

**ENQUIRY INTO THE SOUTH GAUTENG DIRECTOR OF  
PUBLIC PROSECUTIONS' FITNESS TO HOLD OFFICE**

**HELD AT**

**SALU BUILDING, 316 THABO SEHUME STREET,  
DEPARTMENT OF JUSTICE AND CONSTITUTIONAL  
DEVELOPMENT**

**31 MARCH 2026**

**DAY 47**



**ENQUIRY INTO THE  
SOUTH GAUTENG  
DIRECTOR OF PUBLIC  
PROSECUTIONS'  
FITNESS TO HOLD OFFICE**

**PROCEEDINGS ON 31 MARCH 2026**

**CHAIRPERSON:** Good morning, everyone. Good morning, Advocate Chauke.

**ADV CHAUKE:** Good morning, Chair.

**CHAIRPERSON:** Good morning, Advocate Mayet. Are you ready?

**ADVOCATE MAYET SC:** We are ready to proceed.

**CHAIRPERSON:** Advocate Chauke, you continue to be under oath.

10 **ADV CHAUKE:** Thank you, Chair. I confirm.

**CHAIRPERSON:** You may proceed, Counsel.

**ANDREW CHAUKE:** (still under oath)

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. Chair, in light of the Panel's concern at the adjournment yesterday regarding the interpretation of Clause 3.1.2 of the terms of reference and the interpretation which could potentially give rise to some confusion, I seek to address this position before proceeding further with cross-examination of Mr Chauke. And with your leave and guidance, I will proceed.

20 As the Panel is aware, Clause 3.1.2, as presently framed, has two possible interpretations, a narrow construction which is confined to the decision made on 2 February 2012 and the subsequent decision made in April 2014. And there is a competing interpretation which gives a broader construction which extends to the subsequent

conduct and delay.

After being advised by the Panel and reading through the transcripts extensively and considering the position, it is evident that Advocate Batohi herself accepted that both interpretations are tenable and she further indicated that to the extent that a broader construction is intended, this may require an amendment of the terms of reference.

I understand that such amendment is pending and the scope of the clause is not settled. This leads me to a bit  
10 of a conundrum because if the clause is to be interpreted narrowly and we confine it, then the scope for meaningful cross-examination on that issue is significantly constrained. And this is simply because the Supreme Court of Appeal has already determined that Mr Chauke's decision was not irrational.

And in those circumstances, the core evaluative question in relation to that decision, the decision of 2 February 2012 and the April decision in 2014, the Supreme Court of Appeal has settled that. So cross-examination  
20 directed at undermining the Supreme Court of Appeal would risk, it does not make legal sense.

By contrast, if the clause is to be understood or amended to extend the consequences of that, to the consequences of that decision, including the alleged delay in proceeding, then there is clear and proper field for additional

cross-examination.

However, as evidence leader, my duty is to ensure that the evidence is fairly and properly tested within the bounds of the issues before the Panel. And as of yesterday, I was of the view that both the limited as well as the extended wide interpretation is necessary to be canvassed. However, in the absence of clarity, there is a real risk that continued cross-examination may either exceed the scope of the terms of reference or proceed on an interpretation of the terms of reference that is ultimately not adopted. That would be unfair to the witness and unhelpful to the Panel.

In these circumstances, I respectfully submit that it would be preferable for the scope of the terms of reference 3.1.2 to be clarified or necessarily amended before cross-examination proceeds further on that aspect. In those circumstances and reserving the right to recall cross-examination, those would be my submissions on that aspect.

**CHAIRPERSON:** Thank you, Counsel. You are aware that the terms of reference constitute a charge or charges against Advocate Chauke. Correct?

**ADVOCATE MAYET SC:** Yes, Madam Chair.

**CHAIRPERSON:** He is called to answer the terms of reference as they are and nothing can be implied on these terms without a proper amendment. I think this is a very basic principle in criminal law. We are not in a criminal law zone,

but we have to bear in mind the prejudice that may emerge from a broader interpretation if we are inclined to do that, as was suggested by Advocate Batohi.

An amendment was sought in a substantive application. We made a ruling and recommended to the President that there is no merit in the application. But of course, the power to amend the terms of reference resides with the President. If he decides to amend the terms of reference, then the terms will be amended and you can then  
10 proceed on the basis of the amended terms.

Without the amendment, we have to proceed on the basis of the terms of reference as they stand. This is our view, and we suggest that you reserve your right to further cross-examine Advocate Chauke in the event the President decides to amend the terms of reference. My sister would like to verify one aspect with you.

**MS RAMAGAGA:** Thank you, thank you, Chair. Advocate Mayet, when you addressed us about this, you also mentioned that acting on the advice of the Panel amongst  
20 others, you have decided to maybe take the step that you are taking. Is it correct, or I have misunderstood you?

**ADVOCATE MAYET SC:** I must apologise. I used the incorrect term.

**MS RAMAGAGA:** Yes.

**ADVOCATE MAYET SC:** I did not mean acting on the – I

meant as arising as a result of the questions that were posed to me yesterday. You will recall that the judge advised me to traverse the transcripts and to highlight the portions, specifically where Advocate Batohi makes these material concessions regarding the interpretation. I was simply referring to that.

**MS RAMAGAGA**: Okay. When you said advice, you did not mean that you have been advised by us. The advice was for you to look at the record, satisfy yourself on what steps to  
10 take, taking into account the facts that are already before the record. So are you saying you have satisfied yourself, and you have then opted to take the option that you are now exercising?

**ADVOCATE MAYET SC**: Indeed.

**MS RAMAGAGA**: Thank you. Thank you, Chair.

**CHAIRPERSON**: Yes. The further aspect relates to 3.2.2.3. You would have read the transcript. My sister is helpful in that regard. She is bringing to my attention that which transpired on the 27<sup>th</sup> of November 2027, when Advocate  
20 Batohi was on the witness stand.

I asked her some questions, and then she conceded that in relation to that clause, that term, the discontinuation of the criminal proceedings is reflected in term of reference 3.2.2.3, that that clause means it refers to the withdrawal of the matter prior to the referral for inquest.

That being the case, it does not appear to me that we can proceed also with your line of questioning, as you did yesterday, in relation also to term of reference 3.1.2. That is “the failure to continue with the charges”. I think these two clauses can be read together, and without an amendment, it does not seem to serve any purpose to call witnesses to testify about which the SCA has pronounced upon.

Some of these matters are matters for argument. We can deal with them later when you file submissions. With that  
10 said, you may proceed with your cross-examination.

**ADVOCATE MAYET SC:** Thank you, Judge. In light of my submissions, I reserve the right to further cross-examine Mr Chauke in the event that the clause is amended. But at this point, I have no further questions.

**CHAIRPERSON:** Yes, thank you, Counsel. Advocate Ngcukaitobi, re-examination.

**ADV NGCUKAITOBI SC:** Madam Chair, I am not sure what the plan of the evidence leaders is, because Mr Mohlamonyane had stood down yesterday to work out  
20 whether he wants to put any further points on the questions that arose at the end of his cross-examination yesterday. But I do not see that he is in the room at the moment. But if there is nothing further, I am happy to re-examine.

**CHAIRPERSON:** So let us wait for Advocate Mohlamonyane. Advocate Mtsweni, do you have an idea?

**ADVOCATE MAYET SC:** Madam Chair, if I could just clarify if he is available? If we could just take a five-minute adjournment to rearrange seating? He will ...[intervenes].

**CHAIRPERSON:** Well, we cannot take an adjournment because I cannot walk up and about ...[intervenes].

**ADVOCATE MAYET SC:** If I could just ...[intervenes].

**CHAIRPERSON:** It is a strain on my leg. We will sit here and wait to adjourn at an appropriate moment for tea. For now, send someone to call Advocate Mohlamonyane because  
10 he had the afternoon and the evening, he should be here to proceed with that aspect of cross-examination. Advocate Mohlamonyane.

**ADV MOHLAMONYANE SC:** Thanks, Madam Chair.

**CHAIRPERSON:** We asked that you be called because when we adjourned yesterday, you reserved your right to further cross-examine the witness in relation to certain aspects that you raised. Advocate Mayet has completed her cross-examination, also conditionally, and it is your chance to proceed now with the further questions to the witness before  
20 Advocate Ngcukaitobi re-examines the witness.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair.

**CHAIRPERSON:** Just to recap on which aspect you had to be given a chance to reflect and further cross-examine the witness. Do you remember?

**ADV MOHLAMONYANE SC:** Ja, I remember that we were

dealing with the signatures that were appended, documents where some of them were signed by Advocate Chauke. And then it emerged that the issue was extensively dealt with during the cross-examination of Advocate Maema by Advocate Mtsweni.

And Madam Chair urged me to read the record. I have indeed read the record and Advocate Mtsweni dealt extensively with that issue. I will not deal extensively with the issue. I have about two or three questions, but it was  
10 illuminating for me to go through that record. There is one aspect that I picked up, but in the course of my cross-examination I will refer to it.

And Madam Chair indicated to me that we should show where Advocate Chauke has taken a prosecutorial decision. Now, let me begin by referring you, Advocate Chauke. Good morning.

**ADV CHAUKE:** Good morning, sir.

**CHAIRPERSON:** In other words, demonstrate to us on this record the evidence that shows that Advocate Chauke took a  
20 prosecutorial decision. Remember, and I must emphasise that, remember this is a racketeering issue which is a matter of legislation. In terms of the law, the Act, POCA, only the NDPP is seized with the power to issue certain decisions regarding to the criteria. So bear that in mind when you point to that evidence regarding the prosecutorial decisions in so

far as Cato Manor is concerned.

**CROSS-EXAMINATION BY ADV MOHLAMONYANE SC**

**(CONTINUES)**: Thank you, Madam Chair. I will bear that in mind. Let me begin, Advocate Chauke, to refer you to Bundle LO3 and the page is 00866.

**CHAIRPERSON**: It would be helpful if you call it what it is, legal opinions, Volume 3, and then refer to the pages.

**ADV MOHLAMONYANE SC**: It is LO3 where Advocate Jiba's answering affidavit appears. It starts there. In the matter of  
10 the *General Council of the Bar of South Africa v Advocate Jiba and Others*. 866. This was a matter in which the GCP was applying for the striking off of Advocate Jiba's name from the role of advocates. Now let me begin by referring you to page 00868, and specifically go to paragraph 201.

**ADV CHAUKE**: Yes.

**ADV MOHLAMONYANE SC**: Yes, which I propose to read into the record. It says:

20 “This matter involved an application to review and set aside the decision taken by me to issue the authorisations necessary to prosecute Booysen in terms of POCA. Booysen was charged with seven counts, only two of which were POCA related, and therefore required written authorisations. On 17 August 2012, I approved the

applications for authorisations in terms of section 2(4) of POCA in respect of contraventions by Booyesen of, *inter alia*, sections 2(1)(e) and (f) of POCA. These charges related to racketeering offences. Booyesen was however also charged with other offences including two counts of murder, one count of unlawful possession of a firearm, one count of the unlawful possession of ammunition, and defeating or obstructing the course of justice.”

10

Now you will agree, Advocate Chauke, that it is common cause that on the 17<sup>th</sup> of August 2012, Advocate Jiba issued the POCA authorisations.

**ADV CHAUKE:** Yes.

**ADV MOHLAMONYANE SC:** Section 2(4). Now go to paragraph 210, 2-1-0, which you will find on page LO00871.

This paragraph is already on record. It was read into the record during the testimony of Advocate Batohi, but I propose  
20 that for purposes of completeness to read it again into the record so that we can put it into its proper context. It says:

“Following the consultation, the prosecution team agreed that Advocate Chauke, as the DPP in charge of this matter, would be the liaison person

between Advocate Hodes SC team and the prosecution team and would provide the Hodes SC team with all the facts and evidence in the documents necessary from the prosecution team to prepare an answering affidavit to be deposed to by myself on behalf of the NPA. I refer the Court to the confirmatory affidavit of Advocate Chauke filed herewith.”

- 10 Now an issue arose as to which matter was being referred to. You will agree that this matter that is being referred to in paragraph 210 is the Booysen matter, the review Booysen matter, not so?

**ADV CHAUKE:** Yes.

**ADV MOHLAMONYANE SC:** Now paragraph 211 says that: “The Hodes team then prepared the answering affidavit which was finalised by Advocate Chauke and which I signed.”

You agree you finalised it?

- 20 **ADV CHAUKE:** Yes.

**ADV MOHLAMONYANE SC:** You can only finalise an affidavit if you are intimate with the facts, not so, Advocate Chauke?

**ADV CHAUKE:** Yes.

**ADV MOHLAMONYANE SC:** And Advocate Jiba says you

were in charge of the matter.

**ADV CHAUKE:** Yes.

**CHAIRPERSON:** And read that sentence further. Do not just focus on the words. Read it in the context in which it is.

**ADV MOHLAMONYANE SC:** Paragraph 211?

**CHAIRPERSON:** Yes, 210.

**ADV MOHLAMONYANE SC:** 210.

**CHAIRPERSON:** Because you say Advocate Chauke, according to Advocate Jiba, was in charge of the matter and  
10 the answer is yes and I am saying to you do not focus only to those words in paragraph 10. I think you have to read it in this context. Read further.

**ADV MOHLAMONYANE SC:**

“Advocate Chauke as the DPP in charge of  
this matter would be the liaison person  
between Advocate Hodes SC team and the  
prosecution team and would provide the  
Hodes team SC with all the facts and  
evidence in the documents necessary from  
20 the prosecution team to prepare an  
answering affidavit to be deposed to by  
myself on behalf of the NPA.”

