of Intelligence decided to sign a MOU to ensure cooperation between the two bodies which have oversight roles over Crime Intelligence and from IPID the wider SAPS. Out of the MOU – the MOU made provision for a task team – a joint task team to look at matters in particular abuse of the fund and corruption within Crime Intelligence. As such I am confident to say that a litany of corruption was brought to our attention through the collaboration with the Inspector General of Intelligence. It also became known to me that the Inspector General and even previous ones have written what they call a “certificate” on the state of affairs of the use of the Secret Service Account and none of that was taken seriously in terms of

10 consequence management for officers who were involved in that. For example some people would in charge of an urgent network and then according to the allegations and evidence and knowledge from collaboration of the IGI would then employ members of their family as agents and draw off a salary or an agent fee or source fees from the Crime Intelligence Fund.

ADV PAUL JOSEPH PRETORIUS SC: Mr McBride without asking you for a definitive answer in relation to statistics in relation to a successful or intended prosecutions do you know of any successful prosecution – criminal prosecution – arising out of the circumstances to which you have just referred the Chair?

20 **MR ROBERT JOHN MCBRIDE:** No sir. At this point I have – I have no knowledge of a prosecution.

ADV PAUL JOSEPH PRETORIUS SC: Right.

CHAIRPERSON: Mr McBride as I understand your evidence – part of your evidence – that you have given in regard to the – to Crime Intelligence it is that you have instances where there has been resistance to giving information to IPID when IPID has certain investigations to conduct and as I understand in some cases you might be able to go

further and say not just resistance but actually attempts to frustrate those - the investigations. Now is that happening or has that been happening despite the provisions of Section 4 of the Act that Mr Pretorius quoted earlier on which says in part:

“Each organ of state must assist the Directorate to maintain its impartiality and to perform its functions effectively.”

MR ROBERT JOHN MCBRIDE: Chair that cooperation which should be forthcoming has been in many specific especially senior police ranks being resisted, being.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Obstructed.

10 **CHAIRPERSON**: Hm.

MR ROBERT JOHN MCBRIDE: There is a willingness to cooperate for lower ranks.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: And to assist but the moment it reaches a certain level there is resistance.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: And very often we have to resort to Section 205 summonses.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: To obtain information.

20 **CHAIRPERSON**: Hm.

MR ROBERT JOHN MCBRIDE: And in a very recent one which is emanating from 2017 it is claimed that the issues in which we require information about and namely in this case what was the purpose of a meeting. It is – there was refusal to give it to us and then we applied for a 205. It was granted and a number of senior police officers then went to the High Court to oppose the 205 hearing that was imminent. It was about

to happen.

ADV PAUL JOSEPH PRETORIUS SC: That is 205 of the Criminal Procedure Act?

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: That is correct. That is a matter of litigation at the moment. Where even from the side of the Inspector General of Intelligence on that matter and other related matters the Inspector General has provided an information note to the Minister of Police that none of the matters that were raised in the information note that I had sent to the Minister of Police on these classification matters if declassified holds any threat – will not cause any threat to sources employed by

10 Crime Intelligence nor for the security of the state and in fact from the assessment of the Inspector General of Intelligence that the matters referred to appear to be about procurement only and the activities constitute maladministration and possibly criminal activity. So we have even gone to lengths to have joint workshops at the insistence – instance and coordination of the IGI with Crime Intelligence and IPID to resolve the issues of mandates and we have discussed these issues. We still have not had joy. There is a kind of impasse by legislation and by practice where the person to declassify would be the head of an agency and the agency in this case in terms of the Intelligence Oversight Act would be the Head of the Service. So the Act makes it quite clear that in terms of Crime Intelligence it will be the Divisional Commissioner. Yet the practice in

20 SAPS is that power is assumed by the National Commissioner. Whereas the Act is quite clear that the National Commissioner for this purpose is to – his responsibility is to deal with administration and financial issues as it relates to Crime Intelligence and that the Head of the Service in terms of the definition is the Divisional Commissioner. Yet there seems to be a reluctance by the Divisional Commissioner to utilise his powers to declassify.

ADV PAUL JOSEPH PRETORIUS SC: We may just summarise that point you just made. It is that people who may not independent or impartial in relation to a particular mechanism used to restrict the flow of information in particular classification of documents is entrusted with that very duty.

MR ROBERT JOHN MCBRIDE: Sorry.

ADV PAUL JOSEPH PRETORIUS SC: So if you – let me put it another way. You are investigating.

MR ROBERT JOHN MCBRIDE: Ja.

10 **ADV PAUL JOSEPH PRETORIUS SC:** In your IPID capacity misconduct within the police. Documents are classified. You – your evidence is to obstruct the free flow of information to IPID.

MR ROBERT JOHN MCBRIDE: Yes sir.

ADV PAUL JOSEPH PRETORIUS SC: In order to breach that barrier you need the permission of the very organisation that you are investigating?

MR ROBERT JOHN MCBRIDE: Indeed sir. That is the – the problem we experience regularly.

CHAIRPERSON: Hm.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Alright. If we may then move onto page 3 of your statement where you give an overview of the nature and purpose of the evidence that you are giving from a factual point of view.

MR ROBERT JOHN MCBRIDE: Should I go ahead?

ADV PAUL JOSEPH PRETORIUS SC: Yes please. Just deal with the points you make on page 3 from paragraph 9 and following.

MR ROBERT JOHN MCBRIDE: Okay. The purpose of my evidence before the Commission to assist the Commission is to express my own personal experiences as

Executive Director of IPID what I observed and what evidence brought to light a number of litigations, court cases, judgments have indicated and led me to firmly believe that there was an attack on anti-corruption institutions and that my suspension on 25 March 2015 was part of that process to take control of independent anti-corruption bodies and remove the heads by suspension, spurious disciplinaries and then to supplant them with compliant people who would not carry out their task diligently and in particular.

ADV PAUL JOSEPH PRETORIUS SC: If we may but before you go on Mr McBride may we just highlight two features of your evidence. You have told the Chair that there
10 is a general issue that you wish to address and that is the weakening of an interference with oversight bodies and the... (break in audio – sound engineer taken ill)

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Thank you, you may proceed Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair. Mr McBride you were about to tell the Chair of your response to the potential criticism of your evidence that you have a personal axe to grind as a result of your treatment over the past year or so, and that it doesn't really fit within the terms of reference of the Commission, which is investigating the effectiveness of the law enforcement agencies including oversight
20 bodies and dealing with State Capture, corruption and fraud.

MR ROBERT JOHN McBRIDE: Thanks Chair, in response to that I will say there's a litany of cases, litigation, judgments, persecution, not only to myself whoever was in that position either had to succumb to the interference or stand up and what I am expressing here is backed up by evidence, affidavits, dockets and judgments, all the way up to the Constitutional Court, so it's, whilst I'm expressing it personally it's as in

my professional capacity as Executive Director and what the Department experienced and I also look at it not in isolation to IPID but in relation to what was happening in other departments.

ADV PAUL JOSEPH PRETORIUS SC: If your evidence which you will give indeed is accepted by the Chair one might ask the question why would anybody be interested in weakening or hollowing out or reducing the effectiveness of an oversight body such as IPID, whose interests would it serve?

MR ROBERT JOHN McBRIDE: Okay, Chairperson in answer to that question a few years ago I came to the conclusion and expressed myself publicly on that but I had also
 10 engaged with other affected persons from other organisations and the public statement I made was that it's to cover crimes that have been committed before, crimes being committed in the present at that time and crimes that were planned to take place in the future and as a result of those discussions I found out I was not the only person that has come to that conclusion.

A meeting was arranged with members who had also suffered the same persecution from SARS, from DPCI, and from IPID and where we discussed these matters, we had our meeting formally with interested parties and NGO's at the Nelson Mandela Foundation in which we expressed our concerns on what was taking place in the country. In fact at a certain stage myself, General Dramat and Ivan Pillay released
 20 a joint statement to that effect, that this is concerted effort to weaken anti-corruption bodies and there can be no reasonable explanation why you would want to weaken anti-corruption and crime fighting bodies except a nefarious one, and in order to succeed at what you are doing you would have to – the word obviously is used from the Commission now, Capture the State and Institutions of the State. At the time we used the term “silent coupe” or “political gangsterism” was the two terms we used then within

our affected circles.

ADV PAUL JOSEPH PRETORIUS SC: So now Mr McBride you will relate to the Chair those circumstances which you personally experienced which together with other information which you have learnt over time has led you to draw the conclusions that you have drawn and will draw at the conclusion of your testimony.

CHAIRPERSON: Before you do that Mr McBride do you know whether that statement that you and Mr Pillay released is in one of the bundles or if not that you can still get a copy?

MR ROBERT JOHN McBRIDE: I'm not certain Chairperson but I'm sure a copy of that
10 can be obtained, it's in the archives somewhere.

CHAIRPERSON: Can be found, yes okay I think it would be helpful to – if it can be found. Do you have a recollection of around when it was when you and Mr Pillay released that statement.

MR ROBERT JOHN McBRIDE: It was 20 – if I can estimate 2015/2016.

CHAIRPERSON: Okay no that's fine. Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Was there any response to the statement of which you're aware, public response or official response?

MR ROBERT JOHN McBRIDE: No I'm not aware of any public responses; I'm not on
20 social media so I was not aware of the general sentiment in regard to that but privately people I knew agreed to it or said well it gets one thinking and then the pattern was a similar pattern in all these institutions and we had identified when the affected group came together there be some leak, some investigation, something goes to the media, suspensions and disciplinary on some spurious ground and immediately new people appointed, in acting position and they immediately go about restructuring the departments of which they have now acting control over and as a result in the IPID also

interference with investigations. In one instance and the same boat in IPID, DPCI and in SARS the same narrative comes out and it goes like this, while since the change or the removal of so and so performance has gone up, so you heard it from SARS which is not my department, you heard it from – in that case it was the former Commissioner Moyane, in the instance of Nklemesa in DPCI it's the same thing, where it comes to IPID in fact we now have evidence that statistics were jippo'd to give the indication of improvement in performance and indeed the acting executive director Gamanjane told Parliament that there's been an improvement in the performance of IPID.

ADV PAUL JOSEPH PRETORIUS SC: You will deal with that matter expressly in t
10 detail in due course.

MR ROBERT JOHN McBRIDE: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: So in paragraph 10 you say that you will explain your suspension on 25 March 2015 and you will also deal with ...(intervention)

CHAIRPERSON: 20 Mr Pretorius, I think you said 25, it's 20 March.

ADV PAUL JOSEPH PRETORIUS SC: To be corrected Chair in a supplementary affidavit, the correct date is 25th.

CHAIRPERSON: Oh your one has already been corrected, okay.

ADV PAUL JOSEPH PRETORIUS SC: What is the correct date?

MR ROBERT JOHN McBRIDE: It's 24th of 25th, it's not the 20th. It's later on Chair, it
20 mentions in the statement the correct date.

CHAIRPERSON: Okay no that's fine.

ADV PAUL JOSEPH PRETORIUS SC: We will deal with that appropriately Chair.

CHAIRPERSON: Yes, okay alright.

ADV PAUL JOSEPH PRETORIUS SC: You say you will also deal with suspensions and transfers of persons other than yourself, just explain that in very, very broad

headline terms to the Chair please.

MR ROBERT JOHN McBRIDE: Thanks Chair. In essence people who would be for example specialists in a particular field, like Chief Financial Officer, would be transferred to head investigations in a province and a Chief Financial Officer has statutory powers and statutory obligations and in this particular instance has no – does not have any investigative criminal or police investigative capacity or training, it's not that way orientated, the person is oriented towards financial matters, then gets put to head a province as a Provincial Head of Investigations. Similarly a head of legal services whose expertise, the person is a jurist, an advocate, that person is then
10 transferred to head another province and for investigations as a provincial head, and there are quite a number of them and I have noted them down in – during the preparation of this statement.

ADV PAUL JOSEPH PRETORIUS SC: You will give detailed examples at the end of your statement?

MR ROBERT JOHN McBRIDE: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: But in general you are saying that appointments, dismissals, transfers had a particular effect on IPID, what was that effect?

MR ROBERT JOHN McBRIDE: Well the immediate effect was to make it
20 dysfunctional, one of the instances I was covering earlier is the provision of special closure in the SOP's was abused to prematurely close cases or bring them to finality so that it can appear that IPID has gone through all these cases at rapid speed.

ADV PAUL JOSEPH PRETORIUS SC: Yes if I may just request that we leave that issue to where you will deal with it in detail but basically what you are saying is that statistics were manipulated.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: But we will come to that if we may in its proper time, I don't want to prevent you from dealing with it at all. Your suspension was lifted ... (intervention)

CHAIRPERSON: Well maybe before you proceed Mr Pretorius I just want to have clarification on this you said something like the immediate effect was I think to make IPID dysfunctional but I just want to draw your attention because that seems to me to suggest that whatever those people did who were effecting these transfers or were making decisions on these transfers and suspensions and so on that it did result in IPID
10 being dysfunctional as opposed to saying their intention or motive was to make IPID, to render IPID dysfunctional, but whether they succeeded or not might be something else, I just want to check what you have in mind when you articulate that.

MR ROBERT JOHN McBRIDE: Thank you Chair. Key investigations suddenly stagnated, we also had the situation, which I will deal with later where to indicate that it was orchestrated we had at least three, possibly four members of Crime Intelligence being appointed to IPID and getting involved immediately with investigations. Some of these Crime Intelligence officials then recycled themselves later, after our return they leave IPID, they go back to Crime Intelligence and other units and are involved in the process of porting investigations, the exact same people who came from SAPS Crime
20 Intelligence, coming to IPID, after we are on suspension and on return they leave.

CHAIRPERSON: Okay, no that's fine, I think from what you have said and later on you can elaborate if you want to, from what you have said at least I get the impression that at some stage there may have been an effect up to a certain level of making IPID dysfunctional. Ja, okay, thank you.

ADV PAUL JOSEPH PRETORIUS SC: Your suspension was ultimately lifted, is that

correct?

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: Was that on the 6th of September 2016?

MR ROBERT JOHN McBRIDE: That's correct sir.

ADV PAUL JOSEPH PRETORIUS SC: And you had then been suspended for approximately 18 months?

MR ROBERT JOHN McBRIDE: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: What led to the lifting of your suspension?

MR ROBERT JOHN McBRIDE: A number of issues, one challenging the Ministers' powers in terms of how they act to unilaterally suspend the Executive Director of IPID, to unilaterally begin a disciplinary process and we went initially to the Court on an urgent basis and at that stage the urgency was not accepted, the urgency argument and we then went on the Pod B to High Court in which the High Court indeed found that the Minister did not have unilateral powers as purported in the Act as it stood then.

ADV PAUL JOSEPH PRETORIUS SC: And what, if I may just interject there, we will come to the judgment of Bosielo, AJ in due course, in detail, but what informed that judgment and the principle that underlay the reasoning in that judgment was in fact the independent of IPID from the Police Department hierarchy, including the Minister, am I correct?

20 **MR ROBERT JOHN McBRIDE:** That is correct, it's the independence of IPID from SAPS but independence in its own right and in addition the independence of the Executive Director, because the independence also manifests itself in the head of the institution, and this has been as I indicated earlier more acutely defined in the more recent judgment from the Constitutional Court on what independence means, what's the extent of it.

ADV PAUL JOSEPH PRETORIUS SC: Right.

MR ROBERT JOHN McBRIDE: For a head of an independent organisation.

ADV PAUL JOSEPH PRETORIUS SC: You refer in paragraph 12 again just in general terms and perhaps we should keep it at that level because there will be further evidence from those involved, to others who suffered the same fate or the same attempted fate as you did, just names those people please?