**CHAIRPERSON:** Before you proceed, Counsel, you are correct that this part of the record was dealt with during the testimony of Advocate Batohi. Actually, these paragraphs

were read into the record, if you remember, and her focus was in those words that Advocate Chauke was in charge of this matter. This was with the view to support her proposition that Advocate Chauke was just not a mere coordinator. So just bear that in mind.

**ADV MOHLAMONYANE SC:** I will, Madam Chair.

**CHAIRPERSON:** Proceed.

**ADV MOHLAMONYANE SC:** Go to LO2, Advocate Chauke. Bundle LO2, and specifically on page 00297. This is an  
10 application for a POCA certificate. Do you see that?

**ADV CHAUKE:** Yes.

**ADV MOHLAMONYANE SC:** It has been extensively dealt with by Advocate Mtsweni when he was cross-examining Advocate Maema.

**ADV CHAUKE:** Yes.

**ADV MOHLAMONYANE SC:** It is in your name.

**ADV CHAUKE:** Yes.

**ADV MOHLAMONYANE SC:** But it is unsigned and it is dated  
10 July.

20 **ADV CHAUKE:** Yes.

**ADV MOHLAMONYANE SC:** 2012.

**ADV CHAUKE:** Yes.

**ADV MOHLAMONYANE SC:** And it says here in paragraph  
2:

“I have perused the documents and

recommend the application.”

**ADV CHAUKE:** Yes.

**ADV MOHLAMONYANE SC:** And it was prepared according to Advocate Maema by Advocate Maema.

**ADV CHAUKE:** Yes.

**ADV MOHLAMONYANE SC:** Go to LO3.

**CHAIRPERSON:** Counsel, I do not want to interrupt you, but I need to understand whether you are connecting the contents of paragraphs 210, 211, and this part of LO3 that you have  
10 just referred to.

**ADV MOHLAMONYANE SC:** Yes, I am connecting them, Madam Chair.

**CHAIRPERSON:** Thank you. And in LO300297, you referred the witness to paragraph 2.

**ADV MOHLAMONYANE SC:** Yes, paragraph 2, Madam Chair.

**CHAIRPERSON:** Only?

**ADV MOHLAMONYANE SC:** Only.

**CHAIRPERSON:** Thank you. Proceed.

20 **ADV MOHLAMONYANE SC:** Go to page LO00665, where you will – are you there?

**ADV CHAUKE:** Yes.

**ADV MOHLAMONYANE SC:** It has already been dealt with, but I am not going to be very long on it. You have admitted that it is your signature?

**ADV CHAUKE:** Yes.

**ADV MOHLAMONYANE SC:** That appears on this document. It is an application for authorisation in terms of section 2(4) of POCA.

**ADV CHAUKE:** Yes.

**ADV MOHLAMONYANE SC:** And you also said in paragraph 2:

“I have perused the documents and recommend the application.”

10 **ADV CHAUKE:** Where do you get that?

**CHAIRPERSON:** Sorry, Counsel, which volume is that?

**ADV MOHLAMONYANE SC:** LO3, Madam Chair. And the page is LO00665.

**CHAIRPERSON:** Yes, thank you.

**ADV MOHLAMONYANE SC:** You have appended your signature on this document.

**ADV CHAUKE:** Yes.

**ADV MOHLAMONYANE SC:** It is common cause.

20 **CHAIRPERSON:** Just please on record what this document is.

**ADV MOHLAMONYANE SC:** The document, Madam Chair, is an application for authorisation in terms of the provisions of POCA addressed to Advocate Jiba, the then Acting NDPP, and it is dated 15 August 2012 and it is signed by Advocate Chauke.

**CHAIRPERSON:** It is addressed to Advocate Jiba by Advocate Noko-Mashilo and is signed by Advocate Chauke.

**ADV MOHLAMONYANE SC:** Yes.

**CHAIRPERSON:** Thank you. Proceed.

**ADV MOHLAMONYANE SC:** You agree that an application in terms of these provisions of POCA is a prosecutorial decision?

**ADV CHAUKE:** Yes.

**ADV MOHLAMONYANE SC:** By signing on this document,  
10 you are taking a prosecutorial decision?

**ADV CHAUKE:** No. I was signing on behalf of Noko. That is what you are missing to understand. It is there. And this letter is from Advocate Noko to Jiba, not from me. I do not know where you get that.

**ADV MOHLAMONYANE SC:** Who prepared this document?

**ADV CHAUKE:** Advocate Maema.

**ADV MOHLAMONYANE SC:** Right. On page 73 of the record of the transcript through to 74, Advocate Maema was asked ...[intervenes].

20 **MS RAMAGAGA:** Which ...[indistinct]?

**ADV MOHLAMONYANE SC:** Day 30 transcript dated 20 February 2026. I have asked that they make copies for me, but I do not have it right here.

**CHAIRPERSON:** It would have been easy if you had warned us about the documents that you are going to use so that the

researchers could prepare them timelessly, Counsel.

**ADV MOHLAMONYANE SC:** I apologise for that. I asked the ITs to print it for me, but they delayed. It is page 73 through to 74.

**CHAIRPERSON:** But you have your junior behind you. Why can they not prepare these documents? The IT team makes documents available online and advocates, attorneys and especially juniors, must make sure that you have these documents. And at the very least, even if you are not given  
10 the documents, our researchers must be told what is it that you plan to use so that we can get those documents timelessly. That would be helpful, Counsel, if you were to go that route.

**ADV MOHLAMONYANE SC:** If you allow me, Madam Chair, before we proceed any further, I just want to ask Advocate Chauke ...[intervenes].

**CHAIRPERSON:** Before you ask Advocate Chauke, Advocate Lekgetho should sit next to you. She is NPA. She should assist you. Advocate Mohlamonyane, you are going  
20 to ask Advocate Chauke a question before I interrupt you. You may proceed.

**ADV MOHLAMONYANE SC:** Ja. Advocate Chauke, whilst you are still on this document, the application, the POCA application, did you ask permission from Advocate Noko before you could sign it as a DPP, as an Acting DPP in KZN?



Now, the point that I want to make is the following. Go to LO3, Bundle LO3, LO00843. Are you there, Advocate Chauke?

**ADV CHAUKE:** Yes.

**ADV MOHLAMONYANE SC:** Madam Chair, are you?

**CHAIRPERSON:** Please give me a second.

**ADV MOHLAMONYANE SC:** Thank you.

**CHAIRPERSON:** Thank you.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair. The  
10 document is addressed to Advocate N Jiba, the NDPP then, stated, it is from yourself, Advocate Chauke, it is dated 15 August 2012, where you are making an application for centralisation of charges in terms of section 111 of Act 51 of 1977 in the *State v Booysen, Johan Wessel and 4 Others* in the Rustenburg CAS.

**ADV CHAUKE:** Yes.

**ADV MOHLAMONYANE SC:** Do you remember the Rustenburg CAS 1099/2009?

**ADV CHAUKE:** Yes.

20 **ADV MOHLAMONYANE SC:** Now, go to page LO00846 where your signature appears.

**ADV CHAUKE:** Yes.

**ADV MOHLAMONYANE SC:** You will agree, therefore, that you were taking a prosecutorial decision?

**ADV CHAUKE:** Yes.

**ADV MOHLAMONYANE SC:** I have no further questions, Madam Chair.

**ADV CHAUKE:** The problem with that is that you did not read the record further because that was a mistake. You see that it is the Director of Public Prosecutions, South Gauteng, when the application was supposed to be made by the Director of Public Prosecutions, DPP, KZN. So, obviously, you have not gone through the record to find the explanation as to the reason and what happened thereafter. But thank  
10 you for your concern.

**CHAIRPERSON:** Where does that appear in the record, in the transcript?

**ADV CHAUKE:** If we go through where Advocate Maema was testifying when it was before this Panel, where he dealt with and then gave an explanation that that was a mistake and that mistake was corrected. I can just maybe get some time and again go through the record so that I can get the actual page.

**ADV BALOYI-MERE SC:** Advocate Chauke, I understand  
20 that this is heavy on you because it is your career and profession on the line, but let us try to deal with this, and I know I am asking a tall ask. Let us try to deal with this with very calm spirits.

**ADV CHAUKE:** Thank you, Chair.

**ADV BALOYI-MERE SC:** I want to assist on the point that

you are making. Advocate Mohlamonyane, you referred to LO300843.

**ADV MOHLAMONYANE SC:** Yes, Madam Chair. Yes, Madam.

**ADV BALOYI-MERE SC:** Yes, and that is the document that is written under the hand of Advocate Chauke.

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

**ADV BALOYI-MERE SC:** Which was later, as Advocate Maema testified, he indicated that it was a mistake which was  
10 picked up by the prosecution team. And if you go to the same LO3 at LO00856, you will find exactly the same document, but this time under the hand of the Director of Public Prosecution KwaZulu-Natal Division and signed at page 00859. It has the name M. Noko-Mashilo, but it is signed PP Maema. And I think during Advocate Maema's testimony, he explained the mistake, and I think that is what Advocate Chauke was trying to indicate to you. Thank you.

**ADV MOHLAMONYANE SC:** I will take that. Thank you, Madam Baloyi-Mere.

20 **MS RAMAGAGA:** Yes, that covering letter that Advocate Mohlamonyane has asked you about, you say that you signed without having obtained consent or permission from Advocate Noko?

**ADV CHAUKE:** I discussed that with Advocate Maema and said he arranged with Advocate Noko that I should PP sign

that application.

**MS RAMAGAGA**: Okay.

**ADV CHAUKE**: So I did not tell Noko to say, no, look, where is Maema? This is what I should do. That is what I am referring to.

**MS RAMAGAGA**: Yes, so you arranged or you took Advocate Maema's word that he had discussed with Advocate Noko, and you could then go ahead and sign the document?

**ADV CHAUKE**: Indeed, Chair.

10 **MS RAMAGAGA**: Thank you, Chair.

**CHAIRPERSON**: My sister, Advocate Baloyi SC, is directing me to the part of the transcript, thankfully to her, page 89. That deals with that application by Advocate Noko, referred to at LO00856. You see that, Advocate Mohlamonyane?

**ADV MOHLAMONYANE SC**: Yes, I see that, Madam Chair.

**CHAIRPERSON**: Do you have the transcript?

**ADV MOHLAMONYANE SC**: Yes, it is before me.

**CHAIRPERSON**: Yes, you have page 89.

**ADV MOHLAMONYANE SC**: It is in front of me, yes.

20 **CHAIRPERSON**: Do you see what transpired during the testimony of Mr Maema in relation to this application by Advocate Noko?

**ADV MOHLAMONYANE SC**: I see that.

**CHAIRPERSON**: It was a similar application to that which was made by earlier on, signed by Advocate Chauke.

**ADV MOHLAMONYANE SC:** I see that.

**CHAIRPERSON:** And Advocate Mtsweni there, at the bottom of that page, is addressing us and he refers to LO00856. The application is now made in the name of Advocate Noko. Then Acting Director of Public Prosecution, KZN, do you see that?

**ADV MOHLAMONYANE SC:** Yes, I see that, Madam Chair.

**CHAIRPERSON:** And Advocate Maema agrees. And midway that page, page 90, Advocate Mtsweni:

10 “Yes. Now, the fact that you now decided to make an application in Advocate Noko's name, could that be an acceptance that the application should not and could not have been made in, under Advocate Chauke's name? Well, I agree with you. What we realised, we realised that even irrespective of us being based in the DPP South Gauteng, the application has to be made from the office of Advocate Noko.”

You see that?

20 **ADV MOHLAMONYANE SC:** Yes, Madam Chair.

**CHAIRPERSON:** You can proceed.

**ADV MOHLAMONYANE SC:** I said I have no further questions to put to the witness.

**CHAIRPERSON:** You do not have further questions?

**ADV MOHLAMONYANE SC:** No further questions, Madam

Chair.

**CHAIRPERSON:** Yes, thank you. Should I understand your response to be an acceptance that although Advocate Chauke says that his signing of the decentralisation application signalled that he took a prosecutorial decision, but then he corrects that and says that was a mistake, and that mistake was corrected by Mr Maema in his testimony? Meaning, if I am correct, he did not make a prosecutorial decision. That which he did was an error.

10 **ADV MOHLAMONYANE SC:** I cannot quarrel with that. It is on record.

**CHAIRPERSON:** You cannot quarrel with that.

**ADV MOHLAMONYANE SC:** Yes, it is on record.

**CHAIRPERSON:** This exercise sought to demonstrate that there is evidence that Advocate Chauke took a prosecutorial decision. Now with this answer, it means there was no evidence or there is no evidence in the record showing that Advocate Chauke took any prosecutorial decision. Is my understanding correct?

20 **ADV MOHLAMONYANE SC:** Yes, it is correct.

**CHAIRPERSON:** It is correct?

**ADV MOHLAMONYANE SC:** Yes.

**CHAIRPERSON:** Yes, thank you.

**ADV MOHLAMONYANE SC:** Madam Chair ...[intervenes].

**CHAIRPERSON:** Before that, let me just ascertain from my

sisters whether they have any questions.

**ADV BALOYI-MERE SC:** Advocate Mohlamonyane, I understand you conceding with the last question, but I wanted to check because you referred us to a number of documents. You referred us to LO3 page LO00869, paragraph 201. And then LO3, page 00871, paragraphs 210 to 211. And I think when you came to the third one, which was LO2 at page 00297, the Chair asked you if you were going to link all those paragraphs. And then you further referred us to LO3 at page  
10 00655, which is an application for authorisation at paragraph 2, where Advocate Chauke said I have read and agree with this application.

Are you saying, should I understand that you were going to link all these paragraphs together with LO3 at 843, the centralisation application to show that Advocate Chauke took a prosecutorial decision, and therefore, once this last one fell away, they all fell away, or you still maintain that this other four instances that you referred us to shows that he took a prosecutorial decision?

20 **ADV MOHLAMONYANE SC:** Yes, I persist that on these other ones, especially on the 15 August 2012, he took a prosecutorial decision by appending his signature here. And that can be a subject of submissions at the end of the enquiry.

**ADV BALOYI-MERE SC:** Sorry, remind me, the 15<sup>th</sup> of August 2012, that would be LO3?

**ADV MOHLAMONYANE SC:** 665.

**ADV BALOYI-MERE SC:** 665, the application for authorisation?

**ADV MOHLAMONYANE SC:** Yes.

**ADV BALOYI-MERE SC:** Okay. Thank you.

**MS RAMAGAGA:** [Indistinct].

**ADV MOHLAMONYANE SC:** On 15 August, Madam Ramagaga, 2012. The page is LO00665.

**MS RAMAGAGA:** [Indistinct].

10 **CHAIRPERSON:** Thank you. You may proceed to re-examine the witness, Advocate Ngcukaitobi.

**RE-EXAMINATION BY ADV NGCUKAITOBI SC:** Thank you, Madam Chair. Perhaps, Mr Chauke, we should start with the last part that Advocate Baloyi-Mere SC has dealt with. If I could ask you to look at the transcript at day 30, 20 February 2026, at page 154.

**ADV CHAUKE:** Yes, Chair, I am there.

**ADV NGCUKAITOBI SC:** So if you go to this page, it does not look like it has lines. No, it does not have lines. But it  
20 is the portion where Advocate Mtsweni reads the email of the 15<sup>th</sup> of August 2012. Can you see that towards the bottom of the page?

**ADV CHAUKE:** Yes, I see that, Chair.

**ADV NGCUKAITOBI SC:** It says, if you read the email in the middle there where I think it is from Advocate Sello Maema,

dated 15 August 2012, where the second paragraph on this email, the last sentence says:

“I have done the prosecution memo on the KZN letterhead, although our DPP will sign as arranged with acting DPP KZN.”

Now, can you just comment on that where Advocate Mtsweni on email already said he did the prosecution memo and it would be signed by the DPP, our DPP, as arranged with the acting DPP KZN?

10 **ADV CHAUKE**: Yes, that is what I was referring to exactly, that there was an arrangement with Advocate Noko that I will sign on her behalf when that application is being submitted to the national office.

**ADV NGCUKAITOBI SC**: Yes, but that was, according to this, not an arrangement made by yourself, it was an arrangement made by Advocate Maema.

**ADV CHAUKE**: Indeed.

**ADV NGCUKAITOBI SC**: So is that what you meant when you said, actually, this was clarified in the evidence of Mr  
20 Maema?

**ADV CHAUKE**: Indeed, Chair.

**ADV NGCUKAITOBI SC**: Yes. Then later on, if you go to page of the same transcript 156, Mr Mtsweni comes back to this topic. Are you at 156?

**ADV CHAUKE**: I am at 156.

**ADV NGCUKAITOBI SC:** Yes, towards the middle of the page where it says Advocate Mtsweni, starts with yes, Advocate Maema.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Can you see that?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now, Advocate Mtsweni says yes, then poses a question to Advocate Maema and says:

10 “Advocate Maema, do you recall earlier when we discussed the centralisation application? Remember, there was a first one that was done by Advocate Chauke in his name, and that you said it was prepared by yourself.”

And then Advocate Maema said:

“That is correct.”

Can you see that?

**ADV CHAUKE:** Yes.

20 **ADV NGCUKAITOBI SC:** So the cross-examination on this was clear, that Advocate Mtsweni accepted that the evidence of Mr Maema was that he had prepared the centralisation application himself.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** And then if you look at what it says thereafter, it says:

“But it was signed by Advocate Chauke.”

And then Mr Maema says yes, and then he says:

“And then on the 28<sup>th</sup> of August, you prepared another centralisation application.”

Advocate Maema says yes, and then he says:

“And this time signed by you.”

And then he says:

“Signed PP.”

10 And then he says:

“And that this signature was in terms of the arrangement between yourself and Advocate Noko.”

Then Mr Maema says:

“Where I would sign on her behalf, I would PP, yes.”

And then Advocate Mtsweni says:

20 “Yes, and that arrangement would have been struck between yourself and her directly.”

And then Mr Maema says:

“Yes, that is correct.”

Mr Mtsweni says:

“No, not through Advocate Chauke.”

Mr Maema says no. Can you see this?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Then Mr Mtsweni continues:

“Yes, and I take it the same as the POCA authorisation of the 15<sup>th</sup> of August, where you said there was an arrangement that Advocate Chauke would sign on Advocate Noko's behalf, Advocate Noko. Yes, that arrangement was done with Advocate Noko.”

10 Mr Mtsweni:

“And yourself.”

Mr Maema:

“Yes.”

Mr Mtsweni:

“Directly?”

Mr Maema:

“That is correct.”

Mr Mtsweni:

“Without Advocate Chauke's involvement,  
20 and then intervention rather.”

He says:

“I would have accepted that the two DPPs  
would have spoken.”

Mr Mtsweni:

“But I mean when you spoke to Advocate

Noko, did you speak to her through  
Advocate Chauke?

Advocate Maema:

“No. You spoke to her directly?”

Advocate Maema:

“Directly, yes.”

I mean, can this ever be doubtful?

**ADV CHAUKE**: Not at all.

**ADV NGCUKAITOBI SC**: Yes. This is what you were  
10 protesting when you said read the rest of the transcript.

**ADV CHAUKE**: Exactly. That is what I was referring Mr  
Mohlamonyane to.

**ADV NGCUKAITOBI SC**: Yes. Okay. The same point, I read  
to you the cross-examination bit, but it appears that this point  
was dealt with also in the evidence-in-chief of Mr Maema on  
day 28, page 191 of the transcript, 18 February 2026, page  
191.

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Yes. So if you start at where the  
20 page starts, which is the question from myself, I say:

“It seems this email in particular discloses  
at the time that you yourself have drafted  
the letter and made a decision to do it in  
the name of Advocate Noko.”

That is where I say to him the email shows that he made the

decision to do it in the name of Advocate Noko. That is Advocate Maema.

**ADV CHAUKE**: Yes. Correct.

**ADV NGCUKAITOBI SC**: And then Advocate Maema then responds. He says:

“That is correct.”

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Yes. And then I say:

“And that Advocate Chauke would sign as

10 arranged.”

And Advocate Maema says:

“Yes.”

**ADV CHAUKE**: Yes.

**ADV BALOYI-MERE SC**: Advocate Ngcukaitobi, I tried to keep up, but I am lost.

**ADV NGCUKAITOBI SC**: Sorry, Madam Baloyi-Mere. It is 191.

**ADV BALOYI-MERE SC**: 191?

20 **ADV NGCUKAITOBI SC**: Yes. Sorry, I think I am now also getting lost.

**ADV BALOYI-MERE SC**: Okay.

**ADV NGCUKAITOBI SC**: So it is day 28 on the 18<sup>th</sup> of February 2026.

**ADV BALOYI-MERE SC**: It is not in your files.

**ADV NGCUKAITOBI SC**: Apologies.

**ADV BALOYI-MERE SC:** [Indistinct].

**ADV NGCUKAITOBI SC:** I see. I apologise.

**CHAIRPERSON:** You can proceed nonetheless.

**ADV NGCUKAITOBI SC:** I see.

**CHAIRPERSON:** Just refer us to the relevant pages of the transcript.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** We will check.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. So we  
10 are at page 191, day 28. The date is the 18<sup>th</sup> of February  
2026. It is the evidence-in-chief of Mr Maema. So we have  
already referred to the first four paragraphs. And after line  
10, I think this is line 10, 11, 12, 12<sup>th</sup> line, where Advocate  
Maema says – well, firstly, perhaps, let us deal with the  
question. So I say to him:

“So does this explain then that this  
document that a big issue has been made  
out of, which is the fact that Advocate  
Chauke has PP'd it with the arrow. That is  
20 its source.”

Then Mr Maema says:

“Chairperson, he had PP'd it because we  
anticipated we were going to court the  
next week. Otherwise, what would have  
happened is that I would then have to

carry all these documents, travel to KZN, wait for the DPP, and then engage with the DPP there. When we have a DPP in the South Gauteng office, it would have been more convenient that Advocate Chauke signs, and then it gets transmitted to the National Director.”

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yes. So that was the evidence in  
10 chief, which seems to have been repeated in cross-examination.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yes, and this is what you were referring to when you said, please, can you look at the transcript as a whole?

**ADV CHAUKE:** Indeed, Chair.

**ADV NGCUKAITOBI SC:** Yes. Now then, to come back to the original question, remember the original question was, show us where Mr Chauke makes prosecutorial decisions.

20 **ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** What do you say about this now that we have gone through the transcript?

**ADV CHAUKE:** There is none. That has not been shown to me until now.

**ADV NGCUKAITOBI SC:** Yes. So your answer when you

said, did you make a prosecutorial decision, and then you said yes, and then the cross-examiner says, okay, well, I have no further questions, what do you say about that?

**ADV CHAUKE:** No, that is why I thought it was a misunderstanding or an omission on the part of the evidence leader not to get through to the explanation, because I was answering as a principal to say if that is what has happened, I would have made a prosecutorial decision. That is why I said yes.

10 **ADV NGCUKAITOBI SC:** Yes. But given the evidence that has now been shown, is it what you say to that answer?

**ADV CHAUKE:** Yes, that is why I was explaining that that was a mistake, that my letterhead was used and I signed there, because that was discovered the very same day that that was a mistake and it was corrected by Advocate Maema.

**ADV NGCUKAITOBI SC:** Yes, but does this become part of this? Because I dealt with this with Mr Maema that they worked with you from a position of trust. They put documents, you do not question them because you trusted the way they  
20 were doing things.

**ADV CHAUKE:** Yes, indeed.

**ADV NGCUKAITOBI SC:** And then when they find a mistake, they also own up to it. It is not as if they are hiding it. It is owned up and then it is corrected.

**ADV CHAUKE:** Indeed, Chair.

**ADV NGCUKAITOBI SC:** And this whole thing was also explained by Advocate Mosing.

**ADV CHAUKE:** Yes, from the records.

**ADV NGCUKAITOBI SC:** From the records, yes.

**ADV CHAUKE:** And ironically, once you explain that this is a mistake and that you would accept that it is accepted that people do make mistakes, and I am also susceptible to that, to making mistakes in the course.

**ADV NGCUKAITOBI SC:** No, that is fine. No problem.

10 Thank you. Then there was ...[intervenes].

**CHAIRPERSON:** But on this point, Counsel, I suppose the matter has been brought to rest by Advocate Mohlamonyane's acceptance that there is no evidence that shows that you took a prosecutorial decision, because that was the key question that led to this whole exercise. And finally, after this clarification, reading the transcript, Advocate Mohlamonyane accepts that other than what he thought constituted a prosecutorial decision, there is none.

**ADV CHAUKE:** Yes, Chair. Thank you.

20 **ADV NGCUKAITOBI SC:** Yes, thank you, Madam Chair. I am not following this line any further. There was an issue on the matter of Mr Mdluli. It is just one issue around the question whether it seems that the evidence leaders accept the binding force of the SCA decision, not that they had an option. But it does seem that Advocate Batohi did not, from

the transcript.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** I just want to refer you to certain portions, which is why we ended up where we are, where the Panel is being asked to second-guess the SCA. So if we start at day nine of the transcript, page 37, apparently the instruction, well, the request was made for this to be pulled out.

**ADV CHAUKE:** Yes.

10 **ADV NGCUKAITOBI SC:** So if we go to the – we are at page 37 at day nine, it should be the 19<sup>th</sup> line. Can you see that?

**ADV CHAUKE:** Yes, the one that starts so here.

**ADV NGCUKAITOBI SC:** Yes, yes, yes, yes.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** So this is Advocate Batohi's, and the only point I am pursuing with you is to show that the reason we ended up where we are is because Advocate Batohi refused to accept the binding force of the SCA judgment.

20 **ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** And that was all in line with her position that the charge refers to the pre-inquest decisions, which was abundantly clear in the cross-examination.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now, she says here:

“So the NPA appeals the matter, and we now turn on to the Supreme Court of Appeal judgment. In this regard, Chairperson, I mentioned that Advocate Chauke has often mentioned, and I think it was mentioned by counsel at the opening...”

She is talking about me:

10 “...that the Supreme Court of Appeal decision vindicated him.”

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Then it seems to go a little bit off script there.

**CHAIRPERSON:** Where did you start reading, Counsel? That is page 37?

**ADV NGCUKAITOBI SC:** I think it is in the 19<sup>th</sup> line.

**CHAIRPERSON:** Where?

**ADV NGCUKAITOBI SC:** Where it says, so the NPA appeals the matter. Well, perhaps, Madam Chair, what would be  
20 helpful is to read ...[intervenes].

**CHAIRPERSON:** Should you not start maybe a little bit up?

**ADV NGCUKAITOBI SC:** Yes, I think so.

**CHAIRPERSON:** To give it a proper context?

**ADV NGCUKAITOBI SC:** Yes, I think so, Madam Chair. So if you look at the full sentence of – the full paragraph of

Advocate Batohi, so the question is from Advocate Mohlamonyane, who says:

“You may proceed to deal with what Advocate Chauke ought to have done after the receipt of this judgment of Murphy J.”

Then she says:

“So here we have a really strong judgment that supports the prosecutors who recommended a prosecution. The reinstatement of the matter is ordered.

10

However, in these circumstances, Advocate Chauke does not do that. Instead, he decides to appeal the Murphy decision. The question is why, given everything that had proceeded in the inquest and in the Murphy review application and the decision.”