MR ROBERT JOHN McBRIDE: Well it would be I would include General Anwar Dramat who was the head of DPCI, and then General Shadrack Sibiya who was the Provincial Head of DPCI in Gauteng and then General Johan Booysen who was the
10 Provincial Head of DPCI in KwaZulu Natal.

ADV PAUL JOSEPH PRETORIUS SC: The criminal charges that were brought against General Sibiya and Dramat against your IPID colleagues who were involved with you in the narrative that you are about to relate and yourself what happened to those charges ultimately?

MR ROBERT JOHN McBRIDE: The charges were withdrawn because according to the Prosecutor there isn't evidence to sustain the prosecution which obviously left us dumbfounded because we couldn't explain why we were arrested, and prosecuted if no evidence existed why it was the priority crimes litigation unit that was involved in the prosecution of the matter whereas the charges by every stretch of the imagination
20 would amount to fraud and so there was from the onset no case, no evidence and in addition to that there was never in terms of proper allegations or accusations the accused people are supposed to receive clear indication on what evidence they are being charged on, the basis for the allegation. Certain aspects of the docket which are normally given to other accused were refused to us, we find out also the vindictiveness of the situation where the complainant almost by proxy in the case is – and this was

after the High Court victory in 2015 December, it's actually the Minister himself who was the complainant.

ADV PAUL JOSEPH PRETORIUS SC: Alright, we will come to the detail in due course, if I may just keep to the scheme of your statement which is at this stage just an overview of what you will testify to. In paragraph 14 from your own knowledge or observation in your position as IPID head you mentioned as contrasted with the prosecutions that did take place or attempted prosecutions that did take place, and we're referred to some of those in the opening statement before the Chair, there were prosecutions that did not take place which you say ought to have at least found their way to the court at some stage. Just highlight those please for the Chair.

MR ROBERT JOHN McBRIDE: That is correct Chairperson the one particular case is related to procurement during the 2010 World Cup and specifically a case of bribery to in particular Major General Booyesen, well an attempted bribery because the suspects were arrested, a policeman by the name of Toshani Pandey were – all evidence was provided and up till today the person hasn't been prosecuted on the bribery case. General Ndululi who I referred to earlier about the curious case of the classification of really – a document which should be already public, then General Pathlane, General Mabula, General Mabula's is in particular serious because it involves a series of torture incidents including torture of policemen following a robbery from a police station of exhibits which came out of a cash in transit heist and a number of people were tortured in order to solve the case of the missing money from the police station.

These cases come from 2010/2011, there was initially prosecution started then mysteriously withdrawn until we then queried it and we have a paper trail of querying it and raising it with the then National Director of Public Prosecutions as to why these matters, which occurred mainly in the Northwest at that stage have not been

re-enrolled. Now in fairness National Prosecuting Authority at that stage had decided to prosecute the suspects of a unit which was headed by General Mabula in three different locations and three different jurisdictions within the Northwest. The matters were then in 2011, I'm not sure, or latest 2012, provisionally withdrawn to centralise the cases and the cases involved assault GBH and if the Act had been passed by then it would have been clearly torture. There is also a case where a suspect died where by all accounts the evidence indicates that this unit was responsible including recordings of people admitting to involvement in torture and we enquired and we continued engaging with the National Prosecuting Authority to get these matters going.

10 Eventually a case was enrolled but out of the seven suspects only two are on trial for that – for all intents and purposes the torture.

ADV PAUL JOSEPH PRETORIUS SC: Alright those are some examples that you have to illustrate the point that you're making. In paragraph 15 Mr McBride you say in my view that both the prosecutions and the non-prosecutions to which you're referring is the *modus operandi* that has been used to capture law enforcement agencies including the National Prosecuting Authority and has led to a weakened criminal justice system, that's your conclusion.

MR ROBERT JOHN McBRIDE: That's correct.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And the purpose of your evidence and the evidence of others is to ask the question to the Chair and for the Chair to make findings and recommendations in regard to the issues is to whether the facts to which you and others will testify support that thesis or do they not support that thesis?

 If we may then move to a new topic, DCJ I am told that it's almost one o'clock, the next paragraph will be quite a lengthy topic with a long exposition I am sure.

CHAIRPERSON: Okay, we will take the lunch adjournment and we will resume at two o'clock, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: You may proceed Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair. Mr McBride before the long adjournment you spoke of an article that you presented to the media in I think in May 2016 it is that you authored together with Ivan Pillay and Anwar Dramat, do you recall that?

10 **MR ROBERT JOHN McBRIDE:** That is correct Chair it was a statement that we jointly released.

ADV PAUL JOSEPH PRETORIUS SC: Would you just look at the document now being shown to you please and identify that? We can then add it to the bundle and paginate it and refer to it later in your evidence if the need arises.

MR ROBERT JOHN McBRIDE: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Is that the article?

MR ROBERT JOHN McBRIDE: Yes I think this is it, yes.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

20 **MR ROBERT JOHN McBRIDE:** But a statement was released Chair and so I would imagine some of the aspects of the statement are included in here.

ADV PAUL JOSEPH PRETORIUS SC: Yes we will deal with matters which arise from this article in due course to the extent necessary and to the extent not already covered by your existing evidence. But as long as you have identified it we can then add it to the bundle.

CHAIRPERSON: But is the position that it is an article based on the statement and not

the statement itself or is it the statement that they released?

ADV PAUL JOSEPH PRETORIUS SC: Can you assist the Chair there please? Is this the statement you released?

CHAIRPERSON: Or you might need more time to have a look at the contents I am not sure.

ADV PAUL JOSEPH PRETORIUS SC: Or you – yes.

MR ROBERT JOHN McBRIDE: Chair it appears to the statement that we released.

CHAIRPERSON: Yes and – okay but you can confirm maybe tomorrow morning after you have read it to – once you are sure.

10 **MR ROBERT JOHN McBRIDE:** Thank you Chair.

CHAIRPERSON: Okay alright.

ADV PAUL JOSEPH PRETORIUS SC: So the question is, is the report before you a complete and accurate reflection of your statement or is your statement different in some respects? And if you could just have a look at it overnight and tell us tomorrow morning? Thank you.

MR ROBERT JOHN McBRIDE: Thank you Chair.

ADV PAUL JOSEPH PRETORIUS SC: We are at paragraph 16 of your statement Mr McBride. Would you tell the Chair of the circumstances referred there by way of background to what you have to say later?

20 **MR ROBERT JOHN McBRIDE:** Thanks Chair. So prior to my appointment in 2014 which was in March and unbeknown to me an investigation had culminated in a recommendation report that was made available to the prosecutor that was managing the case. And the case concerned rendition or the irregular or undocumented repatriation of Zimbabweans to their country of origin. And this statement included evidence in a docket and the opinion of the investigator. So unlike SAPS the practice

when I arrived at IPID was that in addition to evidence in a docket IPID investigators would make a recommendation report which is essence their opinion about the sum total of the evidence after assessing it.

ADV PAUL JOSEPH PRETORIUS SC: Right what were – what was the central allegation in the so called rendition matter and in the progress report which you say was issued before you arrived at IPID?

MR ROBERT JOHN McBRIDE: Thank you Chair. The key elements is that the very loaded term rendition was used and it was known and still is known as a rendition case which basically means from media in relation to in particular the USA of suspects being
10 un-procedurally detained and not taken to trial and in this instance the allegation was that General Dramat, Sibiya and other generals were involved in masterminding the illegal repatriation of Zimbabweans back to their country of origin. Specifically if we take the context of what it was called “to get them killed” on the other side by their own authorities.

ADV PAUL JOSEPH PRETORIUS SC: Right did this progress report include any recommendation in regard to Messrs Dramat and Sibiya?

MR ROBERT JOHN McBRIDE: Yes in the recommendation report there was in the 22 January 2014 report a recommendation that a number of general including Generals Sibiya and Dramat be prosecuted.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Right. What...

CHAIRPERSON: Let me just ask this before the next question from Mr Pretorius. I just want to understand what part is a crime or supposed to be crime? Would the position be that only the SAPS for example may repatriate undocumented foreigners or would the position be that it is either – it should either be SAPS or certain officials of the Department of Home Affairs and if it is done by somebody else then it is illegal or is the

position that somebody must give an instruction that they must be repatriated and in their absence of an instruction from a particular official then the repatriation is a criminal offence?

MR ROBERT JOHN McBRIDE: Thanks Chair. My understanding is that it has to involve Department of Home Affairs and in this particular instance as from memory the documentation which was used to process the individuals concerned as a falsified document. And so the repatriation and the Home Affairs documentation attached to that repatriation was falsified. In addition to that the people who were repatriated from memory were people who had been identified by Zimbabwean authorities that having
10 been involved in crimes in their country including the killing of a colonel within the Zimbabwean police. Now the allegations are that the Zimbabwean police as part of a cooperation agreement I am not sure whether it is a Bilateral or it is a SADC one at this stage entered the country to request assistance of SAPS to assist them locate where these people are presumably with the intention of – of bringing them to justice in Zimbabwe. So in the process people were arrested for context Chair this took place over about two weeks at least and I am just relying on memory. So it was a long process with lots of different people involved at different stages.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: And it involved Beit Bridge Border Post.

20 **CHAIRPERSON:** Okay. Okay thank you. I guess it must be that it is not everybody who can just identify somebody as an undocumented foreigner and drive him out of the border or get his or her friends to say let us drive them out it has got to be certain people who are authorised?

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: So we know thus far Mr McBride that prior to your appointment as the Executive Director of IPID in 2014 a report already existed?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: An IPID report? Well that is controversial. Let us just – let us just say a report?

MR ROBERT JOHN McBRIDE: Thanks Chair would you like me to ...

ADV PAUL JOSEPH PRETORIUS SC: No I would just want to summarise.

MR ROBERT JOHN McBRIDE: Okay.

ADV PAUL JOSEPH PRETORIUS SC: And you can comment at the end?

10 **MR ROBERT JOHN McBRIDE:** Okay.

ADV PAUL JOSEPH PRETORIUS SC: This report recommended that Messrs Dramat and Sibiya be criminally charged, do you recall the offence or the alleged offence?

MR ROBERT JOHN McBRIDE: I cannot remember specifically ...

ADV PAUL JOSEPH PRETORIUS SC: You have got it in paragraph 16 and you can refer to that. The last line.

MR ROBERT JOHN McBRIDE: Kidnapping and defeating ends of justice.

ADV PAUL JOSEPH PRETORIUS SC: Right. This report then would have been prepared under the executive directorship of your predecessor?

MR ROBERT JOHN McBRIDE: That is correct yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Who was that?

MR ROBERT JOHN McBRIDE: The predecessor was at the initial stage it was Mr Francois Beukman and after his resignation an acting executive director Ms Kuki Mbeki was the acting executive director.

ADV PAUL JOSEPH PRETORIUS SC: Right. At the time what positions did Messrs Dramat and Sibiya hold respectively?

MR ROBERT JOHN McBRIDE: General Dramat was the national head of the Directorate for Priority Crimes Investigation and General Sibiya was the Provincial Head.

ADV PAUL JOSEPH PRETORIUS SC: And ...

MR ROBERT JOHN McBRIDE: For Gauteng.

ADV PAUL JOSEPH PRETORIUS SC: Dramat left office or was removed from office in 2015, am I correct?

MR ROBERT JOHN McBRIDE: Yes he was forced out of office Chair.

ADV PAUL JOSEPH PRETORIUS SC: Who replaced him?

10 **MR ROBERT JOHN McBRIDE:** On an acting basis it was General Berning Mtlemeza.

ADV PAUL JOSEPH PRETORIUS SC: Alright. And General Sibiya what happened to him?

MR ROBERT JOHN McBRIDE: General Sibiya was – was dismissed.

ADV PAUL JOSEPH PRETORIUS SC: By whom?

MR ROBERT JOHN McBRIDE: It was by well General Mtlemeza and the process that unfolded from the disciplinary.

ADV PAUL JOSEPH PRETORIUS SC: Right. You were appointed Executive Director then on the 3 March 2014 you say in paragraph 17, is that correct?

MR ROBERT JOHN McBRIDE: That is correct Chair.

20 **ADV PAUL JOSEPH PRETORIUS SC:** What did you do on your appointment relevant to your evidence?

MR ROBERT JOHN McBRIDE: I requested an update on all what I refer to as or was referred to then as high profile cases. Cases involving senior policemen but also that had found expression in the media and also a briefing on cases that were underway and to get a status of where the cases are. And one of those cases was the so called

the rendition case.

ADV PAUL JOSEPH PRETORIUS SC: Right did you receive that briefing?

MR ROBERT JOHN McBRIDE: Yes I received the briefing from on a number of occasions in my first week from Mr Sesoko and Mr Ncuba and I also received a briefing on the Cater Mano case from Mr Angus and the briefing and the funny thing about both cases is the involvement of SAPS in both cases and in particular the rendition case which is pertinent here was that most of this – statements were taken by let me restate that. Firstly I became very concerned at the way in which the case reached IPID.

ADV PAUL JOSEPH PRETORIUS SC: Before you go there can we just clear up one
10 detail or two details. Messrs Ncuba and Sesoko are going to feature in the evidence and they will ultimately possibly also give evidence. Who were they – what positions did they occupy?

MR ROBERT JOHN McBRIDE: Mr Sesoko was the acting at that stage National head of investigations and Mr Ncuba was the acting provincial head of Limpopo province of IPID.

ADV PAUL JOSEPH PRETORIUS SC: Within IPID both of them?

MR ROBERT JOHN McBRIDE: Yes sir.

ADV PAUL JOSEPH PRETORIUS SC: Yes. You drew certain conclusions initially
20 from these briefings well what you were told over the course of the ensuing months is of relevance and we will deal with that in detail in due course. But your first observation having been briefed is what you were about to tell the Chair.

MR ROBERT JOHN McBRIDE: The first aspect it was very stark and of concern to me and having read the IPID Act and the provisions in the constitution prior to my interview process and appointment I became concerned by the fact that the docket had been prepared by crime intelligence and brought to the acting head of IPID who then handed

it to Mr Ncuba to indicate he must continue on this rendition case to work with crime intelligence and that he must circumvent reporting to Mr Sesoko who was his senior. And it indeed it was crime intelligence that the introduced Mr Ncuba to the prosecutor who became the prosecutor and involved in this case and involved in disciplinarians later Advocate Mosing. For me the issue was and I had raised it then, why is crime intelligence involved in your investigation? Are we not separate from SAPS now? From my understanding we are separate and independent. And immediately upon posing that specific question Mr Ncuba said to me, Boss it is the first time in my life I was called Boss. Boss let me be open with you from the beginning. I was concerned
10 and scared about this case from the day it was given to me. And when he said it led me to ask further questions and he elaborated and he clearly was still shaken up then. And I then enquired as to what is the status of the case? And he told me that there is some outstanding statements and there is a – a report on a statement analysis and cell phone records analysis on the suspects. And I enquired to him, what is the status of it? And he indicated that he has communicated with the NPA to add the new evidence which he has now obtained into the docket and that the NPA namely Advocate Mosing has referred him to the South Gauteng Director of Public Prosecutions Mr Chauke, Advocate Chauke to pick up the document and then add the additional evidence in.

ADV PAUL JOSEPH PRETORIUS SC: Alright. We perhaps going a little too fast
20 surprisingly into evidence which is later in your statement.

CHAIRPERSON: Can I just ask this Mr Pretorius before you proceed? When you were given the file or the report whatever you were given in regard to the rendition case when you wanted to be updated on the high profile cases. You have said that you – you have said that one of things that you picked up was the involvements – involvement of SAPS. Now I – was that – did you pick that up from the documents or is that

something that Mr Ncuba told you or is it both? In other words from the file or documents could you tell that SAPS had been involved or and or was it the investigator who told you?

MR ROBERT JOHN McBRIDE: Thank you Chair. The briefings that were given to me in the first week were all verbal, oral briefings. At a later stage when the new evidence was factored in I was given a report which I had to sign off on in terms of the regulations which is about the 8th or 9th April and that is when I saw a report.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: Ja.

10 **CHAIRPERSON**: So in the verbal reports you were told about the involvement of SAPS but when you saw the report there was also something to show that SAPS had been involved?

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Now you have stressed to the Chair the statutory framework and the various judgments to which you will refer that emphasise the importance of the independents of IPID. Not only is it important but it is indispensable to our law enforcement system. You have given that evidence. What function would criminal intelligence then which is part of SAPS and part of the regime
20 over which you have oversight, what function would criminal intelligence then have in preparing such a docket in conjunction with or for IPID?

MR ROBERT JOHN McBRIDE: Generally to my understanding CI would not prepare documents. CI acts in support of detectives and DPCI in assisting them with their investigations and providing intelligence in which they can take the investigations further. And CI to my knowledge at present would not be involved with IPID. But more

importantly Chair crime intelligence themselves it is unusual for them to be carrying dockets and taking statements from witnesses and suspects.

CHAIRPERSON: It is generally not their function?

MR ROBERT JOHN McBRIDE: That is correct Chair.

CHAIRPERSON: Hm.

MR ROBERT JOHN McBRIDE: It is not and very often they do not even testify in court in order to protect their identities so they can continue doing the work that they should. So all of this together and the way in which Ncuba expressed his concern at how the matter was handled initially made me to be on guard.

10 **ADV PAUL JOSEPH PRETORIUS SC:** A second issue arising from what you have just told the Chair may become important later when we talk of certainly the Workman's Report and your views on the Workman's Report. At the time of your first briefings you say they took a week or so?

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Where you were given verbal briefings.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: You say that you were told that certain information had to be added to or supplemented to an existing file/report/docket, what was the position?

20 **MR ROBERT JOHN McBRIDE:** It was to be added to a docket and around about the 9 March the status of the case I reported to the then Minister, Minister Mthethwa that it is in a process of being completed. There is these additional pieces of evidence that need to be added. So not only did I get a briefing I reported to the Minister what the status is and at some stage around about the same time I had requested a meeting with the Minister to give him a report on the status of all the cases. It was on my own

initiative and basically to – so that I know that I am on top of things and that I am dealing with it and that issues are speedily resolved.

ADV PAUL JOSEPH PRETORIUS SC: Alright before you go on. Just to revert to one point which may become important. The information was to be added to other information already in the possession of the NPA, am I correct?

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Does it not follow therefore from what you were told that there would have been a report already in possession of the NPA because otherwise it could not act? Am I correct, am I not correct?

10 **MR ROBERT JOHN McBRIDE:** There was not a reference to a specific report. At that stage I was not even accustomed to the process of writing a recommendation report which is the opinion of the investigator. From memory with similar matters it was a docket that is submitted without a recommendation report as detectives in the police do. So I was not aware of that specifically that there was a report. And what was being added and to what it was added in my understanding was a docket.

ADV PAUL JOSEPH PRETORIUS SC: Right. A docket containing certain information?

MR ROBERT JOHN McBRIDE: Yes and evidence.

ADV PAUL JOSEPH PRETORIUS SC: Because you know that in – I am sorry. You know that in the Workman's Report which we will deal with in due course.

20 **MR ROBERT JOHN McBRIDE:** Yes, yes.

ADV PAUL JOSEPH PRETORIUS SC: It was found that you did indeed have knowledge of what has become termed as the first report?

MR ROBERT JOHN McBRIDE: Well at some stage I would have knowledge of it. And there is not any issue with having knowledge of it. A recommendation report is an opinion of an investigator. But in the initial weeks I did not know that there existed a

report or that these reports were done in the way in which they were done.

ADV PAUL JOSEPH PRETORIUS SC: Yes we may return to that issue. Did you reach any conclusion at least initially in relation to what existed in the case file at that stage?

MR ROBERT JOHN McBRIDE: Yes I had...

ADV PAUL JOSEPH PRETORIUS SC: You deal with that in paragraph 19.

MR ROBERT JOHN McBRIDE: Yes Chair. I – yes from the report given by Mr Ncuba to me that is the verbal report the briefing there was a clear understanding who the suspects were and the roles they played. One of the questions I asked at that stage was since this took place over at least two weeks who was involved and at what stage?

10 **ADV PAUL JOSEPH PRETORIUS SC:** By this you mean the rendition as we have called it?

MR ROBERT JOHN McBRIDE: That is correct Chair. Who was involved and at what stage and what crime was committed at the various stages? And then I was given an explanation and I then asked perhaps I was – I was being a bit clever I asked them, what are the elements of the crime in each of these stages? And I – I then picked up that there was – there was now a concern from my investigators that this level of interrogation of what is been given to them was also of concern with them and after the initial briefings it was then – which I said to the Minister, we are finalising the evidence and all evidence will be reviewed on the basis of the questions that I asked relating to
20 who played a role where and who was associated with the various stages of this rendition which to me was a new crime and it indicated a conspiracy from start to finish and that is why I needed to get a break-down of who played a role where.

CHAIRPERSON: And what the elements were of the crime?

MR ROBERT JOHN McBRIDE: Exactly Chairperson.

CHAIRPERSON: Did you get an answer from Mr Khuba and whoever else were

briefing you when you asked what the elements of this crime were that you are recommending that these people be charged with?

MR ROBERT JOHN MCBRIDE: At that stage Chairperson it was – it was not clear cut. It – there was an explanation briefly as to who said what and how people were implicated. Later on the same discussion took place about a month – two months later with the National Director of Public Prosecutions in a meeting between him, Mr Sesoko and myself just discussing the case after we had handed the case over to him in April. So it was just soon after that and kind of brain storming what really is this funny creature which is called “rendition” for South African Law and what does it mean and so

10 on but to answer your question Chair I did not get a clear answer. Rather I got a description of the sequence of events as alleged.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Mr McBride. You say then in summary you are appointed. You are told of an investigation conducted with the assistance or at the behest of Crime Intelligence. We can clarify that relationship in due course. You interrogate the facts and you reach a certain conclusion which to put it at its highest is an issue of doubt around the validity of any conclusions that might have been reached albeit on an initial basis?

MR ROBERT JOHN MCBRIDE: Yes Chair. If I can put it this way already I was under the firm belief that already the – the investigations independent and integrity has been
20 compromised.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

MR ROBERT JOHN MCBRIDE: At the initial stages.

ADV PAUL JOSEPH PRETORIUS SC: What did you then direct having received these briefings? You deal with that in paragraph 20 of your statement.

MR ROBERT JOHN MCBRIDE: Thanks Chair. In essence I requested that all the

evidence must be reviewed and that all evidence that must now be acquired be processed because of the issue of the integrity. I – I was nervous of the involvement of Crime Intelligence. Already at that stage Crime Intelligence did not have a – a good public image if I can put it that way and then the usurping and the secrecy involved immediately got like I say I got my guard up, *ja*.

CHAIRPERSON: Just to make sure I understand you correctly when you said at the beginning of your evidence on this issue that you picked up or were briefed to the effect that there had been involvement of SAPS. Was reference to SAPS confined to Crime Intelligence or were there people from SAPS outside of Crime Intelligence as well who were involved?

MR ROBERT JOHN MCBRIDE: In terms of the investigation Chair it was only Crime Intelligence involved.

CHAIRPERSON: Okay.

MR ROBERT JOHN MCBRIDE: In terms of the suspects I cannot remember at which stage I realised that but the suspects were all from DPCI.

CHAIRPERSON: Yes, okay.

MR ROBERT JOHN MCBRIDE: And a number of others who received – sorry to go into the detail – who received messages were from other divisions of SAPS but.

CHAIRPERSON: Yes.

20 **MR ROBERT JOHN MCBRIDE:** They were implicated only because they received SMS.

CHAIRPERSON: Okay.

MR ROBERT JOHN MCBRIDE: Success SMS.

CHAIRPERSON: Hm, but in terms of investigation it was Crime Intelligence that was involved?

MR ROBERT JOHN MCBRIDE: That is correct Chair.

CHAIRPERSON: Okay, thank you.

ADV PAUL JOSEPH PRETORIUS SC: Right. Did you then assess what needed to be done after your briefings?

MR ROBERT JOHN MCBRIDE: Yes that is correct [intervenes].

ADV PAUL JOSEPH PRETORIUS SC: And what did you decide needed to be done?

MR ROBERT JOHN MCBRIDE: That an entire review of all evidence including that which was obtained before IPID received it.

ADV PAUL JOSEPH PRETORIUS SC: Did you direct further investigations be
10 conducted?

MR ROBERT JOHN MCBRIDE: Yes that is correct and I – I stated that in my information note to the Minister on 9 March.

ADV PAUL JOSEPH PRETORIUS SC: You deal with that at paragraph 20 of your affidavit. Briefly could you detail what further investigations were in your view necessary to be undertaken?

MR ROBERT JOHN MCBRIDE: It was the extent to which the identified suspects could be implicated and that would require the factoring of the cellphone records analysis but also to look at in terms of review I cannot remember specifically what I had said then and how it evolved later into – to what it was but briefly it was to review
20 evidence in existence particularly because of the contamination and the fear expressed and concerned by the chief investigator who was Mr Khuba.

ADV PAUL JOSEPH PRETORIUS SC: At the stage you received your briefings had the relevant cellphone records being properly and comprehensively analysed?

MR ROBERT JOHN MCBRIDE: My understanding at that stage the cellphone records had been obtained and before I arrived the cellphone record analysis had been

obtained and hence Khuba had requested the docket from Advocate Mosing to include this additional evidence in the docket.

ADV PAUL JOSEPH PRETORIUS SC: What did the analysis of the cellphone records in view show?

MR ROBERT JOHN MCBRIDE: As far as General Sibiya is concerned in contrast to what at least three Crime Intelligence Officers had stated namely that he was on at least three scene – three different scenes. The cellphone records analysis showed that General Sibiya was not on any of the scenes and if I remember correctly Khuba told me that he even 205'd the private phone of General Sibiya and both phone recording –
10 records analysis were consistent with each other but were in contradiction to the evidence that was contained in the statement by Crime Intelligence Officers.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Your answer may not explain to people who have no knowledge of the detail precisely what happened but you refer to three persons who made claims about the whereabouts of General Sibiya on the crime scene or at a particular time. What time was this? What occasion was this?

MR ROBERT JOHN MCBRIDE: It was during the – the tracking down and arrest of the Zimbabweans who were wanted in Zimbabwe.

ADV PAUL JOSEPH PRETORIUS SC: At issue was whether General Sibiya knew of, was involved in or was present at the “rendition operation” and its execution. Correct?

20 **MR ROBERT JOHN MCBRIDE:** Hm.

ADV PAUL JOSEPH PRETORIUS SC: So his whereabouts were important?

MR ROBERT JOHN MCBRIDE: His whereabouts were important, but I would prefer if – if it is in order Chair that we break, break it down to, to arrest rather than the blanket “rendition” definition.

ADV PAUL JOSEPH PRETORIUS SC: Okay.

CHAIRPERSON: Maybe – I am sorry Mr Pretorius. I was going to ask this question. Maybe it belongs after you have – you are done but maybe we should deal with it now. Just so that we understand, your understanding of what it is that they were alleged to have actually done that was referred to being “rendition” what was it? Were they alleged to have falsified some documents or instructed people to falsify documents and then apprehended those people, took them in a car and tried to take them out of South Africa? Just the actual acts as you understood them that was referred to as “rendition” what was it?

MR ROBERT JOHN MCBRIDE: In terms of the – Chair in terms of the word “rendition”
10 it is only what I know in the American context.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: And that in the South African context it would not be allowed as described by media.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: And reports of fiction about what “rendition” entails.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: My understanding is that even based on the allegations.

CHAIRPERSON: Hm.

20 **MR ROBERT JOHN MCBRIDE:** Made by Crime Intelligence.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: General Dramat’s association with the series of events was that he was informed by a Crime Intelligence Officer who was at the border.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: That Zimbabwe officials want to come and see him.

They are looking for suspects.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: So that is General Dramat.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: The next link of General Dramat to the series of stuff is that he allegedly congratulated officers for the arrest of the Zimbabweans.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: So it is two issues that link him to it.

CHAIRPERSON: Hm.

10 **MR ROBERT JOHN MCBRIDE:** He also was amongst those who received automated bulk SMS' indicating successes.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: So if I remember correctly.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: That is the sum total.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Of General Dramat's.

CHAIRPERSON: Alleged involvement?

MR ROBERT JOHN MCBRIDE: Involvement in this whole saga.

20 **CHAIRPERSON:** Okay.

MR ROBERT JOHN MCBRIDE: General Sibiya's involvement was a – was at a scene where suspects were arrested and assaulted on three different scenes.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: So after I was informed that General Sibiya could not be placed on any of the scenes in my own mind then it was – then it means that the

three witnesses from Crime Intelligence placing General Sibiya on three different scenes cannot possibly reasonably be true and it just made me even more suspicious. So, *ja* so Chair that is.

CHAIRPERSON: That.

MR ROBERT JOHN MCBRIDE: The sum total of their involvement.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: In the whole saga.

CHAIRPERSON: Okay. No, now - now I understand.

ADV PAUL JOSEPH PRETORIUS SC: Just one fact which emerges from your answer

10 now the key witnesses in relation to the involvement of General Sibiya were from Crime Intelligence?

MR ROBERT JOHN MCBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And the investigation was being conducted at least in part by Crime Intelligence?

MR ROBERT JOHN MCBRIDE: That is correct.

CHAIRPERSON: And you said that on your understanding generally doing investigations and carrying dockets is not the normal function of Crime Intelligence?

MR ROBERT JOHN MCBRIDE: That is correct. My understanding.

CHAIRPERSON: Hm.

20 **MR ROBERT JOHN MCBRIDE:** And I still have the understanding. It is not their function.

CHAIRPERSON: Yes, okay.

ADV PAUL JOSEPH PRETORIUS SC: We may have to deal with some detail in due course but I understand and this is just to place Mr Sesoko and Mr Khuba on the scene. Did you give Mr Sesoko any task? Remember the reports had been given to – careless

use of word on my part. I am sorry. The briefings had been given to you by Mr Khuba.
Correct.

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: I am sorry. Did he have a rank? Perhaps I should give him due recognition. Was it Mr Khuba or did he have a rank at the time?

MR ROBERT JOHN MCBRIDE: He was the Acting Provincial Head.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

MR ROBERT JOHN MCBRIDE: Ja.

ADV PAUL JOSEPH PRETORIUS SC: Well let me not bother then. Mr Khuba gave
10 the briefings to you?

MR ROBERT JOHN MCBRIDE: Yes and one of the issues there Chair if you would allow me was that he had been told by Acting Executive Director Kuki Mbeki not to involve Sesoko in – in the investigation.

ADV PAUL JOSEPH PRETORIUS SC: Sesoko in your view should he have been involved?

MR ROBERT JOHN MCBRIDE: Absolutely sir. He was the head – the National Head of Investigations and he was the direct supervisor to Mr Khuba.

ADV PAUL JOSEPH PRETORIUS SC: Right. Did you then task Mr Sesoko with any mandate?