Now, you explained that the appeal decision was the NDPP's decision, not you.

20 **ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Yes. Then in that ...[indistinct] she then says:

“So the NPA appeals the matter and we now turn to the Supreme Court of Appeal judgment. In this regard, Chairperson, I

mentioned that Advocate Chauke has often mentioned, and I think it was mentioned by counsel at the opening, that the Supreme Court of Appeal decision vindicated him.”

Now, in this enquiry, this current enquiry, you have heard for yourself that the evidence leaders accept that the SCA judgment exonerated you. That is their term, not vindicated, but exonerated you.

10 **ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Yes. Now, there is another portion where she is clearer that she does not accept that the SCA decision exonerated you. So that appears at page 105. What day is it? The same day. Also on the 19<sup>th</sup> line. Yes, remember that earlier she had complained that there was an appeal against the judgment of Judge Murphy.

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: So if you look at after the 10<sup>th</sup> line where Advocate Baloyi-Mere SC speaks, can you see that?

20 **ADV CHAUKE**: Yes, that now at the back.

**ADV NGCUKAITOBI SC**: Yes, that is right.

**ADV CHAUKE**: Yes.

**ADV NGCUKAITOBI SC**: Now, Advocate Baloyi-Mere SC says:

“Now, at the back of your answer and the

reasons that you have given, what do you make of the fact that the SCA then overturned that decision of Murphy J?”

And Advocate Batohi responds:

10 “The SCA may have overturned it, but as I explained earlier, it was critical of Advocate Chauke's conduct in this matter. And in fact, the SCA was also very critical and dealt with the inquest magistrate's findings and seemed to have suggested that Advocate Chauke should have done things differently at that stage of the proceedings. So it does not exonerate him. It certainly deals with his conduct in a critical way.”

This is the whole point. So for the first time today, we have an admission that the SCA decision has exonerated you, but the problem was their witness who refused to accept the binding force of the SCA judgment.

20 **ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** And then Advocate Baloyi-Mere continues, which is now day nine, 27 November 2025, the following page, where she says:

“But that is not part of the order. We as lawyers know that judges will tell us

whatever they tell us, give us guidance.  
But at the end of the day, it is the order  
that one has to comply with. What  
matters, we have the order.”

Then Advocate Batohi says:

“The order matters.”

And Advocate Baloyi-Mere continues:

10 “That is what I am asking. That is at the  
back of your answer and your response,  
consider the judgment and the order.

What do you make of that? Are you still  
maintaining that the Murphy judgment  
should not have been appealed?”

And then she says:

“Yes, I am.”

Then Advocate Baloyi-Mere says:

“Thank you.”

20 This is the whole problem that the NDPP refuses to accept  
the binding force of the SCA judgment. She is holding on to  
the Murphy J judgment.

**ADV CHAUKE:** Yes, because it suits her narrative.

**ADV NGCUKAITOBI SC:** No, no, we will deal with that later,  
but I am just dealing with the facts now.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** And then the final one is day 11 at

page 95. Day 11 is the date is the 3<sup>rd</sup> of December 2025. So we looked at the exchange with Advocate Baloyi-Mere earlier, I think on day nine. And then this topic is then revisited on day 11 by the Chairperson.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** So if you look at just below line 10, so it is the 11<sup>th</sup> line where the Chairperson says:

10 “Just one last aspect. I hear you that as regards the Mdluli matter, you still needed some more information and you were satisfied as regards the Cato Manor matter that the matter had to be referred.”

And the Chair continues:

“The Mdluli matter, and please correct me if I am missing something. The SCA, the judgment of Judge Brandt dealt with the Mdluli matter and in my view, closed the chapter.”

20 Now that view of closing the chapter is actually the view that is shared by Advocate Mayet.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:**

“Meaning that as I understand the judgment, all that needed to be done following the inquest was for the matter to

be re-enrolled or for the withdrawn charges to be re-instituted. Am I correct? Just on the reading of the judgment, which judgment seems to absolve Advocate Chauke.”

Even that question of absolving is also shared now by Advocate Mayet. And the question of re-institution, is no longer within your hands.

**ADV CHAUKE:** Yes.

10 **ADV NGCUKAITOBI SC:** It is now with the ...[intervenes].

**ADV CHAUKE:** NDPP.

**ADV NGCUKAITOBI SC:** Mr Nxasana.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** And she then responds, Advocate Batohi, she says:

“Chairperson, I want to refer to, I did deal with this matter earlier.”

She is talking about that exchange with Advocate Baloyi-Mere:

20 “I want to refer to my notes on this, but my understanding at a very high level of the Brandt judgment is that it did not absolve Advocate Chauke. I do not mean to be disrespectful. I am trying to find my notes as I speak.”

So that is the – then later on, perhaps let us just read everything. Then the Chairperson says:

“I am going to request that we park it here. Let us flag that point. All of us will look at that judgment again and then deal with this aspect because it troubles me.”

Advocate Batohi:

“It is important, yes.”

The Chairperson:

10 “And the reason why it troubles me is because an appellate court has pronounced on a matter and will seem to go against that decision. I just want to understand in respect of which aspects of the judgment did the SCA get it wrong.”

Then she says:

20 “Chairperson, we are not saying the SCA got it wrong. Well, you said earlier that you did not agree with certain parts of the SCA judgment earlier.”

Then Advocate Batohi:

“Chairperson, what I mean to say is that we agree with the SCA judgment, but we do not agree that it absolves Advocate Chauke's conduct.”

Now, see on this, I just cannot understand how a senior advocate, when a judgment of the SCA looks specifically at your conduct in relation to withdrawing and referring to an inquest and says we do not find anything irrational about this decision, how it can be said that is not an absolution.

**ADV CHAUKE:** It is very unfortunate.

**ADV NGCUKAITOBI SC:** Yes. Then Chairperson continues:

10 “That is my reading of the judgment. The SCA did not say I absolved Chauke. The SCA spoke of the conduct of Mr Chauke or Advocate Chauke not being irrational, if I may use the legal terminology. If his conduct was not irrational, what does it do? It absolves him in my understanding of the law. Now I want to understand what is it that the SCA, which disfavoured, if I may use the terminology, disfavoured Advocate Chauke? When we reconvene, before we all forget, let us  
20 look at that judgment and maybe you can assist me in that regard, concerning the Ramogibe matter.”

Then she says:

“I will do so, Chairperson. That is an important aspect.”

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** So it seems this is the whole problem that underlie the referral of the Mdluli case, despite the SCA, simply because Advocate Batohi did not agree with the effect of the SCA judgment.

**ADV CHAUKE:** On the advice of the legal opinion that she obtained after everything is said and done.

**ADV NGCUKAITOBI SC:** Yes, we know that line comes from the opinion of Advocate Hulley.

10 **ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yes. It is just repeated by Advocate Batohi.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** But today that has changed. Everyone accepts that the SCA, the effect of the SCA's judgment is that you cannot be charged for withdrawing the charges and referring them to an inquest.

**ADV CHAUKE:** Indeed. It is just unfortunate that a senior counsel would have just misled Advocate Batohi in that score.

20 **ADV NGCUKAITOBI SC:** Mr Chauke, we have done so well so far without ...[intervenes].

**CHAIRPERSON:** It is not, I beg your pardon, Counsel. Advocate Chauke, I do not think it is fair to Advocate Hulley to say that it is not fair that the senior counsel would mislead Advocate Batohi.

**ADV CHAUKE:** I apologise.

**CHAIRPERSON:** Advocate Batohi is similarly an officer of the court. She is an advocate and I think an advocate of a long-term standing. She has been an advocate for a long time. So it is not fair to attribute a blame entirely to an advocate who prepares an opinion.

**ADV CHAUKE:** I accept that, Counsel.

**CHAIRPERSON:** Because she ought to have read the SCA judgment as you can see in the transcript. We adjourned and  
10 said, let us go back and read this judgment again because it troubles me that you take such a view that the SCA got it wrong or did not absolve Advocate Chauke. So she ought to have read the judgment herself. Even before the opinion of Advocate Hulley, not so?

**ADV CHAUKE:** Indeed, Chair.

**CHAIRPERSON:** Thank you, proceed.

**ADV NGCUKAITOBI SC:** Thank you. Do you want to withdraw the word misleading?

**ADV CHAUKE:** Indeed, that is why I was apologising. I am  
20 saying I am withdrawing that reference.

**ADV NGCUKAITOBI SC:** Yes. Thank you. Thank you very much. Now then there is just one aspect on the matter of Cato Manor. Do you still have the terms of reference with you?

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Now, the Chairperson has said that the terms of reference would constitute a charge sheet to use colloquialism.

**ADV CHAUKE:** Yes.

**ADV NGCUKAITOBI SC:** Now, we went through this in detail with you in evidence-in-chief from 3.1.1 up to 3.1.1.5. It is just to ask really if there is anywhere here where there is a reference to you having made prosecutorial decisions.

**ADV CHAUKE:** Not that I am aware of.

10 **ADV NGCUKAITOBI SC:** Yes, okay.

**ADV CHAUKE:** It talks about supporting a decision.

**ADV NGCUKAITOBI SC:** Yes, I understand that, but that is about these memorandums we have gone through.

**ADV CHAUKE:** The racketeering.

**ADV NGCUKAITOBI SC:** Yes.

**ADV CHAUKE:** The racketeering, yes.

**ADV NGCUKAITOBI SC:** Yes, but those are all the memorandums we have been going through.

**ADV CHAUKE:** Yes.

20 **ADV NGCUKAITOBI SC:** Yes, but I am asking specifically whether there is anywhere where you are being taken to task for making a prosecutorial decision.

**ADV CHAUKE:** Not at all.

**ADV NGCUKAITOBI SC:** Yes. And it would have been open for them if they wanted to charge you with making a

prosecutorial decision to do that.

**ADV CHAUKE**: I think so. It is obvious for me in that regard.

**ADV NGCUKAITOBI SC**: And that is why they have been asking for an amendment to the charges. It is unclear to me how the charges would be amended after the accused has pleaded and testified and been cross-examined.

**ADV CHAUKE**: It was a face-saving exercise so that, like I indicated, to throw a bigger net. In criminal prosecutions we say throwing the book at the accused.

10 **ADV NGCUKAITOBI SC**: Yes. Well, yes. Thank you. Do you wish to say anything else? This is your last opportunity before you are excused.

**ADV CHAUKE**: Ja.

**ADV NGCUKAITOBI SC**: You do? Okay, I made a mistake there. No, I do not want to hear anything. Madam Chair, thank you. I have no further questions.

**ADV CHAUKE**: Ja.

**ADV NGCUKAITOBI SC**: No, do not answer my question, please.

20 **ADV CHAUKE**: Thank you, Chair.

**CHAIRPERSON**: Are you done?

**ADV CHAUKE**: Yes.

**MS RAMAGAGA**: Ja. Now, if one is to look at the fact that the charge sheet does not include making prosecutorial decisions, if there is evidence that you made prosecutorial

decisions, if there is such evidence on record, would it matter and would it have an impact on this enquiry?

**ADV CHAUKE**: No.

**MS RAMAGAGA**: Thank you.

**CHAIRPERSON**: I suppose there is nothing that arose in the re-examination that was new that you would wish to revisit, Advocate Mohlamonyane?

**ADV MOHLAMONYANE SC**: No, Madam Chair.

**CHAIRPERSON**: In that event, Advocate Chauke, thank you.

10 You are excused.

**ADV CHAUKE**: Thank you, Chair.

**CHAIRPERSON**: At least for now.

**ADV CHAUKE**: I heard that I might have to come back.

**CHAIRPERSON**: People have reserved their rights.

**ADV CHAUKE**: Yes.

**CHAIRPERSON**: And should it happen that the President decides on the Panel's ruling otherwise, we may have to re-look at what the President would have done or would have amended, and you may have to come back.

20 **ADV CHAUKE**: Indeed, Chair, I accept.

**CHAIRPERSON**: It will be quite something extraordinary, though. But let us see what the President does.

**ADV CHAUKE**: I just hope the President will agree with the Panel.

**CHAIRPERSON**: We are still waiting for the Presidential

decision.

**ADV CHAUKE:** Thank you, Chair.

**CHAIRPERSON:** We have recommended and the powers rest with the President to amend or not to amend.

**ADV CHAUKE:** Indeed, Chair. Thank you very much.

**CHAIRPERSON:** Yes, thank you. You are excused then. Thank you very much for your patience.

**ADV CHAUKE:** Thank you, Chair.

**NO FURTHER QUESTIONS**

10 **CHAIRPERSON:** On housekeeping matters, before we adjourn for tea, Advocate Ngcukaitobi?

**ADV NGCUKAITOBI SC:** Yes, it is not working again. My next witness is General Mabula.

**CHAIRPERSON:** Is General Mabula here and is he ready to take the witness stand?

**ADV NGCUKAITOBI SC:** Yes, he is ready. He is in the building.

**CHAIRPERSON:** He is in the building?

**CHAIRPERSON:** Yes, he can come up in a few seconds.

20 **ADV MTSWENI:** Madam Chair, perhaps if I might just come in with your permission. I will be dealing with the Mabula aspect. I have looked at the statement and discussed it with my leader, Advocate Mohlamonyane, and I have conveyed to Mr Ngcukaitobi that on analysis of the Mabula statement, there is nothing that us as the evidence leaders would want

to take issue with insofar as his evidence is concerned. And I indicated to Mr Ngcukaitobi that it might be prudent that we just accept his statement that his statement goes in without any need for oral evidence. Mr Ngcukaitobi believes that Mr Mabula deserves audience, but would ask for the Panel's guidance. But insofar as the evidence leaders are concerned, we have got no qualm or any issue with General Mabula's evidence and that his statement insofar as we would submit to the Panel that it can go on, go in and be accepted  
10 as evidence without the need for oral evidence. But then we are in the Panel's hands insofar as that is concerned.