20 **MR ROBERT JOHN MCBRIDE:** Yes. In – both Mr Khuba and Mr Sesoko I directed that Mr Khuba must report to Mr Sesoko all developments in the case and that Mr Sesoko must oversee the process of review.

CHAIRPERSON: Before Mr Pretorius asks the next question just to make sure one follows the sequence. So you arrive at IPID after your appointment?

MR ROBERT JOHN MCBRIDE: Yes sir.

CHAIRPERSON: You call for a briefing all high profile cases?

MR ROBERT JOHN MCBRIDE: Yes sir.

CHAIRPERSON: One of them is one referred to as the “rendition case”?

MR ROBERT JOHN MCBRIDE: Yes Chair.

CHAIRPERSON: Which, which – in which the suspects were General Dramat and General Sibiya. You get given the briefing. In terms of that briefing you are made to understand that there is already a docket that has been sent to the NPA. You get that briefing and in due course you brief the Minister and you get – you get concerned when you get the briefing about certain features of this matter and at a certain stage you then
10 ask Mr Sesoko to effectively be the one to whom Mr Khuba would report about this matter. At the time – at that time you have been told by Mr Khuba that there was further evidence or further documents that he wanted to be added to the docket that was at the NPA. Is that correct so far?

MR ROBERT JOHN MCBRIDE: That is correct Chair.

CHAIRPERSON: Yes. Now as I understand the Act and I have not read the whole of it and from what you have said I saw that there is a provision that the Executive Director must refer matters that require criminal prosecution to the NPA or relevant authorities for prosecution. So now at that stage when you were briefed did you get to know whether what had happened namely the sending of the docket to the NPA that
20 represented the referral of the matter for prosecution and whether did you also get to know whether it had been referred by the Acting Director who was before you?

MR ROBERT JOHN MCBRIDE: Thank you Chair. What had happened between the period of Mr Beekman’s resignation and the appointment of the Acting Executive Director at the stage in around November 2013 when I had been nominated for the post subject to approval by Parliament according to what I – I was told was that Ms Mbeki

had actually stopped coming to work. In fact I never ever met Ms Mbeki and Mr Khuba at some stage I do not know whether it was initially indicated to me that there was pressure placed on him by Advocate Mosing to bring the docket in December already and he had indicated to Advocate Mosing that the procedure is that the Executive Director must sign and that Advocate Mosing was still insistent that he gets the docket to him as soon as possible. Later on I found out that during December, November or December 2013 prior to the docket and the recommendation report reaching Advocate Mosing there was other pressure place on Mr Khuba by General Ntlemenza who was Deputy Provincial Commissioner in Limpopo where Mr Khuba resided and the

10 two of them knew each other from police work and investigations within the Province of Limpopo and I was not made aware of it in the first engagements with Khuba. At some stage later on when he – he explained sequence of events in further detail. He indicated that General Ntlemenza and he can answer for himself when he – if and when he testifies - had said to him that he is holding up his progress by taking long with the report. So for Khuba he was under pressure to get whatever he had in the docket and whatever conclusions he had come to at that stage in the absence of additional information that was outstanding and possibly and now we know *exculpatory* evidence been included in the docket and been factored in and considered and that is how it came to be that the two factors - the unavailability of Ms Mbeki and the pressure placed

20 on him - to deliver the docket with the recommendation report to Advocate Mosing.

CHAIRPERSON: So am I correct that from what you say your understanding is that that docket was sent to the NPA. Advocate Mosing is from the NPA?

MR ROBERT JOHN MCBRIDE: Yes sir.

CHAIRPERSON: Was sent to the NPA without it being signed or sent by the Acting Executive Director?

MR ROBERT JOHN MCBRIDE: That is correct sir and in addition it was also not signed by the National Head of Investigations – the Acting Head of Investigations.

CHAIRPERSON: Mr Sesoko?

MR ROBERT JOHN MCBRIDE: That is correct Chair.

CHAIRPERSON: Yes, but your understanding is that he would have had to sign it normally before it was sent off?

MR ROBERT JOHN MCBRIDE: That is – that is correct sir.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: Because in this instance Khuba is the investigator.

10 **CHAIRPERSON:** Yes.

MR ROBERT JOHN MCBRIDE: He has to take it to his supervisor.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: And his supervisor was Mr Sesoko.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: So it would have to be cleared corrected.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Before it is passed over to the Executive Director to sign off on it.

CHAIRPERSON: Hm.

20 **MR ROBERT JOHN MCBRIDE:** To get it to the NPA. So that process was purposefully omitted.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: By the instructions.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Of Ms Mbeki.

CHAIRPERSON: Hm. So Mr Sesoko was – was overlooked in terms of having to play his role in that docket or reports and then from what you heard the Acting Executive Director had played a role and said Mr Sesoko should not be involved?

MR ROBERT JOHN MCBRIDE: That is correct sir.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: And consequently it was not in terms of procedures.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: And accepted practices of IPID.

CHAIRPERSON: Hm, but in terms of the Acting Executive Director having signed. I
10 assume there would have been a place for her to sign. You do know that she had not signed anywhere or you are not sure?

MR ROBERT JOHN MCBRIDE: At the stage when I was briefed I was – I was not aware but I subsequently became aware that she did not sign.

CHAIRPERSON: Okay.

MR ROBERT JOHN MCBRIDE: And only Mr Khuba signed.

CHAIRPERSON: Yes, okay. Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Thank you. The Chair referred to the provisions of the Act and if I may just place on record again Section 7(4) of the IPID Act which reads:

20 “The Executive Director must refer criminal offences revealed as a result of an investigation to the National Prosecuting Authority for criminal prosecution and notify the Minister of such referral.”

It seems that task in terms of the Act is visited on the Executive Director?

MR ROBERT JOHN MCBRIDE: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: Although we do know that matters may be transferred through other channels and we will try and find that as well. You yourself have told us about that?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Right. The further investigations and the review did they lead you to a conclusion different to the one that had been referred to the NPA previously?

MR ROBERT JOHN MCBRIDE: Chair at the time when the finalised recommendation report with a completed docket and I say completed docket advisedly because even as
10 recent as 2016 whilst we were still out on suspension and that whole, entire docket had been given to another investigator officials of NPA had requested additional information. So even in terms of what we believed was a completed docket and quite conclusive there was still additional information which is the normal process in terms of where there is a case and some elements missing, but at the time when we – when the report was given to me to sign off on as per the – the recommendations made by Mr Khuba and Mr Sesoko they – there was a conclusion that one of the DPCI members who had not provided any version but there was evidence to indicate he was involved in the irregular documentation for repatriation was recommended to be prosecuted and to be disciplined. Other generals which included the present Head of DPCI and I do not
20 remember – I remember a General Tauke. I remember a few other generals names mentioned.

ADV PAUL JOSEPH PRETORIUS SC: Sibiya?

MR ROBERT JOHN MCBRIDE: General Sibiya. General Sibiya was – I think the wording that was used at that time of the final report was the evidence that he was on the scene or involved could not sustain a prosecution.

ADV PAUL JOSEPH PRETORIUS SC: Alright and in respect of General Dramat what was the outcome of the further investigations?

MR ROBERT JOHN MCBRIDE: In terms of the analysis as I recall it was to the effect that whether General Dramat received a phone call from the Crime Intelligence Office at Beit Bridge we do not know what the conversation was about. There was an instance of a meeting which I forgot to mention earlier of General Dramat and the Zimbabweans Police Officers. If the meeting did take place there are no minutes kept. We do not know what was discussed and on the SMS' received by General Dramat there was no response to them in fact one of the success reports did not even go to
10 General Dramat. It allegedly went to his personal assistant. There is no evidence and even if my understanding was even if all that was alleged mainly by Crime Intelligence was correct it would not constitute the elements of a crime, so that was the answer to my initial question when we received the final report.

ADV PAUL JOSEPH PRETORIUS SC: Right, because in some and in summary you say that as far as General Dramat is concerned the evidence was, as I understand what you're telling the Chair now, was simply that he was invited to discuss the matter and after the event congratulated certain police officers, that was the evidence.

MR ROBERT JOHN MCBRIDE: In fact just to clarify Chair, after the arrest of, presumably, the wanted suspects, so that would be a normal procedure within the DPCI
20 within police also, success reports it's to do with morale, it's to say work well done and it's in that context I understand that those congratulatory messages was to encourage people to continue doing good work.

ADV PAUL JOSEPH PRETORIUS SC: In any event as I understand your position is that after the briefings, after directing further investigations you concluded that the elements of the crimes with which or in respect of which there was an initial proposal

General Dramat and Sabir be charged could not be countenanced.

MR ROBERT JOHN McBRIDE: It could not be sustained, there was no exculpatory evidence, actually, Chair it would be wrong to exclude or not to factor in the exculpatory evidence.

ADV PAUL JOSEPH PRETORIUS SC: What happened then on the 18th of March 2014 in respect of these matters?

MR ROBERT JOHN McBRIDE: If my memory serves me correctly we submitted – I'd like to request to just give a small context. During that period...(intervention).

10 **CHAIRPERSON**: Where you need to, you may refresh your memory by looking at the statement.

MR ROBERT JOHN McBRIDE: Thank you Chair.

ADV PAUL JOSEPH PRETORIUS SC: We're at paragraph 21.

20 **MR ROBERT JOHN McBRIDE**: Okay, we had decided that in the light of the report that Khuba had given us about his surprise as to one day coming out of church, he then read about his investigation in the Sunday Times, it was my intention, and it was agreed between the three of us that if the leaks occur they're not going to take place from IPID and so the docket with all the evidence that had been factored in them together with the final recommendation report compiled by Khuba and endorsed by Mr Sesoko and signed off by me went directly to the National Director of Public Prosecutions and that's where it stayed.

CHAIRPERSON: So in terms of this, maybe second report, if we can call it that, that you signed, so Mr Khuba had, had a role in terms of investigating or looking further into some of the issues that you had raised and he had then prepared a report and that report had been looked at by Mr Sesoko who was his supervisor and then at a certain stage it came to you and effectively all three of you signed it, is that right or maybe only

you and Mr Seseko?

MR ROBERT JOHN McBRIDE: No Chair it was signed by Mr Khuba, signed by Mr Seseko and then it came to me and then I signed off on it and to be fair and open there were a number of grammatical errors and it sometimes very irritating for my co-workers, often I'm particular about their spelling and grammar and from the report that I received, the one which, Chair, you refer to as a second report, grammatical changes were made on it and for example a simple thing like he instead of she and minor issues.

CHAIRPERSON: Minor things.

MR ROBERT JOHN McBRIDE: Minor issues yes and – but it was all three of us,
10 Khuba made recommendations, Sesoko reviewed and assessed and it was brought to me to sign off in terms of regulations.

CHAIRPERSON: Yes, but am I right to say in the end, on that report one could find the three signatures?

MR ROBERT JOHN McBRIDE: Yes that's correct sir.

CHAIRPERSON: Okay, alright thank you.

ADV PAUL JOSEPH PRETORIUS SC: Right so that report was dated the 18th of March 2014 according to your statement.

MR ROBERT JOHN McBRIDE: Chair, no it was...

ADV PAUL JOSEPH PRETORIUS SC: Or is that the date of issue does it differ from
20 the date of finalisation and signature?

MR ROBERT JOHN McBRIDE: Yes I think...(intervention).

CHAIRPERSON: Or was it one of the dates where corrections were to be made?

MR ROBERT JOHN McBRIDE: It's not this one Chair, this is the date, the 18th of March, I think this is the date on – I have to remember.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: At some stage after this whole process it was submitted to NDPP.

ADV PAUL JOSEPH PRETORIUS SC: Perhaps go to page 227.

MR ROBERT JOHN McBRIDE: Okay, yes I have it so it was submitted by Mr Sesoko to me on the 18th of March it was then signed by me on the 9th and I think it was on the 13th, now that...(intervention).

CHAIRPERSON: Is that 9th April, it can't be 9th March obviously?

MR ROBERT JOHN McBRIDE: No it's 9th of April, sorry Chair.

CHAIRPERSON: Yes okay.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Page 264, does that help you?

MR ROBERT JOHN McBRIDE: Yes that's correct.

ADV PAUL JOSEPH PRETORIUS SC: It seems that you signed it on a different date?

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: What date was that?

MR ROBERT JOHN McBRIDE: It's reflecting here the 9th of April and that would be the normal course of events in terms of dealing with the inbox and outbox, so some stuff stays for a week or so.

ADV PAUL JOSEPH PRETORIUS SC: So it would have been issued then after your signature, am I correct?

20 **MR ROBERT JOHN McBRIDE:** That's correct.

ADV PAUL JOSEPH PRETORIUS SC: So the 18th of March 2014 is incorrect and we should replace that with sometime after 9 April 2014?

MR ROBERT JOHN McBRIDE: That's correct, it reached NDPP and there's documentation to confirm it in April.

ADV PAUL JOSEPH PRETORIUS SC: Thank you, in any event apart from that, is it

correct that a report under your signature was issued to the NDPP firstly?

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: And secondly as you've indicated would be the case, that report effectively exonerated Messrs. Dramat and Sibiya?

MR ROBERT JOHN McBRIDE: Chair if I can just say it differently.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: It did not recommend prosecution against them as there was no evidence it did not – I'm just a bit concerned about saying that it exonerated them.

10 **CHAIRPERSON**: Yes it reached a conclusion different from the one that had been reached by the first report or, if we can put it that way

MR ROBERT JOHN McBRIDE: That's correct Chair.

CHAIRPERSON: Yes the first one said prosecute.

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: And your one did not recommend prosecution.

MR ROBERT JOHN McBRIDE: That's correct.

CHAIRPERSON: Okay.

MR ROBERT JOHN McBRIDE: And just to follow-up, fast-forward, you know, four years later indeed the charges have been withdrawn from both Dramat and Sibiya
20 precisely because prosecution was unsustainable. So the so-called second report was correct and the NPA found that – and hence we stand by that report because there is some collateral in terms of, even though opinion of the investigators.

CHAIRPERSON: Although you say that you – although you were concerned about saying the second report exonerated them would it be correct to say the basis for your conclusion not to recommend criminal prosecution was that you could not find any

evidence that they had committed any crime?

MR ROBERT JOHN McBRIDE: That's correct Chair, that's exactly it there just wasn't evidence connecting them to any particular crime.

CHAIRPERSON: Ja okay.

ADV PAUL JOSEPH PRETORIUS SC: Alright two issues, firstly your use of the words, effectively exonerated perhaps then should be rephrased I don't want to get into a semantic argument, you've put your position clearly we will just amend that and put...(intervention).

MR ROBERT JOHN McBRIDE: I'd like to comment on it Chair.

10 **CHAIRPERSON**: Yes.

MR ROBERT JOHN McBRIDE: Hence, effectively exonerated the use of the word "effectively".

ADV PAUL JOSEPH PRETORIUS SC: Alright.

CHAIRPERSON: You are comfortable if one includes effectively rather than if one simply says exonerated them, if one says it effectively exonerated them, you are comfortable with that?

MR ROBERT JOHN McBRIDE: That's correct Chair.

CHAIRPERSON: Okay thank you.

20 **ADV PAUL JOSEPH PRETORIUS SC**: Well for the sake of completeness and accuracy we could go to page 264 and under the heading "recommendation" in paragraph 8 of the report signed by you on the 9th of April 2014 you could perhaps read the recommendation onto the record.

MR ROBERT JOHN McBRIDE: Thank you Chair,

"Based on the available evidence the Independent Police Investigative Directorate recommends that no charges should be brought against

Lieutenant General Dramat and Major General Sibiya. The investigation established that there is no *prima facie* case against them. However with regard to Lieutenant Colonel Malulega? there is a *prima facie* case to sustain charges of kidnapping and defeating the ends of justice”.

CHAIRPERSON: Did you say that the first – that Mr Khuba had signed the first report docket, he had?

MR ROBERT JOHN McBRIDE: Yes that’s correct.

CHAIRPERSON: Okay, alright.

ADV PAUL JOSEPH PRETORIUS SC: Then paragraph 22 you deal with the
10 involvement of the then Minister of Police Minister Nhleko in the matters related to the issuing of what you call the final IPID report in paragraph 22, please explain what happened there?

MR ROBERT JOHN McBRIDE: At some stage after the appointment of Minister Nhleko a reference group was established by him and my understanding is that Ministers have in their powers the authority to establish groups that provide advice or evidence and this group was involved in finding out a number of cases and they came to speak to, amongst other people, IPID and questioned us on a number of cases and in the reference group was Advocate Mathenjwa who – and Advocate Kruger who visited us at IPID and they asked us – Advocate Kruger dealt with other cases and
20 Advocate Mathenjwa dealt – asked questions about the so-called rendition saga. Mr Khuba was present to brief them and he briefed them. My impression was, Advocate Mathenjwa was not too happy with the explanation, he then – soon after that...(intervention)

ADV PAUL JOSEPH PRETORIUS SC: Sorry with what explanation?

MR ROBERT JOHN McBRIDE: Of what had taken place with the case and that we

had recommended no prosecution, so this would be August 2014.

ADV PAUL JOSEPH PRETORIUS SC: Okay.

MR ROBERT JOHN McBRIDE: And a few days later or no it could even have been a month later...(intervention).

CHAIRPERSON: I'm sorry may I just interrupt you Mr McBride, I may have missed something, there was a team of people who came to ask questions about certain matters, Mathenjwa was one of them, Kruger was another one. They are coming to ask about questions, did you connect with the Minister of Police at that time, or not really?

MR ROBERT JOHN McBRIDE: Chair, absolutely because it was the Minister that
10 established a reference group and when they...(intervention).

CHAIRPERSON: Oh they were in the reference group?

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: Oh okay now I understand, okay thank you.

MR ROBERT JOHN McBRIDE: And at some stage after their visit, and they may have visited us once or twice, I think the initial time Mr Khuba was not around because he was based in Limpopo but I think I arranged for him to brief them because he was the investigating – on a number of cases, including (indistinct) they were interested in and including the case of General Phiyega with respect to General Lamoer in Western Cape which is cases that we were involved in investigating, all these cases preceded my
20 arrival at IPID. In any event a few weeks or months later Mr Khuba reported to Mr Sesoko that Advocate Mathenjwa requested the entire docket or a copy of the entire docket of the rendition saga and according to Mr Sesoko, Mr Khuba told Advocate Mathenjwa that he must ask the Executive Director for it. Soon after that – soon after me becoming aware of the request by Advocate Mathenjwa I received a letter from the Minister and the Minister indicated he wants this docket all exhibits, colour photos

relating to the docket and he had – in his letter to me he had put the wrong CAS number. So I then discussed it with Mr Khuba and Sesoko and I said I don't feel like giving this docket over, I feel this is not proper and their advice from – in particular Mr Sesoko was that Chief you know what this Minister is new maybe he doesn't know all the issues for the sake of good relationship – because until then it looked like the relationship was okay, can you just please comply with this request and I thought – Mr Sesoko always has, he always has a very calming effect and logical rational effect whereas I like to take things up immediately and he would say, no wait, so he's – by that time I'd learned to listen to his, you know, his advice.

10 **CHAIRPERSON:** Was it like a good sounding board so to speak?

MR ROBERT JOHN McBRIDE: Yes, yes if – and he'd always – he'd always take...(intervention).

CHAIRPERSON: A very common sense approach...(intervention).

MR ROBERT JOHN McBRIDE: Absolutely, absolutely and then I then complied with the request to the Minister and in my last sentence of the letter – the info note to the Minister, I indicated that, firstly he's indicated the wrong CAS number but I know which CAS number he means because the member of the reference group asked for it and I left a cryptic message right at the end in the last line to say that I'm giving you the stuff with the utmost sincerity and trust which is an unusual way to end a letter but I was
20 trying to indicate to him how sensitive this matter is without really offending him and I think that was – and he gave me a time limit, I think two days to provide all of it and we were to scurry around getting it and that was towards the end of November, the 26th or 28th it went off to the Minister. Subsequently I found out that on the 6th of December General Dramat received a notice of intention to suspend from the Minister and we became aware of it later on General Dramat was suspended and Minister

spokesperson Minister Muso Shondi? made a statement that as a result of IPID's investigations and recommendations he is suspending General Dramat and I realised there is something wrong because the recommendation report together with the copy of the docket that we had sent to the NDPP and now we had sent to the Minister did not recommend disciplinary steps or general prosecution of General Dramat and so during that period myself and the spokesperson responded to it, I think the spokesperson Mr Moses Dlamini then made a statement...(intervention).

ADV PAUL JOSEPH PRETORIUS SC: IPID's spokesperson or Ministerial spokesperson?

10 **MR ROBERT JOHN McBRIDE:** No the IPID's spokesperson.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

MR ROBERT JOHN McBRIDE: That we did not recommend – during the same period...(intervention).

ADV PAUL JOSEPH PRETORIUS SC: Sorry just before you go on had Minister Nhleko gone public in relation to the reasons for the suspension of General Dramat?

MR ROBERT JOHN McBRIDE: That's correct Chair, it was round about the 22nd of December, Dramat is suspended and they make a statement.

CHAIRPERSON: And when you say he had gone public is that through his spokesperson or apart from what the spokesperson said he also may have said
20 something publicly.

MR ROBERT JOHN McBRIDE: Thanks Chair, no it was through the spokesperson's statement, if memory serves me correct it was in response to queries asked by the media as to the reasons for the suspension.

ADV PAUL JOSEPH PRETORIUS SC: And importantly what was the justification given in the public statement?

MR ROBERT JOHN McBRIDE: That IPID had recommended disciplinary action that action should be taken against General Dramat.

ADV PAUL JOSEPH PRETORIUS SC: Yes, what you say was not correct?

MR ROBERT JOHN McBRIDE: It was not correct because I had not given any statement or any briefing to the NDPP or the Minister that indicated that action should be taken against General Dramat.

ADV PAUL JOSEPH PRETORIUS SC: Ultimately...(intervention).

CHAIRPERSON: Would it – I'm sorry Mr Pretorius, the documentation that you gave to the Minister pursuant to his request, was it in the form of the file or docket that IPID
10 had?

MR ROBERT JOHN McBRIDE: Yes Chair it was a copy of the entire docket.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: Which end of the recommendation report, the one referred to as the second recommendation report, it was a full copy of that and it was actually on Mr Sesoko's advice that we kept a copy and so a copy of that copy we submitted to the Minister.

CHAIRPERSON: Oh now is that because the original had gone to the NPA, I see you said – you say you were to keep a copy of the copy that you sent to the Minister, where was the original had it gone to the NPA?

20 **MR ROBERT JOHN McBRIDE:** It had gone to the National Director of Public Prosecutions yes sir.

CHAIRPERSON: Yes so as far as the NPA is concerned would the position be that when they received the report that you signed their file or docket would have both, what we referred to as the first report as well as the second report or was the first report withdrawn when there was a second report?

MR ROBERT JOHN McBRIDE: Chair it was only the report that I had signed.

CHAIRPERSON: That they had?

MR ROBERT JOHN McBRIDE: That they had.

CHAIRPERSON: What had happened to the first report?

MR ROBERT JOHN McBRIDE: I'm not sure of it but at some stage soon after that it then, towards the end of December 2014 it then surfaces in the media.

CHAIRPERSON: The first report?

MR ROBERT JOHN McBRIDE: Yes, so when – my understanding is when Khuba retrieved the docket he did not retrieve that preliminary report with him, just the docket
10 because that's what's carrying the evidence and the original evidence. Sorry Chair, just to say from my side, my knowledge the Minister did not receive any other report from me except the one that does not recommend any disciplinary or criminal action against General Dramat and Sibiya.

CHAIRPERSON: Oh so certainly from you he only received the one that did not recommend any disciplinary or (indistinct) criminal prosecution?

MR ROBERT JOHN McBRIDE: That's correct Chair.

CHAIRPERSON: If he did have – if he did have the first one, he certainly didn't get it from you?

MR ROBERT JOHN McBRIDE: That's absolutely correct Chair.

20 **CHAIRPERSON:** Yes but you say – you say you are not sure or are you sure whether Mr Khuba had retrieved, from the NPA what we have been referring to as the first report and I don't if that's accurate, whether it was a report, you don't know or you do know that he had retrieved it?

MR ROBERT JOHN McBRIDE: Chair my understanding is that he didn't.

CHAIRPERSON: He did not?

MR ROBERT JOHN McBRIDE: He did not.

CHAIRPERSON: Okay.

MR ROBERT JOHN McBRIDE: And the reasons why I'm saying so at some stage Mr Moshing? says in – I think in the interview at (indistinct) that he was going through Mr Moletse's cupboard who had now left NPA and then he found that report of that – that was only signed by Mr Khuba. So I'm factoring that in because I subsequently became aware of that factor but at the time an unsigned version of that first report surfaced initially in the media then Mr Dlamini brought it to me and asked me, Chief I've just made a statement that we did not submit this, now this is surfacing on the media. I
10 think at that stage I first became aware – this is now in December 2014 that there existed a previous report as a recommendation report and then I said to Mr Dlamini, well is it signed and he then says, no it's not signed and then a few...(intervention).

CHAIRPERSON: Not even by Mr Khuba?

MR ROBERT JOHN McBRIDE: Not even by Mr Khuba, the initial one and then the one with Mr Khuba's signature is on then also surface so I enquired is this indeed Mr Khuba's signature because to me, perhaps it was forged, that's me from my position, having no knowledge of the existence of a first report and it's then that Mr Khuba admits, yes he signed this thing and then he gave me the full circumstances then, how it was signed and indeed he confirmed that was his signature.

20 **CHAIRPERSON:** But would it be correct to say that whoever may have been aware of both reports would have been aware that the one signed by Mr Khuba only could not be – could not prevail over the second one firstly because the second one was also signed by Mr Khuba and it was reaching a conclusion that was the opposite of the conclusion of the first one but in addition the second one was signed by Mr Khuba's supervisor as well as the Executive Director now?

MR ROBERT JOHN McBRIDE: Ja and Mr Sesoko did, that is correct.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: Chair so ...

CHAIRPERSON: Yes, yes.

MR ROBERT JOHN McBRIDE: They could not choose the one over the other.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: The – because the one was incomplete had ...

CHAIRPERSON: No, no they could choose one and that is the second one. Because the second one was signed by the Executive Director.

10 **MR ROBERT JOHN McBRIDE**: Chair...

CHAIRPERSON: And for all intents and purposes there was no indication it was not complete is it not?

MR ROBERT JOHN McBRIDE: Chair you absolutely correct.

CHAIRPERSON: Ja they could not choose the first one for some of the reasons that you have articulated but anyone aware of the two if he had to choose it could only be the second one.

MR ROBERT JOHN McBRIDE: Yes Chair if they were looking for the truth.

CHAIRPERSON: Ja.

MR ROBERT JOHN McBRIDE: They could only choose the second one.

20 **CHAIRPERSON**: Ja.

MR ROBERT JOHN McBRIDE: If they were looking for something else they would ignore the one that I signed.

CHAIRPERSON: Okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: You refer to the first or 'provisional report' in inverted commas surfacing, was that a leak to your knowledge? Was it an authorised

release of the first report?

MR ROBERT JOHN McBRIDE: To give context Chair it was – my suspicion was that Advocate Mosing and I will tell you why I am saying – Advocate Mosing the reference group and the Minister were not aware that it is at the NDPP the report that I signed. And the Minister and the Reference Group received that so called first report through their own means and not through any procedure and acted upon it and that is what caused the confusion if I can use a funny analogy they pulled the trigger prematurely without checking and did not look at the report that I provided and the docket to the Minister.

10 **ADV PAUL JOSEPH PRETORIUS SC**: Alright so what I...

MR ROBERT JOHN McBRIDE: Because they are not interested in it.

ADV PAUL JOSEPH PRETORIUS SC: So what I understand from your answer is that there was a level of intrigue somewhere you do not quite know where?

MR ROBERT JOHN McBRIDE: That is my suspicion and that is my belief.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

MR ROBERT JOHN McBRIDE: And unfolding of events seems to strengthen that suspicion.

ADV PAUL JOSEPH PRETORIUS SC: Yes but I return to my question Mr Mc Bride.

MR ROBERT JOHN McBRIDE: Yes Sir.

20 **ADV PAUL JOSEPH PRETORIUS SC**: The provisional report.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Or the first report you say surfaced in the press?

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Was that an official release by an – by a

person authorised to release it to the press or was it what we now know the term 'leaked'?

MR ROBERT JOHN McBRIDE: Chair it was a leak.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

CHAIRPERSON: Did the Minister ever send you a letter acknowledging receipt of the report you sent to him as far as you recall?

MR ROBERT JOHN McBRIDE: He did not send a letter acknowledging Chair but when they received together with the info note they usually sign in a register that they have received it.

10 **CHAIRPERSON**: Yes.

MR ROBERT JOHN McBRIDE: That proof of that delivery exists somewhere.

CHAIRPERSON: Exists okay.

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: So would the – would the report to go with your letter would it have been delivered by hand as opposed to being posted or sent by courier or you do not know?

MR ROBERT JOHN McBRIDE: Say it would have been delivered by hand.

CHAIRPERSON: Yes and then signed {indistinct}.

MR ROBERT JOHN McBRIDE: By one of the messengers of IPID.

20 **CHAIRPERSON**: And it would have been delivered to the office of the Minister?

MR ROBERT JOHN McBRIDE: That is correct Sir.

CHAIRPERSON: And you say you do know that there exists somewhere a written record that they received the report?

MR ROBERT JOHN McBRIDE: That is correct.

CHAIRPERSON: That is the Minister's office?

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: Do you have an idea around about when it would have been in 2014 when they received the report, the Minister's office received the report?

MR ROBERT JOHN McBRIDE: It would have been ...

CHAIRPERSON: If there is a document that might help you feel free to have a look.

MR ROBERT JOHN McBRIDE: It is the 25th or 24th November 2014.

CHAIRPERSON: Of November?

MR ROBERT JOHN McBRIDE: Ja and I was given two days to respond.

CHAIRPERSON: Yes.

10 **MR ROBERT JOHN McBRIDE**: So the reply would have reached the Minister within two days.

CHAIRPERSON: Yes around 27th or...

MR ROBERT JOHN McBRIDE: 27th or 28th.

CHAIRPERSON: November?

MR ROBERT JOHN McBRIDE: Latest ja.

CHAIRPERSON: Ja. And the – the announcement that General Dramat was suspended, when did that become – when was that announced publicly in relation to the Minister's receipt of your report? Are you able to remember?

20 **MR ROBERT JOHN McBRIDE**: The suspension took place around about the 22nd December a few days before Christmas.

CHAIRPERSON: Oh so that is about three weeks or so after the Minister's office had received your report?

MR ROBERT JOHN McBRIDE: That is correct Chair. Just to give further context the Notice of Intention to suspend.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: General Dramat arrived on the – Dramat received on 6 December.

CHAIRPERSON: Oh okay.

MR ROBERT JOHN McBRIDE: So it is probably within the week of receiving.

CHAIRPERSON: Of receiving your – the report?