**CHAIRPERSON:** Yes, thank you, Counsel. I think that will obviate a cross-examination, but it is important that the witness be placed here. We may want to ask him questions. Remember, there is already evidence on record by the previous witnesses referring not once, not twice, to what Mr Mabula did or General Mabula did in relation to the Cato Manor matters. So it is important that we allow that he comes, takes the oath and if a need arises, we may ask him  
20 questions as a Panel.

**ADV MTSWENI:** Thank you, Madam Chair.

**CHAIRPERSON:** Counsel, both of you, we suggest that we take a tea break then start with the witness when we reconvene after tea. We will reconvene at half past 11.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair.

**ENQUIRY ADJOURNS**

**ENQUIRY RESUMES**

**CHAIRPERSON:** Good day, everyone. Good day, General Mabula. General, do you prefer to take an oath or affirmation?

**MAJ-GEN MABULA:** I prefer an oath, Chair.

**CHAIRPERSON:** Thank you, sir. Do you swear that the evidence you are about to give will be the truth, nothing else but the truth? If so, raise up your right hand and say, so help  
10 me God.

**MAJ-GEN MABULA:** So help me God.

**JAN MABULA** duly sworn states

**CHAIRPERSON:** Thank you, General.

**MAJ-GEN MABULA:** Thank you.

**CHAIRPERSON:** You may proceed, Counsel.

**EXAMINATION BY ADV NGCUKAITOBI SC:** Thank you, Madam Chair. General Mabula, in front of you, you should have a copy of your statement marked 7-1. Is that correct?

**MAJ-GEN MABULA:** It is correct, Chair.

20 **ADV NGCUKAITOBI SC:** All right, so if you go to the end of that statement, which should be page 717.

**MAJ-GEN MABULA:** I have it, Chair.

**ADV NGCUKAITOBI SC:** Your signature appears.

**MAJ-GEN MABULA:** I have got it, Chair.

**ADV NGCUKAITOBI SC:** Is that your signature?

**MAJ-GEN MABULA:** That is my signature, Chair.

**ADV NGCUKAITOBI SC:** Yes, so if you then go to the beginning of the statement, 7-1. Paragraph 2 says that:

“The facts contained in the statement are within my personal knowledge.”

Is that correct?

**MAJ-GEN MABULA:** It is correct, Chair.

**ADV NGCUKAITOBI SC:** And then, are they binding on your conscience?

10 **MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** Yes, thank you very much. Now, so your career is set out at paragraph 6 of your statement within the SAPS. Is that correct?

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** Yes, can you just briefly deal with that? It seems that you started off as a Constable.

**MAJ-GEN MABULA:** Must I read it out, Chair?

**ADV NGCUKAITOBI SC:** No, no, no, just a summary that you basically are a career police officer. You can just give  
20 us the summary highlights here.

**MAJ-GEN MABULA:** Oh just out of my...

**ADV NGCUKAITOBI SC:** Yes, you can use paragraph 6 to...

**MAJ-GEN MABULA:** To what?

**ADV NGCUKAITOBI SC:** Yes, to remind yourself.

**MAJ-GEN MABULA:** Thanks, Chair. I joined the police,

actually, in 1983 and then I went to college in 1984, where I was a Constable until 1987 and I worked as a Charge Office Commander in a place called Delareyville, it is in the North West and in 1987, 1993, I became a Sergeant and a Warrant Officer and I became a Section Head in Delareyville, also in the North West Province. 1993 to 2000, I became an Inspector and Captain on the same year. And became acting Branch Commander at Lichtenburg, which is also North West.

2000-2001, I became a Superintendent in Klerksdorp  
10 Detective Branch. And 2001-2007, I became a Provincial Commander, Serious and Violent Crime in North West. 2007, I became a Provincial Commander, Organised Crime. In 2007-2010, I became the Provincial Head, Detective Services as a Director in North West. In 2010-2016, I became a Provincial Head for Priority Crime Investigation, which is called DPCI, The Hawks, in North West. 2016-20... actually, 2019, not 2020, I became the Deputy Provincial Commissioner, Crime Detection in North West.

**ADV NGCUKAITOBI SC:** So we should correct 6.9 to 2019.

20 **MAJ-GEN MABULA:** Yes. 2019, that is my retirement year.

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** You also mentioned you started in 1983, but it looks like you started in 1984.

**MAJ-GEN MABULA:** I started in the police, when you joined

the police as a student.

**ADV NGCUKAITOBI SC:** Oh.

**MAJ-GEN MABULA:** So I joined the police in 1983, so our service is calculated by the time when you are sworn in as a police student.

**ADV NGCUKAITOBI SC:** So we should be saying 1983?

**MAJ-GEN MABULA:** 83, yes.

**ADV NGCUKAITOBI SC:** Not 1984?

**MAJ-GEN MABULA:** Yes.

10 **ADV NGCUKAITOBI SC:** So 6.1 also needs to be amended?

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Okay, thank you. And then your qualifications, you mentioned that you have got a Bachelor of Technology degree in Policing.

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** And a National Diploma in Police Administration.

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** Where were these obtained?

20 **MAJ-GEN MABULA:** Technikon SA and the University of South Africa.

**ADV NGCUKAITOBI SC:** So which one was Technikon SA?

**MAJ-GEN MABULA:** The diploma.

**ADV NGCUKAITOBI SC:** I see.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Okay. And then the Bachelor's degree at Unisa.

**MAJ-GEN MABULA:** Yes, Unisa.

**ADV NGCUKAITOBI SC:** All right. And then, so this CV ends in 2019, which, what have you been doing since then?

**MAJ-GEN MABULA:** Since 2019, I am employed by a private company.

**ADV NGCUKAITOBI SC:** Okay.

**MAJ-GEN MABULA:** As a Manager.

10 **ADV NGCUKAITOBI SC:** All right.

**MAJ-GEN MABULA:** Not as a General, as a Manager.  
[Laughter]

**CHAIRPERSON:** Yes, General, I see you looking at me. Obviously, you come from my turf, and we are the North Westerners.

**MAJ-GEN MABULA:** Yes.

**CHAIRPERSON:** So I see you look at me, you smile. I am just making this disclosure.

**MAJ-GEN MABULA:** I smile because I feel protected, Chair.

20 [Laughter]

**CHAIRPERSON:** I think I must disclose that I know you. I am sure you remember me.

**MAJ-GEN MABULA:** Yes.

**CHAIRPERSON:** Yes, indeed. You may proceed.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. So it

ends in 2019, you left the police in 2019.

**MAJ-GEN MABULA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** In order to work for a private company.

**MAJ-GEN MABULA:** No, it was actually my retirement age. I still feel South African Police Service is still my home.

**ADV NGCUKAITOBI SC:** I see, so it was a retirement, not a resignation.

**MAJ-GEN MABULA:** It was a retirement, yes.

10 **ADV NGCUKAITOBI SC:** And then, since then, you have worked for the same private company.

**MAJ-GEN MABULA:** No, a private company, yes. Since then, I have worked for the same private company, yes.

**ADV NGCUKAITOBI SC:** Okay, and in the security industry or in a different industry?

**MAJ-GEN MABULA:** In the security industry.

**ADV NGCUKAITOBI SC:** All right, I see. Is there a reason why you will not disclose its name?

**MAJ-GEN MABULA:** I feel safe not to disclose.

20 **ADV NGCUKAITOBI SC:** Okay, that is fine.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** But there is no reason?

**MAJ-GEN MABULA:** No, there might not be, but I feel very much.

**ADV NGCUKAITOBI SC:** All right, no, that is fine.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** All right, and then you have also undergone extensive training, as per paragraph 7. Can you just deal with that?

**MAJ-GEN MABULA:** I underwent extensive special training, including homicide investigation, forensic disciplines, Organised Crime, intelligence handling.

**ADV NGCUKAITOBI SC:** Yes. All right, and then you, I think you were at DPCI between 2010 and 2016, is that correct?

10 **MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** And that is the relevant period here in this case?

**MAJ-GEN MABULA:** It is correct, Chair.

**ADV NGCUKAITOBI SC:** You were the Provincial Head of North West DPCI?

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** That is North West Hawks?

**MAJ-GEN MABULA:** Yes, Chair.

20 **ADV NGCUKAITOBI SC:** And then you were at the rank of Major General?

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** Yes, thank you very much. Which rank you still hold?

**MAJ-GEN MABULA:** Yes, Chair.

**ADV NGCUKAITOBI SC:** Yes. And you became a Major

General when?

**MAJ-GEN MABULA:** 2010.

**ADV NGCUKAITOBI SC:** When you became the head of the Hawks?

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** Yes, all right, thank you. Now, we can then move a little bit faster than what we have done so far. You know about this case, is that correct? Well, not this case. You know about one of the allegations in this case,  
10 which is the Cato Manor issue?

**MAJ-GEN MABULA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes, and how do you know about that?

**MAJ-GEN MABULA:** I know about it when it was actually highly publicised in the media and on the electronic media, so day in, day out, it is also been televised.

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** All right, but you had prior  
20 knowledge because you were personally involved?

**MAJ-GEN MABULA:** Correct, Chair. Can you just take us there?

**ADV NGCUKAITOBI SC:** So I have now skipped three pages of your statement. I have skipped page 7-3, 7-2, 7-3, and 7-4. I am now in 7-5.

**MAJ-GEN MABULA:** Yes, Chair.

**ADV NGCUKAITOBI SC:** Where we deal with a factual background.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Yes, so you can use that or you can read directly or whichever approach makes you comfortable.

**MAJ-GEN MABULA:** Okay, I will read.

10 “During my tenure as a provincial head of  
DPCI North West under Lieutenant General  
Anwa Dramat, who was then DPCI National  
Head, I was actually involved in complex  
investigations and had reputation of  
handling sensitive matters. It therefore  
came to no surprise when Lieutenant  
General Dramat appointed me on 14  
December 2011 to lead a team of  
investigators to conduct a fact-finding  
enquiry into allegations against members of  
20 Cato Manor Organised Crime Unit in  
KwaZulu Natal.

At that time, there was a significant public concern, including civil society and human rights organisations, regarding allegations that members of the unit were involved in

unlawful killings linked to taxi violence and retaliatory operations. These concerns were amplified by media reporting, including Sunday Times exposé, published on or about 11 December 2011, which alleged that the unit operated as a hit squad. The article is attached as Annexure NJM1.”

**ADV NGCUKAITOBI SC:** Yes, that will be at page 7A1 of your statement.

10 **MAJ-GEN MABULA:** Yes. Can I carry on?

**ADV NGCUKAITOBI SC:** Yes, you may carry on.

**MAJ-GEN MABULA:**

“In response to these allegations and on 14 December 2011, Lieutenant General Dramat formally appointed me to assemble and lead a team to conduct preliminary investigations aimed at assessing the veracity of allegations as reported. We were further mandated to engage with the Independent

20 Police Investigation Director, which is IPID, and offer assistance in respect of cases referred to in the exposé. My appointment letter is attached as Annexure NJM2.”

**ADV NGCUKAITOBI SC:** Yes. Now, if you can go to 7A4.

**MAJ-GEN MABULA:** I got it.

**ADV NGCUKAITOBI SC:** And then paragraph 2. Firstly, what is that document? The document at 7A4.

**MAJ-GEN MABULA:** 7A4?

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** It is a mandate, actually, that allowed me to conduct investigations.

**ADV NGCUKAITOBI SC:** It is a letter written by...

**MAJ-GEN MABULA:** Major General Dramat, yes.

**ADV NGCUKAITOBI SC:** To yourself?

10 **MAJ-GEN MABULA:** To myself, yes.

**ADV NGCUKAITOBI SC:** Doing what? Mandating you?

**MAJ-GEN MABULA:** Mandating me to conduct a fact-finding mission around KZN or KwaZulu Natal regarding the allegations that were actually appeared on the Sunday Times during the time.

**ADV NGCUKAITOBI SC:** And who was General Dramat?

**MAJ-GEN MABULA:** General Dramat was the National Head of Directorate Police Crime Investigation, which is DPCI, based in Pretoria.

20 **ADV NGCUKAITOBI SC:** Yes, he was the National Head of the Hawks.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** It looked like what happened really is this. He saw the story in the newspapers himself, if you look at paragraph 1.

**MAJ-GEN MABULA:** Correct so.

**ADV NGCUKAITOBI SC:** And then he decided to instruct you to start an investigation.

**MAJ-GEN MABULA:** That is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. And then paragraph 2, what does it say?

**MAJ-GEN MABULA:**

10 “Major General Mabula is hereby appointed to lead the investigation and is directed to establish a team with the relevant competencies to investigate the critical issues that have been identified in the abovementioned article.”

**ADV NGCUKAITOBI SC:** Yes. And then you also mentioned IPID. What does paragraph 3 say?

**MAJ-GEN MABULA:**

20 “The task team will communicate with the ICD, which currently is IPID, and offer assistance in respect of the mentioned 45 cases.”

**ADV NGCUKAITOBI SC:** Yes. I mean, this number of cases has generally moved. Sometimes we have 52, sometimes 45, sometimes 23. Do you know why there was a reference to 45 cases?

**MAJ-GEN MABULA:** I think there was a reference because

I think in the newspaper article that is where it was actually mentioned.

**ADV NGCUKAITOBI SC:** I see.

**MAJ-GEN MABULA:** If my memory serves me well, I have a long time not read the article to refresh my memory.

**ADV NGCUKAITOBI SC:** No, I understand.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** And then paragraph 4, what does it say?