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: But certainly from what you say when General Dramat received the Notice of Intention to suspend him from the Minister your office had delivered your report to the Minister's office?

10 **MR ROBERT JOHN McBRIDE**: Absolutely Sir.

CHAIRPERSON: And when the decision was taken to suspend General Dramat the report had long been delivered to the office of the Minister?

MR ROBERT JOHN McBRIDE: That is correct Chair.

CHAIRPERSON: Yes and you do not know how and whether he may have any – had any other reports?

MR ROBERT JOHN McBRIDE: I have no idea how he would have received it.

20 **CHAIRPERSON**: Yes. Yes. But you say that the announcement or the spokesperson of the Minister said that the reason – said that the suspension of General Dramat was based on a report of IPID recommend – making a recommendation to that effect or something like that?

MR ROBERT JOHN McBRIDE: That is correct Chair.

CHAIRPERSON: Okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Mr McBride. The contents of the provisional or first report and of the final report signed by you will be dealt with in due course in a little more detail. But to summarise thus far you came into office, you were

told of an investigation labelled the rendition investigation. You directed certain further investigations take place and that the original information be reviewed. And you signed a report then in April 2014?

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: That was submitted – and that report was submitted to the NDPP?

MR ROBERT JOHN McBRIDE: That is correct Chair.

CHAIRPERSON: Maybe I should...

ADV PAUL JOSEPH PRETORIUS SC: In December of the same year then General
10 Dramat was suspended it seems on the basis of the provisional report and not on the basis of the final report?

MR ROBERT JOHN McBRIDE: One can only assume that.

ADV PAUL JOSEPH PRETORIUS SC: Right that is the implication at least of your evidence.

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And in public through his advisor perhaps the Minister relied apparently on the first or provisional report to justify the suspension of General Dramat?

MR ROBERT JOHN McBRIDE: That is correct.

20 **ADV PAUL JOSEPH PRETORIUS SC**: Ultimately as a result of what you have described what happened to General Dramat? Was the out – what was the outcome?

MR ROBERT JOHN McBRIDE: If you will allow me Chair just before that there is another...

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: Occurrence that happens.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: Around about the 8 January there was an 8th January rally ...

CHAIRPERSON: That is now 2015?

MR ROBERT JOHN McBRIDE: 2015 Sir.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: In Cape Town. During that period I was doing what we referred to in the public services cold face work. Working with investigators on the ground, understanding what they go through in Cape Town. I was then contacted by
10 one of the people who I had initially met with the Reference Group who is – his surname is Radebe that is how I know him and he then came to the office of IPID in Cape Town and met with me, spoke to me and said that the Minister is here and can I come and see the Minister?

ADV PAUL JOSEPH PRETORIUS SC: Is that Minister Nhleko?

MR ROBERT JOHN McBRIDE: Minister Nhleko. And it was...

CHAIRPERSON: He had been – he had been where? The Minister is here can you come and see him?

MR ROBERT JOHN McBRIDE: He was at the stadium where the rally was being held.

CHAIRPERSON: Oh was this a political rally?

20 **MR ROBERT JOHN McBRIDE:** Yes it was a political rally.

CHAIRPERSON: Oh okay alright.

MR ROBERT JOHN McBRIDE: So I – I indicated to him that look I do not have accreditation to go in. And he indicated to me that he will get someone to meet me. Eventually I managed to get to the Minister and the Minister was in the meeting with me and – and a person who was the advisor to the Minister Mandla Nozulu we knew him as

Mandla Sithole was present in the meeting. Radebe left the meeting the he did not sit in. And the Minister asked me about a number of cases including the case of General Phiyega but the key issue was I then said to the Minister, Minister you have made a mistake with General Dramat. And I think there is a way after to speaking to me I can brief you what happened that there is a climb down – there can be a climb down for you on this matter I think this is going to lead to problems. And the Minister said to me, ah that is a good idea I will think about it. And I did not hear from him on this matter instead he said by the 13th or 14th can you finalise your report on the Phiyega Lamoure issue and General Phiyega was the National Commissioner and the report had to be prepared for the Minister to make a recommendation to the President about the matter whether there was action or no action. And I indicated well it is a big ask but let us get going. To continue the context I then met the Minister at his – at his ministerial home in Pretoria around about the 15th there was some delay.

ADV PAUL JOSEPH PRETORIUS SC: 15th of?

MR ROBERT JOHN McBRIDE: January Sir.

CHAIRPERSON: Before you get there going back to the meeting you had with the Minister where the rally was.

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: Are you saying he asked you about a number of cases.

20 **MR ROBERT JOHN McBRIDE:** Yes.

CHAIRPERSON: And did you brief him on those cases?

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: Okay alright.

MR ROBERT JOHN McBRIDE: Yes. So at his home I again briefed him on a number of cases. I think I had the Pandey case with me and the General Phiyega case with

me.

ADV PAUL JOSEPH PRETORIUS SC: What was the Pandey case?

MR ROBERT JOHN McBRIDE: The Pandey case involved I eluded to it earlier involved corruption during the 2010 World Cup relating to accommodation for police officers and including the role of General Ngobeni who was the Provincial Commissioner and the role of General Phiyega when hindering the investigation.

ADV PAUL JOSEPH PRETORIUS SC: Alright. When – yes I side tracked you I am sorry. Please continue.

MR ROBERT JOHN McBRIDE: So during that meeting the Minister did not touch on
10 General Dramat at all. Rather when he looked at the recommendations relating to General Phiyega as it related to interference in the Booysen investigation into Pandey and General Ngobeni. The Minister says well your comrades in KZN will not be happy with this. And I did not understand what he meant but I knew this – it was a seminal moment.

CHAIRPERSON: Now you earlier on talked about Ngobeni being Provincial Commissioner, is that Provincial Commissioner in KZN?

MR ROBERT JOHN McBRIDE: That is correct Sir.

CHAIRPERSON: Yes okay. So in relation to KZN was it just the case of Commissioner Ngobeni that you were briefing the Minister on or there was – or was there another KZN
20 matter?

MR ROBERT JOHN McBRIDE: It was General Ngobeni, a number of police officers and I think in total about four cases/

CHAIRPERSON: Okay.

MR ROBERT JOHN McBRIDE: Relating to General Ngobeni and the interference by General Phiyega and General Ngobeni in the investigation.

CHAIRPERSON: Okay. Okay. Now when the Minister said your comrades in KZN will not be happy with this was that generally in relation to the KZN matters on which you were briefing him or was it in relation to a specific – one specific matter maybe of Ngobeni?

MR ROBERT JOHN McBRIDE: Specifically I got the impression it was the Ngobeni Pandey matter.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: And – ja that is the impression I got.

CHAIRPERSON: Okay you may continue you were saying that he said your comrades
10 will not be happy and then what happened in terms of the discussion?

MR ROBERT JOHN McBRIDE: So the discussion ended there and I did not pursue it further. I knew it on another level now and I – I got out of the Ministerial house very fast.

CHAIRPERSON: Hm, hm. Yes Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: I had asked you and you had intervened with this evidence in relation to the ultimate fate of General Dramat arising out of these incidents. I am fast forwarding just to explain to the Chair the context and outcome.

MR ROBERT JOHN McBRIDE: My apologies Chair there is like so much different angles and ...

20 **CHAIRPERSON**: Yes no that is fine.

MR ROBERT JOHN McBRIDE: A lot of detailed information so...

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: What happened to Dramat ultimately?

MR ROBERT JOHN McBRIDE: Dramat was suspended – ultimately he was forced out of the service and he was forced into a – an early retirement package.

ADV PAUL JOSEPH PRETORIUS SC: And who replaced him as head of the Hawks?

MR ROBERT JOHN McBRIDE: That was General Ntlemeza.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

CHAIRPERSON: Now when you met with the Minister at the rally in Cape Town you had said something to him about the General Dramat matter namely that they would have to – there was going to be a clamp down but my understanding and you must tell me if my understanding of your evidence is correct is that on that occasion the two of you did not discuss details about it, is that correct or did you? In other words did you tell him why you were saying that, what your view was about his decision and so on?

10 **MR ROBERT JOHN McBRIDE:** Chair I raised the issue with him and I said it, Minister you are wrong, you need to climb down on this one and he did not even bother to listen to me. He just said oh that is a good idea I will consider it. It was kind of dismissive and ...

CHAIRPERSON: So it was not a case of maybe we must find another time to discuss it or – my impression earlier on was that it was like there would be another time to discuss it that is not what was arranged?

MR ROBERT JOHN McBRIDE: No his – Chair his focus was on General Phiyega.

CHAIRPERSON: Okay.

MR ROBERT JOHN McBRIDE: Where is that?

20 **CHAIRPERSON:** Yes. Okay.

MR ROBERT JOHN McBRIDE: That case.

CHAIRPERSON: Okay.

MR ROBERT JOHN McBRIDE: I would expect that it is also has something to do with the Reference Group whatever report they gave because they were asking about General Phiyega also.

CHAIRPERSON: Hm.

MR ROBERT JOHN McBRIDE: To us. Would General Phiyega on the particular case we also did not recommend criminal prosecution because the issue was and I am sorry to go off on a tangent but just there is context to it and it gives direction. So General – the issue was did General Phiyega improperly warn General Lamoure that there was an investigation against him and this is based on an intercept between the two generals talking which was recorded by Crime Intelligence and in the recommendations that came out of the matter which – our recommendations were and the DPP of the Western Cape agreed with the recommendations that the discussion could not have been a
10 warning to General Lamoure because the discussion was taking place against the background of a Parliamentary question being asked about whether there is an investigation against General Lamoure. What we did say was that the extent of the disclosure in the conversation appeared to be improper and therefore maybe there should be some disciplinary consequence on that. So I am – so it is – in effect it is two generals that the Minister has an interest in and both of them do not have recommendations to prosecute.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: It may be termed an irony but as I understand your evidence and the facts the law IPID is there is investigate the police?

20 **MR ROBERT JOHN McBRIDE:** That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And what is happening with the Reference Group is that the Minister has set up a different inquiry to investigate IPID, is that right?

MR ROBERT JOHN McBRIDE: That is correct.

CHAIRPERSON: I was – I was still to – going to ask what was this Reference Group – where was it coming from, was there a policy on which it was based, was there a statue

on which it was based, was it a statutory provision thing or was it just an informal group of people that the Minister had put together on your understanding?

MR ROBERT JOHN McBRIDE: My understanding then perhaps wrongly and – was that the Minister had some prerogative to set up an advisory group which he terms Reference Group to advise him on a number of pressing issues. And I have – we were never informed by the Minister there is Reference Group and what its mandate is. On one occasion Advocate Kruger was downstairs and the securities said someone from the Minister's office and they want to see you then – demanding to see you. So I said well let them come up and Advocate Kruger came in with I think it was with Radabe and
10 she did not greet me when she came in. She was like very stern and I said, have a seat and she like stared at me for a full minute. So I did not know her I later on found out that she was – she had been a police officer at some stage but I got the sense that she is a police officer by – because I had faced in my life intimidatory tactics like that before. But I just – I just said let me be civil they said they coming from the Minister so let us hear what – so would you like some tea? And so on and then they started asking questions and I think that is when they raised the issue of rendition case and that is when I then contacted Mr Sesoko to arrange another date for Mr Ncuba to come down from Limpopo to brief them and then that is what we did ja. So that is how I became aware of Reference Group. I did not see anything in the newspaper. Minister did not
20 tell me anything.

CHAIRPERSON: Well one of the witnesses who has given evidence here I think did make reference to this Reference Group of the Minister of Police I think it was Mr or Advocate Muofhe who was advisor to Minister Ramatlhodi.

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: He says – he said he was invited to part of the Reference Group and

so I think it is the same Reference Group.

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: If I am not mistaken.

MR ROBERT JOHN McBRIDE: Advocate Muofhe I sort of was acquainted with him from a previous occasion. I think he was in Thokoza when I knew him and he came on his own to us and he wanted to check around about January or February 2015. And he says to me he wanted to really know what is going on with rendition in a very collegial way. And then we explained and it was not with the other team. Advocate Muofhe was alone then I explained to him and Mr Ncuba was there and Ms Sesoko was there. And
10 he then said to me before parting he said now I know I have heard you now I know – I understand I am satisfied. And he left and my sense was that he was sympathetic with the circumstances we found ourselves in.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: At that moment ja.

CHAIRPERSON: Hm. Okay thank you. Yes Mr Pretorius maybe this is a – the time to confirm with Mr McBride that if it is fine with him and everybody we could go up to five o'clock subject to a break in five minutes time, would that be fine with you?

MR ROBERT JOHN McBRIDE: Yes Chair that is in order.

CHAIRPERSON: Yes.

20 **MR ROBERT JOHN McBRIDE**: Thanks.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: Mr McBride would you look please at paragraphs 23 and 24 and just tell the Chair of the contents thereof so that we can wrap up at least this part of this part of your statement?

CHAIRPERSON: I think you might have to repeat I am not sure that he understood

what you were asking?

ADV PAUL JOSEPH PRETORIUS SC: Yes. If you would just look at your statement at paragraphs 23 and 24.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Just in part summarise as in part introduces new facts but it wraps up the evidence that you have just given.

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Just would you put that on record please?

MR ROBERT JOHN McBRIDE: Okay. So we then repudiated the Minister's statement
10 that he had suspended Dramat on the recommendations of IPID and a response was
given by Mr Dlamini who was a National Spokesperson. And the Minister later on
accused me of fraudulently altering an investigation report and subsequently I was
suspended on it looks like Chair it is the 25 March ja. I think that is the right date on –
at 24th.

CHAIRPERSON: Oh, oh yes.

ADV PAUL JOSEPH PRETORIUS SC: Just before you go on we will come to that
issue in due course because that is the subject matter of the Workman's Report which
is a matter of some controversy between yourself and Workman's and we will deal
with that in detail. But the first point is that the Minister justified the suspension of Mr
20 Dramat on the basis of the provisional first report and your response was that the
Minister was wrong because there was a proper second report signed by yourself.

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Is that correct? And you say in paragraph 23
that the provisional report prepared by Mr Ncuba was indeed incomplete because it did
not consider all the evidence in its totality in particular exculpatory evidence?

MR ROBERT JOHN McBRIDE: Absolutely.

ADV PAUL JOSEPH PRETORIUS SC: And then you say in the last sentence of paragraph 23 that the first report was signed only by Mr Ncuba and in terms of IPID regulations indeed we now know the Act and standing operational procedures all final reports must be countersigned by the investigator, supervisor and you say in the statement the approving authority prior to referring the case file to the NPA, is that correct?

MR ROBERT JOHN McBRIDE: Chair that is correct I would like to also add there are occasions where IPID has recommended a particular course of action as far as
10 prosecution is concerned and the NPA has not heeded that and including to prosecute or to not prosecute. The NPA does not always agree with what we say. They have the final say in terms of deciding to prosecute or not.

ADV PAUL JOSEPH PRETORIUS SC: Right.

MR ROBERT JOHN MCBRIDE: The purpose of me stating this and emphasising it is whatever is said in any report the NPA takes the final decision based on the evidence in the docket.

ADV PAUL JOSEPH PRETORIUS SC: Right and the approving authority referred to in the last line of paragraph 23 is yourself? Is that correct?

MR ROBERT JOHN MCBRIDE: That is correct sir. That is correct.

20 **ADV PAUL JOSEPH PRETORIUS SC:** You say in paragraph 24 as you have said now you publically contradicted the statement by the Minister and clarified that Dramat and Sibiya had been exonerated. You use the word exonerated there. I presume you mean affectively exonerated by the IPID investigation and then the Minister accused you of fraudulently altering the IPID report?

MR ROBERT JOHN MCBRIDE: Thanks Chair. That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: You deal with that in that sequence.

MR ROBERT JOHN MCBRIDE: Ja.

ADV PAUL JOSEPH PRETORIUS SC: And then you were suspended?

CHAIRPERSON: I am sorry – I am sorry. I guess that you – you had no choice but to tell the public what the position was because now the Minister through his spokesperson had told the nation that his decisions to suspend General Dramat was based on a recommendation of your organisation and as head of the organisation if that was not correct you had – you had an obligation to put the record straight?

MR ROBERT JOHN MCBRIDE: Hm.

10 **CHAIRPERSON:** Or not?

MR ROBERT JOHN MCBRIDE: No, absolutely Chair. We had to. We were also stung and dumbfounded by the allegations against us.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: And what became clear as the Minister not acting in good faith and the Minister on a path that has been decided and later on – I am sorry Chair. Just to go into – later on I become aware of that the conversation of the previous year of Mr Khuba and General Ntlemeza in Limpopo. I also become aware that at the time of 2014 if – December the same day that – I might be a day or two out. The same day General Dramat receives his notice of intention to suspend General Ntlemeza
20 meets with Khuba again or phones him and says:

“Watch there is going to be a hit on Dramat. Watch the media.”

And that is by coincide for me is the same day. So what happened in 2013 when Minister Nhleko was not there Ntlemeza is already pushing Khuba to speed up his report. Reportedly so is Advocate Mosing and then when everything comes to maturity and fruition General Ntlemeza then tells Khuba watch the media there is going to be a

hit on Dramat. It seems a path was chosen and people are on it and as much as I tried to look at another reasonable possibility of why this is happening to us I could not come up with a reasonable understanding of the Minister's decisions and the path that we were now on and my – any belief that the Minister might be mistaken or might be wrong or has a misunderstanding of the law was now completely wiped away and that is why I then realised I had to speak up and then also approach the courts. Anything less than that would be an attack on the independence and integrity of myself and of IPID and of the investigators who work with me and therefore we had to speak up.

CHAIRPERSON: Am I right that in your earlier evidence you also said that you
10 understood from Mr Khuba - and I guess he will confirm if he gets called – you understood from him that when Mr Ntlemeza was putting pressure on him to send the docket to report to the NPA he said that report that was to be sent to the NPA was what was holding his progress back or something like that?

MR ROBERT JOHN MCBRIDE: That is correct.

CHAIRPERSON: Is that - that is what you said?

MR ROBERT JOHN MCBRIDE: That was in November/December 2013.

CHAIRPERSON: Yes, okay.

MR ROBERT JOHN MCBRIDE: That is before even the first report now reaches Mosing.

20 **CHAIRPERSON:** Yes, but you were being told this after your appointment as?

MR ROBERT JOHN MCBRIDE: Yes that is correct sir.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: That is correct.

CHAIRPERSON: Okay, thank you.

ADV PAUL JOSEPH PRETORIUS SC: Chair there will be direct evidence of that

conversation.

CHAIRPERSON: Okay, thank you.

ADV PAUL JOSEPH PRETORIUS SC: Is this a convenient time for?

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: A 10 minute adjournment?

CHAIRPERSON: I think so. It is four minutes past. We will take a 10 minutes break, but we will return at quarter past.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

CHAIRPERSON: We adjourn.

10 **REGISTRAR:** All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: You may proceed Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair. You refer to certain public statements in paragraphs 23 and 24 Mr McBride, I presume that you will be able to assist us to find those statements?

MR ROBERT JOHN McBRIDE: Yes Chair I will endeavour to find them, I will have to contact the IPID spokesperson from the Department, Mr Dlameni.

20 **CHAIRPERSON:** Thank you and just to maybe wrap up on something we dealt with earlier, you told us that in relation to the office of the Minister there does exist somewhere something in writing that is proof that they received your report and when they received it. In regard to the NPA is there a similar proof available in terms of when they would have received your report?

ADV PAUL JOSEPH PRETORIUS SC: My understanding Chair is that there is, and if I remember correctly in our submission of papers and urgent application at the High

Court and Constitutional we would have annexed all of those issues.

CHAIRPERSON: Okay, okay, thank you. In the end it might not be an issue but it might just be important to know who received it when in relation to events that may have happened after.

MR ROBERT JOHN McBRIDE: Sorry Chair the only issue for some of the documentation, I might not have access to it now because it's with IPID.

CHAIRPERSON: Yes, well I think to the extent that you might know that certain documents within IPID may exist that might assist the Commission or might assist you to assist the Commission speak to the Legal team of the Commission, and the
10 investigators, I'm sure that can be sorted out, thank you.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair. Mr McBride just to refer to certain to statements made under oath by Mr Khuba the document at page 1225 of Bundle CYC what is that document?

CHAIRPERSON: Did you say 1225?

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair.

MR ROBERT JOHN McBRIDE: Thanks Chair, this document is a supporting affidavit of Mr Khuba that was made in according to the stamp on the 26th of June 2015 and it's in relation to the matter in the High Court challenging the unilateral suspension and disciplinary of Minister Nhleko.

20 **CHAIRPERSON:** Yes in terms of the date you referred to the stamp that must be the date when it was filed in the High Court I would imagine but at page 1247 which is the last page of the affidavit there's another date there isn't it, in terms of when it was deposed to? 19th June is the date that appears there, 2015.

MR ROBERT JOHN McBRIDE: That's correct Chair, I would imagine it's when the entire bundle was ...

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: It's perhaps appropriate to deal with this affidavit at this stage, although it is possible that Mr Khuba will give evidence, the full story from his point of view is set out here and I'm going to refer you to certain paragraphs if I may to see what you say about those paragraphs. I understand that this is Mr Khuba's affidavit in the matter where you challenged your suspension and it's the affidavit which finally came to rest in the halls of the Constitutional Court.

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: You go to page 1226.

10 **MR ROBERT JOHN McBRIDE:** I have it Chair.

ADV PAUL JOSEPH PRETORIUS SC: I presume it is correct as appears from this affidavit and from your evidence to date that Mr Khuba was in IPID an official in IPID long before you came onto the scene at IPID, correct?

MR ROBERT JOHN McBRIDE: Indeed, that's correct.

ADV PAUL JOSEPH PRETORIUS SC: He says in paragraph 5 on page 1226:

"I was first assigned to investigate the involvement of the SAPS, South African Police Service, including members of the DPCI in the illegal rendition of Zimbabwean Nationals towards the end of 2011, although I was only given the green light to investigate in October 2012."

20 **MR ROBERT JOHN McBRIDE:** That's correct I see it.

ADV PAUL JOSEPH PRETORIUS SC: In paragraph – he may explain the delay of a year in that regard when he comes to give evidence. Paragraph 6 he says:

"The circumstances in which the case was initially investigated and assigned to me were very unusual."

He then refers to the report in the Sunday Times alleging what was referred to then as

an illegal rendition which appeared in during or about October 2011, which resulted in questions in Parliament. Do you see that?

MR ROBERT JOHN McBRIDE: Yes I see.

ADV PAUL JOSEPH PRETORIUS SC: And it appears from paragraph 6.2 that your predecessor, Mr Beekman, instructed Sesoko, the then Acting Chief Director of Investigations at IPID to initiate an investigation, correct?

MR ROBERT JOHN McBRIDE: That's correct sir.

ADV PAUL JOSEPH PRETORIUS SC: It then appears that Sesoko appointed Khuba to head the investigation, but it seems that shortly after that appointment both Sesoko
10 and Khuba were instructed to hold off the investigation apparently on the instruction of the then Minister of Police, Mr Nathi Mthethwa, do you see that?

MR ROBERT JOHN McBRIDE: I see this.

ADV PAUL JOSEPH PRETORIUS SC: It was only about a year later during October 2012 that a Colonel Makangwe from SAPS Crime Intelligence Gathering Division came to Sesoka's office at IPID and at that stage it appears that in the intervening period Crime Intelligence, or the intervening year to which we've just referred, Crime Intelligence were indeed investigating the matter, is that your understanding of what happened?

MR ROBERT JOHN McBRIDE: That's correct yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Makangwe handed over the docket that Criminal Investigation Gathering – or sorry – Crime Intelligence Gathering Division had opened into the renditions matter and advised, according to Khuba in any event, advised Sesoko that an investigation had already been conducted by Crime Intelligence Gathering – sorry Chair – and that the matter was not being handed over to IPID on the instructions of the Minister of Police Mr Nathi Mthethwa, is that your understanding of

what occurred?

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: Khuba continues to say that shortly after I began my investigations I briefed Mbeki on the case and informed her that I would consult with Seseko in the course of the investigation. Now Mbeki was as you've told the Chair your immediate predecessor Executive Director IPID, correct?

MR ROBERT JOHN McBRIDE: That's correct sir.

ADV PAUL JOSEPH PRETORIUS SC: He says that is Khuba says that it was common practice to consult with your immediate superior, is that your understanding of the practice within IPID?

MR ROBERT JOHN McBRIDE: Yes, that's correct.

ADV PAUL JOSEPH PRETORIUS SC: You've said so. Khuba continues to say as the National Head of Investigations at IPID Sesoko was ordinarily consulted and briefed on all national investigations. Khuba continues to say in paragraph 6.6 on page 1228, to my surprise Mbeki categorically instructed me not to work with or discuss the investigation with Sesoko. Mbeki instructed me instead to collaborate with Makangwe from CIG, that's Crime Intelligence Gathering, in the conduct of the investigation and to keep this collaboration secret. This was the first and the only time that I'd received such instructions about an investigation.

20 Now to the extent that the facts in paragraph 6.6 may be found to be correct after all the evidence is heard by the Chair is that circumstance or are those circumstances unusual or questionable?

MR ROBERT JOHN McBRIDE: To my knowledge and my experience in IPID we've never had such a situation, and from what Mr Khuba says they haven't had such a situation prior to this so it's clearly unusual.

ADV PAUL JOSEPH PRETORIUS SC: Apart from it being unusual Mr McBride may I ask you would it be proper or lawful for the IPID director, and I know I'm asking for your opinion but from your personal knowledge and experience for the Acting Director Executive Director of IPID to instruct an investigator not to report to his superior but rather to collaborate in secret with someone from another branch of the South African Police Service, particularly where the witnesses were from Crime Intelligence themselves?

MR ROBERT JOHN McBRIDE: It's completely irregular and sinister.

ADV PAUL JOSEPH PRETORIUS SC: In paragraph 6.7 Khuba continues, he says:

10 “Mbeki's instruction was an unusual and problematic one because members of the CIG were themselves involved in the arrest of these Zimbabwean Nationals that were subsequently rendered to Zimbabwe. It also seemed to be a problematic instruction given the widely known history of animosity between Lt Col General Ndludli and the previous Divisional Commander of the CIG, and Major General Shadrack Sibiya, then the Provincial Head of DPCI for Gauteng Province.”

That's a topic for another time. In any event he concludes in paragraph 6.8:

20 “I was instructed by Mbeki to report directly to her in the matter and the keep her abreast of the progress in the investigation through regular reports. I sent weekly reports on the investigation to Mbeki and also periodically sent her copies of the working draft of the investigation report.”

He then says, and this is closer to the time where you became involved Mr McBride in paragraph 7:

“On perusing the file of the CIG's investigation of the rendition I became concerned that the investigation that CIG had conducted was not reliable or

adequate.”

And then he sets out various reasons for that to which he can testify if and when he comes to give evidence.

He says in paragraph 7.3, in relation to the CIG investigation:

“It also seemed suspicious to me that certain of the Zimbabwean Nationals identified Sibiya by name in their affidavits obtained by CIG although it was unlikely that they would know his identity.”

And then he notes in paragraph 7.4 that in his interview with Werksmans Advocate Mosingh expressed similar concerns about the credibility of the CIG officers’ evidence.

10 Then he says in paragraph 8, that by way of background because you now come on the scene:

“On 4 March 2014 at the very first meeting that I had with the McBride [he says] I conveyed my concerns about the manner in which the rendition matter was brought to IPID and assigned to me for investigation. I told McBride that I felt uncomfortable and suspicious of the involvement of CIG in the investigation and the instruction that I was not to discuss the investigation with Sesoko but to report directly to Mbeki.”

What do you say about that statement in paragraph 8, is it correct? Do you have any comment?

20 **MR ROBERT JOHN McBRIDE:** It’s a reflection of the discussions we had during the first occasion of being briefed.

ADV PAUL JOSEPH PRETORIUS SC: Paragraph 10 on page 1231 of Khuba’s affidavit reads as follows:

“I also worked under the guidance of Advocate Mosingh and Moletse of the NPA the Special Projects Division in the office of the NDPP who were

involved in CIG's investigation before IPID became involved. Mosingh told me that before the matter was referred to IPID Colonel Makangwe had approached the NPA to prosecute General Sibiya on the strength of the CIG's investigation but the NPA had declined to do so."

What is your knowledge of the allegations in that paragraph?

MR ROBERT JOHN McBRIDE: I don't remember that particular aspect being discussed with me initially, as I said some of the information I became aware of subsequently in greater detail.

ADV PAUL JOSEPH PRETORIUS SC: Right then he refers in paragraph 11 and
10 following to the report of January 2015, what you've referred to as the first or the provisional report. In paragraph 13 he says, well in paragraph 12 he says – just bear with me a moment Chair please – he says on 20 – if I can go back one paragraph to paragraph 11:

"On 22 January 2014 says Khuba I submitted to Advocate Mosingh of the NPA what I will for the sake of convenience refer to as the January 2014 report of the IPID investigation."

He says in paragraph 12:

"I was placed under considerable pressure by Mosingh to submit a signed
version of the January 2014 report, with recommendations so that he could
20 hand over the matter to the DPP."

That would be the Provincial Director of Prosecutions, correct?

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: Towards the end of the 2013 Mosingh started insisting that I finalise my investigations and give him the report. My sense was that he was under a lot of pressure to wrap up the case. He then says in paragraph 13:

“While I did as I was instructed I was not satisfied that the January 2014 report was in fact a final report because my investigations were not complete. After I submitted the January 2014 report I continued with the investigation, I always intended to supplement the docket with the outstanding evidence and to send an updated report when my investigation was properly completed.”

Are you able to confirm the facts in that paragraph 13 from your own knowledge?

MR ROBERT JOHN McBRIDE: From my own knowledge no, but from what I was told yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Right but you do know, as I understand it, that there was dissatisfaction that the 2014 report was incomplete, that was your own view?

MR ROBERT JOHN McBRIDE: That’s correct yes.

ADV PAUL JOSEPH PRETORIUS SC: And that certainly from your part you directed that the docket be supplemented with outstanding evidence, is that correct?

MR ROBERT JOHN McBRIDE: That’s correct and to be subjected to review of all this, of all existing statements in any event for evidentiary value.

ADV PAUL JOSEPH PRETORIUS SC: It’s perhaps appropriate at this time to make a point that you made to the investigators, there’s a distinction as I understand it between the report that IPID would produce and the evidence contained in any file or ultimately
20 in any docket.

MR ROBERT JOHN McBRIDE: Yes, that’s correct.

ADV PAUL JOSEPH PRETORIUS SC: It’s common cause that the final report, or second report differed in content from the first or provisional report?

MR ROBERT JOHN McBRIDE: That’s correct.

ADV PAUL JOSEPH PRETORIUS SC: Was the evidence contained in the docket ever

altered?

MR ROBERT JOHN McBRIDE: No it was not except that additional information was supplemented and added to it.

ADV PAUL JOSEPH PRETORIUS SC: Right.