10 **MAJ-GEN MABULA:**

“The team must also establish if disciplinary action must be taken against the members and make recommendation in this regard.”

**ADV NGCUKAITOBI SC:** So which members are being referred to here?

**MAJ-GEN MABULA:** Referring to Cato Manor Organised Crime Unit, Serious and Violent Crimes Unit.

**ADV NGCUKAITOBI SC:** Yes. Now, there are three organisations that are referenced here. There is the Hawks, 20 there is ICD or IPID, and then there is the quote-unquote police. So where would be the mandate of General Dramat to get involved in investigating the conduct of the police and then taking action against them?

**MAJ-GEN MABULA:** Can you rephrase the question again?

**ADV NGCUKAITOBI SC:** So I am saying in this letter there

are three organisations involved.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Firstly, there is the Hawks.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Then there is the police.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** And then the ICD. Now, General Dramat is coming from the Hawks.

**MAJ-GEN MABULA:** Yes.

10 **ADV NGCUKAITOBI SC:** And does he have a mandate to look at the conduct of the police?

**MAJ-GEN MABULA:** He has the mandate to look at the conduct of his own members, which were DPCI, because by that time, Cato Manor Organised Crime, they were actually answerable to General Dramat.

**ADV NGCUKAITOBI SC:** Thank you. Yes, that is what I needed to clarify.

**MAJ-GEN MABULA:** Yes.

20 **ADV NGCUKAITOBI SC:** Yes. And then you are also the subject of instructions from General Dramat because you were also Hawks North West.

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. Now, he could have done it differently. He could have said the Hawks in KwaZulu Natal must look at this thing. Correct?

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** But he did not. He got Hawks from a different province.

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** And would you know why?

**MAJ-GEN MABULA:** I would have known what I would say. Maybe if I have to say, I would be drawing an opinion, but I would have known myself.

**ADV NGCUKAITOBI SC:** Yes. But, I mean, is this not  
10 simpler that actually the members of Serious and Violent Crime in KwaZulu Natal were themselves involved? So there would be a clear conflict of interest.

**MAJ-GEN MABULA:** Correct.

**ADV NGCUKAITOBI SC:** So there must be a need for a neutral person from somewhere else.

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. So that does not seem to be far-fetched. It seems to be straightforward.

**MAJ-GEN MABULA:** Correct.

20 **ADV NGCUKAITOBI SC:** Okay. Yes, thank you. So that explains, then, how this matter comes to your desk. It is from your boss because he is read the newspapers. Is that correct?

**MAJ-GEN MABULA:** It is correct.

**ADV NGCUKAITOBI SC:** Yes. Now, that was in paragraph

24. And then what did you do thereafter, paragraph 25?

**MAJ-GEN MABULA:**

“Upon completion of this criminal investigation, I was required to submit a report to Lieutenant General Dramat containing recommendations regarding any misconduct that might warrant disciplinary action.”

**ADV NGCUKAITOBI SC:** Yes. And then paragraph 26.

10 **MAJ-GEN MABULA:**

“At that stage, we did not have access to relevant case dockets, which remained under the control of SAPS KwaZulu Natal, and IPID. The preliminary investigation accordingly relied primarily on local records centre, which is LCRC material, including crime scene photographs relating to a fatal shooting incident involving members of Cato Manor Unit.”

20 **ADV NGCUKAITOBI SC:** Yes. And then you start your investigation following page 7.7.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Correct? And then what happens?

**MAJ-GEN MABULA:**

“In order to access further material, I

contacted Mr Kumbalani Khuba, who led IPID is task team investigating this incidents. On 6 January 2012, I met with Mr Khuba at IPID offices at 23 Dorothy Nyembe Street, Durban, accompanied by DPCI team members.”

**CHAIRPERSON:** Sorry, General. Mr Kumbalani Khuba, was he a member of the SAPS?

**MAJ-GEN MABULA:** Chair, he was actually a member of  
10 IPID.

**CHAIRPERSON:** IPID.

**MAJ-GEN MABULA:** He was the one who was actually, when our arrival in KwaZulu Natal, he was the person who was currently leading the team, task team under the umbrella of IPID.

**CHAIRPERSON:** And he was based in KZN?

**MAJ-GEN MABULA:** No, he was based in Limpopo. He was just as myself deployed.

**CHAIRPERSON:** He was part of the team that was assigned  
20 to help in the investigation?

**MAJ-GEN MABULA:** Investigation by IPID at the time.

**CHAIRPERSON:** Thank you.

**ADV NGCUKAITOBI SC:** Yes. And you met with him on account of the instruction from General Dramat that you should...

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** You should work in partnership with IPID.

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. All right. And then on 6th of January 2012, you met with him in the offices of IPID?

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** And then you referred to DPCI team members that were with you?

10 **MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** Do you remember who they were?

**MAJ-GEN MABULA:** It was Brigadier Mokoena, who is now the General. Brigadier Lewele was a Colonel. Colonel Mano, Lieutenant Colonel Gola, and who else? I think Warrant Officer Ramakosi. Ja, among those were the team members.

**ADV NGCUKAITOBI SC:** And how were those selected to be part of this?

**MAJ-GEN MABULA:** I selected in terms of their skills.

**ADV NGCUKAITOBI SC:** You selected them?

20 **MAJ-GEN MABULA:** Yes, I had the opportunity to select. I mean the appointment said...

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** ...I must assemble a team, so I had a choice to.

**ADV NGCUKAITOBI SC:** And where did you get them from?

**MAJ-GEN MABULA:** Some was from head office, and then some from North West and Gauteng.

**ADV NGCUKAITOBI SC:** I see.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** All right. But you see, even your own choice, you did not select people from KZN?

**MAJ-GEN MABULA:** No, I could not.

**ADV NGCUKAITOBI SC:** Exactly. What is the reason?

**MAJ-GEN MABULA:** I mean I could not because I wanted to  
10 be very neutral. I wanted people who are very much neutral in terms of the investigation, objective anyway.

**ADV NGCUKAITOBI SC:** Yes, thank you. Now, then you attend this meeting on the 6th, and then in that meeting you deal with that in paragraph 29.1 to paragraph 29.4. What was discussed in that meeting?

**MAJ-GEN MABULA:**

“In that meeting I did inform Mr Khuba of my  
mandate from Lieutenant General Dramat,  
and I clarified that the investigation was at  
20 that stage not a criminal investigation. I made it clear to him. I indicated that approximately seven cases have been identified, and I requested access to the relevant dockets.”

**ADV NGCUKAITOBI SC:** And then what happened? What

did you say?

**MAJ-GEN MABULA:**

“Then Mr Khuba indicated that they do not have the 45 dockets mentioned in the expose, but conceded that they had complaints which they were investigating against the Cato Manor Unit.”

**ADV NGCUKAITOBI SC:** You know, one of the things that this Panel has learned over the months of the evidence has been, I would say, the lethargy from the perspective of ICD and IPID. That things just do not move there. Now, you have the encounter here with IPID. I mean, if they are saying to you, we also have complaints, why have they not resolved them?

**MAJ-GEN MABULA:** Well, I do not know whether to comment regarding that.

**ADV NGCUKAITOBI SC:** No, but at the time you were discussing with Mr Khuba, you know, I can understand you are getting involved late because you have been instructed by General Dramat.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** But he is telling you, we have been sitting with these cases. But the question that arises logically is why? Why have you not finalised them? Because it is 2012. These are cases stretching back from 2008. It is four

years later.

**MAJ-GEN MABULA:** Yes. No, he actually did not explain the reason why. So even myself, I did not ask why are you actually delaying in these matters. Because I have to forge the relationship, by the way.

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** For that time, yes.

**ADV NGCUKAITOBI SC:** Yes. Thank you very much. And then, you then address a request for forensic expertise. Is  
10 that correct?

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** And in relation to specific cases, which are mentioned at 31.1 to 31.7.

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** And why were these specific cases? I mean, in another correspondence, I think from Mr Maema, we learned about six dockets, but here you are mentioning seven.

**MAJ-GEN MABULA:** Yes.

20 **ADV NGCUKAITOBI SC:** Do you know what is the reason? Where did the additional one come from?

**MAJ-GEN MABULA:** Chair, at this stage when I wrote this letter, it was actually not cases.

**ADV NGCUKAITOBI SC:** Okay.

**MAJ-GEN MABULA:** It was LCRC reports. Because what

happened from the sources and the complainants and people who shared information with us, they did provide case numbers to us. And then, as we approach Mr Khuba, not necessarily willing to divulge or hand over this, so we work on that LCRC reports. So that is why the cases will be seven. It is not actually cases. Those were actually LCRC reports.

**ADV NGCUKAITOBI SC:** What is the difference between a docket and an LCRC report?

**MAJ-GEN MABULA:** A docket will be where you have got a  
10 complainant, a witness statement. A docket will be actually carried by the investigating officers. LCRC, this is their own docket. It is where now they take photos, their crime scene photos. So that is the difference. So this, what is actually indicated here, will be actually filed in the case docket.

**ADV NGCUKAITOBI SC:** I see.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** So this forms part of the case docket.

**MAJ-GEN MABULA:** Exactly.

20 **ADV NGCUKAITOBI SC:** But it is not a case docket.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** I see. Your letter is at 7A5.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** And you were asking for forensic expertise.

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** And why?

**MAJ-GEN MABULA:** Because we want to unravel. Because when you have got the ballistic, he is able to do a more thorough analysis, and then he is also in a position to reconstruct the crime scenes. Because whenever we interacted with the local record centre in KZN, we understood that not all the crime scenes were actually visited by the ballistic experts. So we knew whenever we summoned  
10 ballistic experts, we might get some more information that can give us direction in terms of investigating those allegations as mandated by General Dramat by then.

**ADV NGCUKAITOBI SC:** So you wanted more scientific expertise.

**MAJ-GEN MABULA:** Exactly.

**ADV NGCUKAITOBI SC:** All right, thank you. And then you do get your wish in paragraph 33.

**MAJ-GEN MABULA:** Paragraph 33, yes.

**ADV NGCUKAITOBI SC:** And that is when, I think it is  
20 Colonel Mangena, but I think he was at the time Captain.

**MAJ-GEN MABULA:** He was Captain Mangena, yes.

**ADV NGCUKAITOBI SC:** He is then assigned. What does that mean, that he now forms part of your team?

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** Your investigative team.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Okay, thank you. And then you commence formally on the 17th of January, is that correct?

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. And then as you start, IPID gives you a list of 52 cases, correct?

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** And that you will find at 7A7.

**MAJ-GEN MABULA:** Correct, Chair.

10 **ADV NGCUKAITOBI SC:** Yes, we had this from Captain Mangena as well, the same list.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** So I am not going to spend time on that.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** And then you say that these cases now have broadened because you started with seven LCRC reports.

**MAJ-GEN MABULA:** Yes.

20 **ADV NGCUKAITOBI SC:** And then you end up with 52 cases.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Was it clear where the 52 cases, I suppose they were from IPID, they were not yet dockets, or were they dockets?

**MAJ-GEN MABULA:** Most of them were actually inquest

dockets.

**ADV NGCUKAITOBI SC:** Inquest dockets?

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Which would mean what? Because we have also had this term inquest docket, and it is never clear to us how does that differ from a police docket.

**MAJ-GEN MABULA:** Ja. You know, inquest dockets is where actually, for me, my interpretation would be a case docket where actually you do not have a direct suspect into  
10 the matter. For me, it is like a fact finding. You are establishing facts. You are not yet sure as to whether what happened. That is my interpretation. Inquest dockets is where now your view is establishing the facts to get more information around the suspects because there it would be clear that the crime has been committed.

**ADV NGCUKAITOBI SC:** Mmm.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Now how does that work in this case where I think virtually all of the 23 dockets that we have  
20 been dealing with in this enquiry, the killers are known. There is no need to do a fact finding about who the killers are because they have written statements where they admitted that they shot and killed people they alleged to be suspects.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Why does that go to an inquest?

**MAJ-GEN MABULA:** Well, I would not understand by that time. We were also surprised when we read through the statements and through the analysis of Captain Mangena.

**ADV NGCUKAITOBI SC:** Mmm.

**MAJ-GEN MABULA:** Yes. And then when also you go through the witness statement, we were actually a bit taken aback.

**ADV NGCUKAITOBI SC:** Yes. Your opinion based on your expertise would be that this should not have gone, this should  
10 not have become an inquest because you call an inquest a fact finding because the facts were known.

**MAJ-GEN MABULA:** Yes. No. According to me, yes. That is why we actually pushed, most of these cases were actually registered as case dockets.

**ADV NGCUKAITOBI SC:** Yes. Thank you very much. And then paragraph 37, you are now starting your work, correct?

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** Do you want to comment on that, on the strategies you followed?

20 **MAJ-GEN MABULA:**

“Through January, the task team analysed the LCRC records and began reconstructing crime scenes across multiple incidents. They also travelled to KwaZulu Natal to continue with the investigation and lies with

IPID investigating team that was stationed in Durban at the time.”

**ADV NGCUKAITOBI SC:** Yes. Thank you. So, but these are multiple trips?

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** People coming in and out?

**MAJ-GEN MABULA:** In and out, correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. You were personally involved in virtually all of them?

10 **MAJ-GEN MABULA:** I was, Chair.

**ADV NGCUKAITOBI SC:** Okay. And then you had security concerns bearing in mind intelligence reports, correct?

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** And what were those security concerns that are dealt with in paragraph 38 and 39 and 40 and 41?