CHAIRPERSON: The additional information was contained in separate documents, it was not a question of amending any sentences in the report that had been – in the first report was it? In other words if there was a docket that was sent to the NPA which contained the first report if there was a docket or whatever it was that contained the information that was sent what was done was just to add more documents without
10 physically changing anything that was in documents that had been sent before, is that right?

MR ROBERT JOHN McBRIDE: Yes Chair, and just to clarify further none of the evidence that was in the docket initially, including the suspect evidence, or the evidence that was obtained suspiciously was ever removed from the docket.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: So all the evidence in its entirety was there including that which the CIG had themselves collected.

CHAIR: So would the position have therefore been that if after the additional documents had been sent to the NPA you removed the additional documents that came
20 after what would have remained with the NPA would have been exactly what they had had before the addition of the documents?

MR ROBERT JOHN McBRIDE: That's exactly correct.

CHAIRPERSON: Okay, alright.

ADV PAUL JOSEPH PRETORIUS SC: It is important to clarify the – in the Werksmans' report there's evidence of changes to certain documents whether that is a

change to the report or to documents contained in the docket we will clarify in due course when we get there, but it's important that we go there and you get an opportunity to deal with that. However as I understand what you are telling the Chair is that nothing was removed so that the original statements would have all been there, or the original documents would have all been there?

MR ROBERT JOHN McBRIDE: Ja, all evidence taken at whatever stage was included in that docket. Just in brief before we get there, only stuff which was altered in the recommendation report, the opinion of Mr Khuba, was that which after review had, and still has no evidentiary value.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Because the report is what, as opposed to the evidence?

MR ROBERT JOHN McBRIDE: Well the report ...(intervention)

ADV PAUL JOSEPH PRETORIUS SC: Let me put it this way is the report evidence?

MR ROBERT JOHN McBRIDE: No it's not. The report is an opinion of the investigator based on what he analyses or assesses in the docket, so he could say based on what he has there might be a case or now that they have exculpatory evidence I can no longer sustain initially what I had suspected and that's what happened in this situation.

ADV PAUL JOSEPH PRETORIUS SC: Continuing, sorry Chair.

20 **CHAIRPERSON:** So we have referred from time to time to a docket that was sent to the NPA. The docket would basically have been a file, is that a right?

MR ROBERT JOHN McBRIDE: Yes that's correct.

CHAIRPERSON: And ordinarily would a docket that would be sent to the NPA include statements from witnesses, plus a report from the investigator or a report containing the opinion as you say or would the report containing the opinion be separate or be sent separately or they would all be sent normally at the same time together?

MR ROBERT JOHN McBRIDE: Okay Chair the recommendation report is not evidence, so only evidence and evidentiary statements are in the docket, so that is in addition to the docket.

CHAIRPERSON: Yes, okay.

MR ROBERT JOHN McBRIDE: Is the investigator's opinion and recommendation report.

CHAIRPERSON: Yes, but normally they would be sent at the time, the report and the evidence, the docket with the evidence?

MR ROBERT JOHN McBRIDE: That's correct Chair, they go at the same time.

10 **CHAIRPERSON:** Yes okay, but what would otherwise be in the docket would be witness statements, is that right?

MR ROBERT JOHN McBRIDE: That's correct.

CHAIRPERSON: And whatever exhibits may be – might be there?

MR ROBERT JOHN McBRIDE: That's correct.

CHAIRPERSON: Okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: We will return to the statement in due course when dealing with the Werksmans' report Mr McBride but for the present at page 1232 paragraph 14 Mr Khuba says:

20 "At the time that I signed the January 2014 report and sent it to Mosingh the following material evidence was still outstanding."

He refers in paragraph 14.1, 14.2 and 14.3 to certain statements including the warning statement of General Sibiya, is that correct?

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: And then in paragraph 14.4 he says:

 "Still outstanding was an expert analysis of the cell phone data which

mapped the location of calls and sms's sent and received at the relevant times."

You've told the Chair of the relevance of that cell phone data analysis?

MR ROBERT JOHN McBRIDE: That's correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Paragraph 14.5 he says:

"I was also still awaiting an expert analysis of the two statements that Colonel Madilonga had made."

And we have that evidence as well on record, but we will deal with that with Mr Khuba in due course. And then in paragraph 14.6 he says that a copy of Madilonga's three
10 statements are attached, my concerns about Madilonga's credibility were confirmed by the expert analysis that I subsequently received from Precision Forensics on 17 March 2014, and he attaches that report. Who was Madilonga?

MR ROBERT JOHN McBRIDE: Madilonga was the Crime Intelligence Officer who was based at Beitbridge who allegedly phoned General Dramat to say the Zimbabweans have arrived and they are on their way to you.

ADV PAUL JOSEPH PRETORIUS SC: Right, he was the so-called eye witness I understand, is that correct?

MR ROBERT JOHN McBRIDE: Well he was a witness that linked, initially linked General Dramat to the Zimbabweans arrival.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Through the sms invitation?

MR ROBERT JOHN McBRIDE: From memory it was a phone call.

ADV PAUL JOSEPH PRETORIUS SC: Okay, alright. In any event he says in paragraph 15 finally on page 1234 finally for present purposes not finally in his affidavit:

"After I sent the January 2014 report to Mosingh I continued to gather and analyse the evidence."

That is consistent with what I understand your evidence to be.

MR ROBERT JOHN McBRIDE: Sorry Chair can you just remind me again which number is it?

ADV PAUL JOSEPH PRETORIUS SC: Page 1234.

MR ROBERT JOHN McBRIDE: Yes I have that.

ADV PAUL JOSEPH PRETORIUS SC: Paragraph 15.

MR ROBERT JOHN McBRIDE: I have that yes.

ADV PAUL JOSEPH PRETORIUS SC: The first sentence.

MR ROBERT JOHN McBRIDE: Yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Is that correct?

MR ROBERT JOHN McBRIDE: That's correct yes.

ADV PAUL JOSEPH PRETORIUS SC: To your knowledge?

MR ROBERT JOHN McBRIDE: That's correct yes.

ADV PAUL JOSEPH PRETORIUS SC: And in fact you managed and directed that further gathering and analysis of evidence, is that correct? After the January 2014 report or certainly after your briefing in March.

20 **MR ROBERT JOHN McBRIDE:** Yes. I think also what is key for the purposes of this Rendition issues is that in 15 that on the 28 February Msoing replies to Ncuba and advising that that evidence which had been emailed must now be attached to the docket which now is at the South Gauteng DPP's place. So that is – the second sentence of 15 – oh the third sentence sorry Chair is critical.

ADV PAUL JOSEPH PRETORIUS SC: Is you go to page 1266 you will see the Annexure to the affidavit of Mr Ncuba. It is a communication from Anthony Mosing of the NPA to Mr Ncuba dated the 28 February 2014.

MR ROBERT JOHN McBRIDE: That is correct Sir.

ADV PAUL JOSEPH PRETORIUS SC: The subject is Response to Questions posed by IPID – Major General Shadrack Sibiya. It reads:

“Dear Mr Ncuba. In light of the fact that the matter has been referred to the DPP of South Gauteng for decision that is the Director of Public Prosecution South Gauteng you are requested to file this evidence and the docket which is presently with the DPP South Gauteng and in future forward any additional evidence or other matter directly with him.”

It reads.

10 “Kind Regards A Mosing”

So it seems that the docket has already been handed onto the DPP for prosecution.

MR ROBERT JOHN McBRIDE: Yes safe to add that without the new evidence.

ADV PAUL JOSEPH PRETORIUS SC: Yes. Indeed because that was still in the process of being collated.

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: And that is the point made in paragraph 15 by Mr Ncuba as I understand it?

MR ROBERT JOHN McBRIDE: That is correct Sir.

20 **ADV PAUL JOSEPH PRETORIUS SC:** We will deal with the remainder of the evidence of Mr Ncuba in this affidavit either indirectly through yourself when we deal with the Worksman’s Report or directly from Mr Ncuba himself if and when gives evidence. So for the present if we may return to your statement. If we can turn to Annexure E at page 143.

MR ROBERT JOHN McBRIDE: Yes I have it.

ADV PAUL JOSEPH PRETORIUS SC: This is an application to the high court Gauteng

Provincial Division to interdict your suspension and to obtain interim relief, is that correct?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: That is certainly in Part A.

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And Part B is to set aside your suspension on various grounds?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Amongst those grounds on page 145 is that
10 the apparent empowering provisions empowering the Minister of Police to suspend you or remove you from office as Executive Director of IPID would be unconstitutional?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: That is eventually what the constitutional court found?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Although it was found that the matter was not urgent and you were not afforded interim relief, is that correct?

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: In that affidavit at page 161 you deal with the
20 matters related to the independence of IPID we needed to traverse them again in any more detail, do you see that?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And in – on page 163 you say in paragraph 37:

“In the context of IPID it is especially important that the Minister
of Police does not have a broad power to suspend the Executive

Director. Given that IPID's function is to investigate complaints of misconduct by members of the SAPS and to maintain effective oversight over the SAPS it is essential that the IPID remains strictly independent of the SAPS. This must include the Minister of Police who is politically responsible for the SAPS and who is executive and political interests are thus bound to the fate of the SAPS."

In general terms those sentiments or propositions were accepted I understand by the constitutional court in general terms not in their detail.

10 **MR ROBERT JOHN McBRIDE**: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And then in paragraph 45 on page 166 you make the allegation as follows:

"As I have explained the Minister's intention to suspend me is calculated to undermine or suppress the IPID investigation report that vindicates Dramat and Siniya and upon which the Minister has relied to justify his suspension of them."

That as I understand was your view at the time?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: The constitutional court made no finding in
20 respect of that allegation as I understand it?

MR ROBERT JOHN McBRIDE: That is correct they did not deal with the merits of the issue.

ADV PAUL JOSEPH PRETORIUS SC: In paragraph 27 you speak of a circumstance that occurred before your suspension. Perhaps we should just put matters in their proper context.

CHAIRPERSON: What paragraph is that?

ADV PAUL JOSEPH PRETORIUS SC: Paragraph 27.

CHAIRPERSON: 27.

ADV PAUL JOSEPH PRETORIUS SC: When, by whom and how were you suspended?

MR ROBERT JOHN McBRIDE: I was suspended by the Minister.

ADV PAUL JOSEPH PRETORIUS SC: Minister of Police?

MR ROBERT JOHN McBRIDE: The Minister of Police. And the Portfolio Committee which should hold the Minister accountable and should be involved in the protection of

10 IPID's independents did not intervene to protect the independents and hold the Minister to account instead parts of the Portfolio Committee which is regarded as a study group which involves the Minister and the ANC caucus of the Portfolio Committee came to an understanding rather than them being different arms of the state came to an understanding that Dramat should go and then Nhleko made a presentation in far as it concerned myself with a range of allegations. I had written to – when these allegations were doing their rounds I had written to the Portfolio Chair who was my predecessor at IPID.

ADV PAUL JOSEPH PRETORIUS SC: Who was that?

MR ROBERT JOHN McBRIDE: Mr Francois Beukman to give me an opportunity to

20 account for any allegations of whatever they concerned and his response to me was,

ADV PAUL JOSEPH PRETORIUS SC: I am sorry just be – let us take it a little more slowly if we may and step by step. You have told the Chair that you were suspended?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: The grounds for your suspension you say in paragraph 26 were summarised or stated as being based on two contradictory reports

emanating from IPID concerning the rendition saga, is that correct?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: So am I to understand correctly you were confronted with the allegation or fact that IPID had issued two contradictory reports?

MR ROBERT JOHN McBRIDE: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: And the inference was that the second report was somehow falsified or prepared fraudulently, is that correct?

MR ROBERT JOHN McBRIDE: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: In order to achieve a certain aim?

10 **MR ROBERT JOHN McBRIDE:** That is correct.

ADV PAUL JOSEPH PRETORIUS SC: That is the subject matter of the Workman's Report which we will deal with in due course. But on this basis before your suspension you wanted to approach the Portfolio Committee. May I just ask is there a difference between the Portfolio Committee on Police and the Study Group that you referred to or are they the same thing?

MR ROBERT JOHN McBRIDE: No they are different things. The Portfolio Committee is all party committee and it is a statutory body of Parliament.

ADV PAUL JOSEPH PRETORIUS SC: Yes that is how we understand it.

20 **MR ROBERT JOHN McBRIDE:** Yes. Whereas the Study Group is a group which includes ANC members which is only ANC members in the Study Group and officials who attend the Study Group. So it is a – if I can just take it further? The Study Group is actually an example of where Parliament fails to hold the Executive to account. Its existence and a fact they have to agree on issues undermines the issue of separation of powers and the issue of holding the Executive to account by its very existence as a caucus.

ADV PAUL JOSEPH PRETORIUS SC: For the purpose of your evidence in paragraph 27 which entity were you seeking to address and which entity was chaired by Mr Francois Beukman, the Portfolio Committee or the Study Group?

MR ROBERT JOHN McBRIDE: It was the Portfolio Committee the larger committee multi party committee.

ADV PAUL JOSEPH PRETORIUS SC: Right.

MR ROBERT JOHN McBRIDE: But the decisions are taken in the Study Group. Everything that is discussed in the Portfolio Committee and on one or two occasions I have been called to this Study Group to explain or level allegations against me. I can
10 say with very little doubt in me that we – the present Study Group that is on its way out was hardly ever supportive of IPID and its independence.

ADV PAUL JOSEPH PRETORIUS SC: Right.

MR ROBERT JOHN McBRIDE: But to answer your question Chair directly ...

ADV PAUL JOSEPH PRETORIUS SC: If I may just intervene there Mr McBride we dealing here with the Portfolio Committee which is enjoined by Parliament to exercise oversight and your evidence here is relevant to Parliamentary oversight.

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Over what was occurring here. You asked Mr Beukman for an opportunity on behalf of IPID before your suspension to address the
20 Portfolio Committee. What was Mr Beukman's response?

MR ROBERT JOHN McBRIDE: Mr Beukman's response was that this matter is sub judice

ADV PAUL JOSEPH PRETORIUS SC: Sub judice.

MR ROBERT JOHN McBRIDE: In court.

ADV PAUL JOSEPH PRETORIUS SC: Correct.

MR ROBERT JOHN McBRIDE: It was in court precisely for the unconstitutionality of the Ministers unilateral decision to suspend me.

ADV PAUL JOSEPH PRETORIUS SC: Alright. You then go on to say that quite contradictory to the approach adopted by Mr Beukman in regard to your request Mr Mhleko in fact did address the Portfolio Committee, is that correct?

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right. Before you go on perhaps that is a convenient time because we are at five o'clock Chair.

CHAIRPERSON: Oh yes. Maybe tomorrow we should start at half past nine again or
10 nine o'clock.

ADV PAUL JOSEPH PRETORIUS SC: May we compromise at half past nine?

CHAIRPERSON: Oh.

ADV PAUL JOSEPH PRETORIUS SC: Chair I have other matters to attend to.

CHAIRPERSON: You have other matters. Ja. Your – what is your current assessment of whether we will finish tomorrow?

ADV PAUL JOSEPH PRETORIUS SC: My current is that we will not.

CHAIRPERSON: It is not pressure – it is not pressure on anybody I just want to assess whether we should put in more time or not?

ADV PAUL JOSEPH PRETORIUS SC: Yes I do not feel the pressure of more time
20 Chair.

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: I do feel the pressure of having to make a forecast.

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: Chair the...

CHAIRPERSON: Okay we should start at ten to give you that little bit of time in the morning?

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair I would be grateful.

CHAIRPERSON: Yes. Yes. Okay alright. We will adjourn and then tomorrow we will start at ten o'clock.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 12 APRIL 2019