**MAJ-GEN MABULA:**

20 “On the 20th of January, I received intelligence indicating that members of Cato Manor Unit were tracking the movements of task team using SAPS automatic vehicle location, which is actually known as AVL systems. This raised a serious concern. I then conveyed the intelligence to the task team and instructed that the documents and

records that the team was analysing for the investigation must be left at the SAPS Special Task Force offices in KwaZulu Natal. This facility was provided by then acting National Commissioner Lieutenant General Nhlanhla Mkhwanazi, who is the current Provincial Commissioner of KwaZulu Natal.”

**ADV NGCUKAITOBI SC:** You are saying the facility, which  
10 facility is this?

**MAJ-GEN MABULA:** The facility is where we actually housed our case dockets and so on. It was at the task force, KwaZulu Natal SAPS Task Force offices.

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** So they actually provided us with a strong safe where we put in all these, yes.

**ADV NGCUKAITOBI SC:** And that was facilitated by General Nhlanhla Mkhwanazi?

**MAJ-GEN MABULA:** Yes, correct.

20 **ADV NGCUKAITOBI SC:** Okay. To help your investigation to be protected?

**MAJ-GEN MABULA:** Yes, correct.

**ADV NGCUKAITOBI SC:** Okay. And paragraph 40?

**MAJ-GEN MABULA:**

“Shortly thereafter, equipment belonging to

a forensic team member was stolen from their vehicle and a criminal case was opened as per Durban Central CAS 1280/01/2012.”

**ADV NGCUKAITOBI SC:** Yes. We have got evidence here that from Captain Mangena that the equipment was actually stolen from his car.

**MAJ-GEN MABULA:** Yes, correct.

**ADV NGCUKAITOBI SC:** And his car was one of the ones that were tracked according to the intelligence by the Cato  
10 Manor people.

**MAJ-GEN MABULA:** Correct.

**ADV NGCUKAITOBI SC:** All right. Carry on.

**MAJ-GEN MABULA:**

“Alternative non-trackable vehicles were therefore procured for the task team. These vehicles were provided by Crime Intelligence.”

**ADV NGCUKAITOBI SC:** What does that mean?

**MAJ-GEN MABULA:** It means now that we actually  
20 established that we have been tracked by AVL. So the vehicles that we actually allocated to the teams, they were no longer fitted with AVL, which might actually, you know, create opportunity for those who are tracking to follow the team.

**ADV NGCUKAITOBI SC:** Yes. Paragraph 42?

**CHAIRPERSON:** If I may ask, General, why would the Cato Manor Unit members track the movements of your team using this AVL? What was the purpose?

**MAJ-GEN MABULA:** Well, I can only imagine, Chair, to say it might have, maybe if the case might be, to check the witnesses that we might be interacting with. And that is why, something that I learned in KZN is most of the witnesses or people that you spoke to, whenever you spoke about Cato Manor, they would just move away, the way they were actually  
10 afraid of this unit.

**CHAIRPERSON:** Thank you, Counsel.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair.  
Paragraph 42?

**MAJ-GEN MABULA:**

“This incident reinforced my concern that the investigation was being actively undermined.”

**ADV NGCUKAITOBI SC:** What does that mean?

**MAJ-GEN MABULA:** It means that there is possibility of  
20 interference into these investigations. The work that we are doing is not really, how can I say, is not really recognised. And then, you know, there is a disruptive element that want the facts not to be divulged to the public.

**ADV NGCUKAITOBI SC:** Yes, yes, yes. And the only people that would have that interest in suppressing the evidence

from surfacing would be who?

**MAJ-GEN MABULA:** It would be those who are involved.

**ADV NGCUKAITOBI SC:** Which is who?

**MAJ-GEN MABULA:** Which by then allegedly would have been Cato Manor.

**ADV NGCUKAITOBI SC:** Yes. And so you are talking about them when you say actively undermined?

**MAJ-GEN MABULA:** Yes, Chair.

**ADV NGCUKAITOBI SC:** You are trying to investigate these  
10 people, but at the same time they are trying to sabotage the investigation.

**MAJ-GEN MABULA:** Exactly, exactly.

**ADV NGCUKAITOBI SC:** Okay, and then you referred to Colonel Mangena's letter at MJ5, which is at page 789. Is that correct?

**MAJ-GEN MABULA:** 789, yes.

**ADV NGCUKAITOBI SC:** Yes, we already called Captain Mangena and he dealt extensively with this letter, so I am not going to ask you to read it. Do you have anything else to say  
20 on this letter?

**MAJ-GEN MABULA:** No, no.

**ADV NGCUKAITOBI SC:** Your preliminary investigation was then completed and your report was given to General Dramat on the 31st of January 2012, is that correct?

**MAJ-GEN MABULA:** Correct.

**ADV NGCUKAITOBI SC:** Now, what did you say to General Dramat?

**MAJ-GEN MABULA:** After giving the report?

**ADV NGCUKAITOBI SC:** No, in the report. What were you telling him you have discovered in the month of January 2012?

**MAJ-GEN MABULA:** No, we analysed actually three dockets. The one was a docket, the one of Durban Central, where a certain Bongani Mkhize was actually killed. And the  
10 other one was Bhekithemba. Bhekithemba case is where our report actually was based.

**ADV NGCUKAITOBI SC:** Find your report if it is more comfortable.

**MAJ-GEN MABULA:** And how we CAS.

**ADV NGCUKAITOBI SC:** I am saying find it, the report.

**MAJ-GEN MABULA:** No, I am covered. I wanted that information.

**ADV NGCUKAITOBI SC:** You have got it?

**MAJ-GEN MABULA:** No, I have got the information that I  
20 wanted to say.

**ADV NGCUKAITOBI SC:** All right, then you can explain to the Panel.

**MAJ-GEN MABULA:** I did compile a report to General Dramat and in that report we also highlighted the possible misconduct that would have been levelled against Cato Manor

and those who were involved.

**ADV NGCUKAITOBI SC:** And what were your preliminary findings?

**MAJ-GEN MABULA:** Our preliminary findings was there was indeed misconduct. And our preliminary report was also that there is a need for a criminal investigation in this matter.

**ADV NGCUKAITOBI SC:** Why? Why is there misconduct and why is there a need for a criminal investigation?

**MAJ-GEN MABULA:** As we are analysing the case dockets,  
10 it was very clear to say it is a very serious crime and many people have been shot and then under mysterious circumstances that are actually raising doubts as to whether it was a self-defence action.

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** So you discovered that the version given in the statements in the dockets by the police is possibly false?

**MAJ-GEN MABULA:** Yes.

20 **ADV NGCUKAITOBI SC:** Yes. And that these are murders and not self-defence, are possibly murders and not self-defence?

**MAJ-GEN MABULA:** Not self-defence, correct, Chair.

**ADV NGCUKAITOBI SC:** And then your view was that when you say there is misconduct, what does that mean?

**MAJ-GEN MABULA:** Misconduct in the sense of because there is a, what do you call, a Code of Conduct by the police how they should behave. So once you contravene that, it might result into a misconduct. There are regulations that actually one would be charged with.

**ADV NGCUKAITOBI SC:** Yes. But what is the misconduct and committed by who?

**MAJ-GEN MABULA:** The misconduct was, for example, if I go to the files, I have just to read what the time our report  
10 actually said to General Dramat. If I have it quickly here. Where is it? Can I just find time? I think I brought it.

**ADV NGCUKAITOBI SC:** You can read from it if it is better for you.

**MAJ-GEN MABULA:** I am just going to check, ja. I am just quickly going to check, sorry. Ja. First, let me just check because we summarise case by case. Okay. The first docket that we actually summarised, it was Durban Central  
185/2/2009, Umgeni. The one against the deceased Mr Bongani Mkhize. After analysing and doing some fact-finding  
20 mission, and then we did recommend to General Dramat by then our findings and recommendations. And then we said into that, we said, that is a long thing so I am not sure whether, our findings was we referred to Mr Mkhize as the chairperson. And then we also summarised the actions by all the members. And then our recommendation that time, we

said:

“It is recommended that the investigation be instituted in terms of Regulation 12 of SAPS Discipline Regulation 2006 against the following members.”

That was in terms of Mr Mkhize;

“Major General Booysen, Regulation 20, in that, on about 21 October until 3 February, at about 13h00 and at or near Durban, KwaZulu Natal, he allegedly failed to comply with legal obligation by failing to ensure compliance to the court order obtained by the deceased Bongani Mkhize, as a result of which he was killed.”

That was our recommendation that time. Our first.

**ADV NGCUKAITOBI SC:** I will just stop there because, you see, this issue around Mr Bongani Mkhize, we have dealt with it extensively in this enquiry. But we have never dealt with the fact that there was a specific recommendation that Major General Booysen should face disciplinary action around this because he failed to ensure that there was compliance with the court order. What did you mean that he failed to ensure compliance with the court order?

**MAJ-GEN MABULA:** What we meant by that time, remember, he was actually the custodian of, or he was actually the one

involved in the answering affidavit. So my expectations was, or our expectation was, he should actually have communicated the final order to his members and put measures in place to say in case when Mr Bongani Mkhize was sought, this were the issues that were supposed to have happened. But then we say on the same to say, but he is the person who goes to the crime scene, but he cannot recall that actually there is a contravention already in the same matter. So he never instituted anything against or any misconduct  
10 against his own members.

**ADV NGCUKAITOBI SC:** Yes. In his book, he describes the court order as superfluous and redundant.

**MAJ-GEN MABULA:** Well, I have not seen the book. I heard about the book.

**ADV NGCUKAITOBI SC:** Yes. Now, you can take what I am saying because we have read it and we read it as part of the record here.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** But what is your comment on that,  
20 that you are saying, well, in law, he was expected to ensure compliance with it.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** But he describes it as superfluous and redundant.

**MAJ-GEN MABULA:** It can be redundant and superfluous.

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** Because the High Court actually have sanctioned that it needs to be observed.

**ADV NGCUKAITOBI SC:** Yes. Okay. Then there is an alternative finding.

**MAJ-GEN MABULA:** Okay.

10 “Alternative, Regulation 20Z, that on about 3 February, about 13h00 near Durban, KwaZulu Natal, in that he allegedly committed a common law offence, to wit murder, in which the deceased Bongani was the victim by Durban CAS 185/2/2009.”

**ADV NGCUKAITOBI SC:** Now, can you just explain why you came to the view that Mr Booyesen must be held accountable for the death of Mr Mkhize?

**MAJ-GEN MABULA:** I came to the view or we came to the view at that time because had he actually applied or complied with what the Court has actually said they need to comply with, Mr Mkhize's life would have been saved.

20 **ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** All right, carry on. What other recommendations did you make?

**MAJ-GEN MABULA:**

“Warrant Officer Stoltz, Warrant Officer

Padayachee, Warrant Officer Dlamuka, Constable Lee and Constable Mfeni, Regulation 20Z, in that on about 3 February, about 13h00 at about near Durban, KwaZulu Natal, in that they allegedly committed common law offence, to wit murder, in which the deceased Bongani Mkhize was the victim by CAS 185/2/2009.”

**ADV NGCUKAITOBI SC:** Yes. And why did you choose this  
10 group of police officers to put them in this bracket of being responsible for the killing of Mr Mkhize?

**MAJ-GEN MABULA:** Because they were the first people who were in the vicinity of the crime scene and in terms of the analysis that were done and exhibit the crime scene as it was analysed, they were actually implicated into this.

**ADV NGCUKAITOBI SC:** Yes. Well, I mean, they admitted that they shot him.

**MAJ-GEN MABULA:** Yes, they admitted, but the question was, was it necessary to shoot him? Is it true? The way they  
20 actually, in terms of their explanation, what happened, the events, how they unfolded, it did not actually make sense.

**ADV NGCUKAITOBI SC:** I understand what you are saying, but I am saying that there is no need for a complicated explanation about why they must be responsible for his killing, because they admitted that they shot him.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** So they must go to Court and explain whether it was self-defence or murder.

**MAJ-GEN MABULA:** Exactly.

**ADV NGCUKAITOBI SC:** Yes. And then what else did you recommend?

**MAJ-GEN MABULA:** Well, then we went on to Howick's case.

**ADV NGCUKAITOBI SC:** Now, Howick is the killer of Mr  
10 Magojela Ndimande?

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** On the 16th of September, 2008?

**MAJ-GEN MABULA:** Yes. I just want to check our recommendations.

**ADV NGCUKAITOBI SC:** And Mr Thokozane Tembe, his bodyguard?

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** What did you say about that?

**MAJ-GEN MABULA:** I just want to check. Okay. Here, we  
20 actually, our recommendations was, we said:

“With regard to Magojela and his bodyguard, Thokozane Tembe, were arrested on 29/08/2008 on the N2 freeway, near Empangeni with the joint effort of Warrant Officer Ndlovu of the Dog Unit and Warrant

Officer Hlope. Handed over to Cato Manor, to Organised Crime Unit members, released them on the basis that they were not linked to the murder of Lieutenant-Colonel Choncho. Cato Manor Organised Crime Unit members, told Warrant Officer Ndlovu of the Dog Unit to, in future, call them before arresting any suspect linked to their cases. It is recommended that an investigation in terms of Regulation 12 of SAPS Discipline Regulation 2006 be instituted against the following members.”

10

It was Warrant Officer Paul Mostert, Captain Lockem, Captain Eva, Warrant Officer Makhanya, Warrant Officer Nel for possible contravention of Regulation 20 as well. The one I have already read.

**ADV NGCUKAITOBI SC:** Why?

**MAJ-GEN MABULA:** Sorry?

**ADV NGCUKAITOBI SC:** They have contravened the regulation in what manner?

20

**MAJ-GEN MABULA:**

“In that, on about 16th September, at near Howick, Pietermaritzburg, KwaZulu Natal, in that they allegedly committed a common law offence, to wit murder, in which the

deceased Magojela Ndimande and Thokozane Tembe were the victims, via the Howick CAS 106/9/2008.”

**ADV NGCUKAITOBI SC:** Yes, and in this case, they also admitted that they had killed him.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** And they also admitted that Mr Thokozane Tembe was running away when they killed him.

**MAJ-GEN MABULA:** Yes.

10 **ADV NGCUKAITOBI SC:** And so you say they must be charged with murder.

**MAJ-GEN MABULA:** Exactly.

**ADV NGCUKAITOBI SC:** Okay, what else?

**MAJ-GEN MABULA:** Camperdown, 96/01/2009, January 2009. Our recommendations:

20 “On the 21st January 2009, an information was allegedly received that a group of African males was intending to commit armed robbery in Pietermaritzburg. Cato Manor Organised Crime Unit members met at the garage on N3, where a briefing was done regarding the make, registration letters and numbers of the vehicle as a white kombi, ND 306-772, which was to be used in the intended robbery and the fact that there

would-be robbers were armed. A decision was allegedly taken to stop the vehicle, which was to be used in the intended robbery on the road. As a location, an intended robbery was unknown. The aforesaid vehicle was postponed, stopped, exchange of gunfire was ensued, resulting in the death of five of at least eight suspects. The vehicle in which the alleged

10 suspects were travelling was hired a taxi.

Three suspects and the driver were arrested and charged on Camperdown CAS 96/01/2009 for attempted murder and possession of unlicensed firearm and ammunition.”

Can I go to the recommendation?

“It is recommended that an investigation in terms of Regulation 12 of SAPS Discipline Regulation 2006 be instituted against the

20 following members:

- Lieutenant Colonel Olivier
- Warrant Officer Paul Mostert
- Captain Lockem
- Captain Eva
- Warrant Officer Makhanya

- Warrant Officer Ghaness
- Warrant Officer Lachman
- Warrant Officer Wolfhaardt
- Reservist Constable Potgieter
- Constable Gumede

For possible contravention of regulation 20Z.”

**ADV NGCUKAITOBI SC:** And why?

**MAJ-GEN MABULA:**

10 “In that, or about 21 January, near Camperdown, Durban KwaZulu Natal, in that they allegedly commit a common law offence, to wit murder, in which they deceased Nhlanhla Linda Majozi, Molosi Nkabeni Ntuli, Peter Apole Siwele, Sipokuthle Msomi, and Jabulani Cele were the victims via Camperdown CAS 96/2009.”

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** Yes.

20 **ADV NGCUKAITOBI SC:** So it is the same thing. Policemen admit that they have shot and killed these people. You say, well, go and face a murder charge then.

**MAJ-GEN MABULA:** Yes. So those were the three cases that we actually presented to General Dramat as a preliminary report, in our preliminary report.

**ADV NGCUKAITOBI SC:** Yes, no, that is fine. That we should do then, your report must be copied for the Panel, once you are finished with your testimony.

**MAJ-GEN MABULA:** Okay.

**ADV NGCUKAITOBI SC:** Yes, the document you are reading from.

**MAJ-GEN MABULA:** Okay.

**ADV NGCUKAITOBI SC:** Now, you have now told General Dramat that, look, we have looked at this thing. There is  
10 actually 52 cases.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** We looked closely at three.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** And there is a picture that is emerging there. What does he say to you?

**MAJ-GEN MABULA:** Because it was still ongoing. Our investigation was still ongoing. By that time, he did accept, but I think he was still thinking of the next plan, because the next plan was he was supposed to appoint investigative  
20 capacity that will deal with this, because we are only doing the fact-finding.

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** But what did he tell you as the team that is appointed, well, you as a leader of the team?

**MAJ-GEN MABULA:** I think that time it was still early stage. Remember, these were the first cases, and then obviously we would have given progress reports. So I am not sure as to whether he would have left us to complete all what the assignment he gave to us, and then whenever we complete with our fact-finding, then he would appoint a person who would carry on with the investigations. So I am not sure by that time, but that was the report we gave to him.

**ADV NGCUKAITOBI SC:** Yes. Your report is clear that these  
10 people are responsible for the murder of these alleged suspects, and they must at least be taken to a disciplinary hearing, if not charged criminally in a court of law.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Did that happen?

**MAJ-GEN MABULA:** I believe it happened.

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** It happened...

**ADV NGCUKAITOBI SC:** These disciplinary hearings?

**MAJ-GEN MABULA:** Yes, but after some time, I think during  
20 the time of General Phiyega.

**ADV NGCUKAITOBI SC:** General Phiyega was not yet the National Commissioner in 20... at the time you made your report, was she the National Commissioner?

**MAJ-GEN MABULA:** No, I think General Mkhwanazi was the acting, because this was a long investigation. So that is why

I am saying I do not know what the view of General Dramat was by then, whether he expected us to complete the assignment, and thereafter to assign another team.

**ADV NGCUKAITOBI SC:** Yes. What I am saying, at the time you made the report, I mean, no one actually took disciplinary steps. These people must be suspended from work. Their firearms must be taken, and then they must be taken through a disciplinary hearing.

**MAJ-GEN MABULA:** No, at that period, no.

10 **ADV NGCUKAITOBI SC:** Yes, that is what I was asking.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** All right, thank you. And do you know why? You know, this is extremely serious that these people are operating like a hit squad, but you are saying there must be discipline. No one disciplines them.

**MAJ-GEN MABULA:** Like I say, maybe as we go on, I will justify why maybe during that short period, because even our mandate actually changed.

**ADV NGCUKAITOBI SC:** Yes, but you do not know why they  
20 did not do the simple thing of taking them to disciplinary hearings.

**MAJ-GEN MABULA:** No. Though, like I said, ultimately they were taken for disciplinary hearing.

**ADV NGCUKAITOBI SC:** Yes, I understand. The problem with labour law is that you have got to take disciplinary action

promptly.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Otherwise, evidence disappears.

**MAJ-GEN MABULA:** Exactly.

**ADV NGCUKAITOBI SC:** Yes. Now, then you brief the Minister. Which Minister are you talking about in paragraph 45?

**MAJ-GEN MABULA:** I am talking about the late Minister Mthethwa, his soul rest in peace.

10 **ADV NGCUKAITOBI SC:** Okay. And what was the reason for briefing the Minister?

**MAJ-GEN MABULA:** Well, actually, this meeting was initiated by General Dramat. I think, ja, General Dramat, then Lieutenant General Mkhwanazi, and then Head of IPID, I think it was Mr Beekman. So we were actually called to a meeting, so I cannot explain what was actually the reason why we were called in that meeting, what was actually necessary for us to be there, but we were called to come and present.

**ADV NGCUKAITOBI SC:** Yes, well, it seems that according  
20 to paragraph 46:

“The purpose of this briefing was to provide the Minister of Police with a comprehensive and factual account of the investigation and a progress account.”

**MAJ-GEN MABULA:** Yes, Chair.

**ADV NGCUKAITOBI SC:** But could I suggest that it probably was because this was a high-profile matter which was already in the news?

**MAJ-GEN MABULA:** Yes, maybe, yes, possibly so.

**ADV NGCUKAITOBI SC:** And so he wants to know what are my officials doing about it?

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Yes. Paragraph 47, you are now in that meeting. What happened?

10 **MAJ-GEN MABULA:**

“At that briefing, DPCI presented its investigation findings.”

The one that I already shared with the Panel.

“Colonel Mangena presented forensic and ballistic analysis on behalf of the DPCI task team. IPID reported on its criminal investigations.”

**ADV NGCUKAITOBI SC:** Yes, if I could just stop you there. You know, there was something made in this case, I am not  
20 sure if it will be persisted with, that Colonel Mangena's reports were signed in September 2012. That was after the signature of the indictment. How is that possible? But you actually suggest that his reports, some of them were ready as early as March 2012.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Okay.

**CHAIRPERSON:** General, you have just mentioned that IPID had to finalise their criminal investigation. Just to avoid the confusion, at paragraph 29.2 of your statement, you make it clear that the investigation was at that stage not a criminal investigation. At what stage did it assume its criminal nature, or was it a mistake?

**MAJ-GEN MABULA:** No, no. No, it is not a mistake. In that paragraph, I think I was trying to explain to Mr Khuba, to say  
10 our mandate is not necessarily criminal investigations, because we are aware that criminal investigation was actually falling under their own terms of reference.

**CHAIRPERSON:** Yes.

**MAJ-GEN MABULA:** So I just wanted to explain to him to say our mission here is a fact-finding mission. Actually, we are not here to interfere with their own criminal investigations.

**CHAIRPERSON:** Yes, but what you also conducted was in any event also a criminal investigation. You have just  
20 mentioned now that you then had to finalise the report on the criminal investigation. Did I get it wrong?

**MAJ-GEN MABULA:** No, our report was more on internal misconduct. Though we are referring to case dockets, but we were actually focussing more on internal investigation, misconduct of our members, because, obviously, criminal

investigation was actually done by IP themselves.

**CHAIRPERSON:** Yes.

**MAJ-GEN MABULA:** Yes. It is only at the later stage, when we combined forces, then we had an input now into criminal investigations.

**CHAIRPERSON:** Thank you.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. I think the public would be rightly confused, because when you  
10 recommend that someone must be charged for violating a regulation, because they committed murder, the public understands the murder to be a crime.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** They do not understand the distinction being drawn between violating a regulation and being charged for committing murder. They are wondering, why are the police not taking this person to court if they committed murder?

**MAJ-GEN MABULA:** Yes.

20 **ADV NGCUKAITOBI SC:** You see what I am saying?

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Can you educate us on that?

**MAJ-GEN MABULA:** No. The only difference here is, if it is a mandate of police, I am investigating a case of, let me say what, a rape case, if it is my mandate. The police are the

custodian of that docket. The investigative officer is in the police detectives. But it does not mean, as when this criminal investigation carries on, there is a duplication in terms of misconduct. Now, the misconduct can be finalised very quickly. It is where a member can be discharged from the service and all those things. But the criminal investigation is apart. It is not necessary to say you combined them.

**ADV NGCUKAITOBI SC:** So they overlap, but they are done by different units within the service.

10 **MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** But the evidence is the same.

**MAJ-GEN MABULA:** The evidence might be the same, yes.

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** So in this case, IPID are the custodian of the mandate in terms of the police conduct criminally. But we as police, we also have to make sure that the internal investigation is conducted, so that when a member is actually found guilty, because the balance of probability is what we actually focus on in this. And then a member can be, even  
20 before the criminal case is finalised, he can be discharged from the service. He can be suspended. All those sanctions can be.

**ADV NGCUKAITOBI SC:** I see.

**MAJ-GEN MABULA:** Yes. I am not sure whether I tried to explain.

**ADV NGCUKAITOBI SC:** No, no. I think you have clarified it. Thank you very much.

**MS RAMAGAGA:** May I just follow up? General, when people, when you make a recommendation that may be in terms of regulation for a person to be investigated through disciplinary proceedings, do they look at the nature of the complaint in order to decide whether a matter should be attended speedily or not? Or do they just follow a normal list as the first come, first served, or first in, first out?

10 **MAJ-GEN MABULA:** Any misconduct needs to be attended speedily.

**MS RAMAGAGA:** Now, looking at this misconduct, it is a misconduct where the police would continue to be in possession of the firearms. It is the misconduct where police have admittedly killed people. And in your view, when you look at this type of transgression, would you, or rather, what is your attitude or view relating to such policemen continuing to be placed in possession of firearms lawfully for purpose of execution of lawful obligations or duties?

20 **MAJ-GEN MABULA:** Okay. My view, always, I will respect the outcome of the investigations because, obviously, someone will have to be appointed in terms as we recommended. Someone needs to be appointed, do a thorough investigation, collect all the material evidence, and then there must be a panel that will be formed, and then the

member will need to be trialled disciplinary.

**MS RAMAGAGA**: And you say, ordinarily, matters such as the one of the three cases that you have spoken about in the recommendations are such that they are in the normal course of things or business of the police service, carried out speedily or attended speedily.

**MAJ-GEN MABULA**: Yes.

**MS RAMAGAGA**: And what would you say about these three? Were they, according to you and your observation,  
10 were they attended speedily?

**MAJ-GEN MABULA**: No, they were not.

**MS RAMAGAGA**: Do you have an idea as to why they were not handled speedily?

**MAJ-GEN MABULA**: I do not know. Maybe the idea might be, like I said, you see, it is always problematic where an inquest docket, mostly inquest docket, sometimes it is a way that can actually confuse some people to say if it is an inquest docket. Maybe, maybe the charges that were actually opened during the time. I am not sure what would have been the  
20 reason for that. But having said that, it does not really say a person who is a supervisor, if he go in depth and go through whatever happened here, he would have decided otherwise.

**MS RAMAGAGA**: You say the Regulation 20 enquiry or investigation can run parallel with the criminal investigation.

**MAJ-GEN MABULA**: Yes, yes.

**MS RAMAGAGA:** So, that being so, in all probability, or rather you can educate us about that, as to on whose desk is the Regulation 20 enquiry placed?

**MAJ-GEN MABULA:** The employer.

**MS RAMAGAGA:** It is the employer.

**MAJ-GEN MABULA:** Yes.

**MS RAMAGAGA:** And the murder docket?

**MAJ-GEN MABULA:** The murder docket, obviously, it goes to criminal court.

10 **MS RAMAGAGA:** To criminal court.

**MAJ-GEN MABULA:** Yes.

**MS RAMAGAGA:** Okay.

**MAJ-GEN MABULA:** Yes.

**MS RAMAGAGA:** No, then that is fine. Thank you.

**ADV NGCUKAITOBI SC:** Yes. Thank you, Madam Ramagaga.

**CHAIRPERSON:** If I may, Counsel, General, you may be aware of the evidence of Ms Williams, who was a member of formerly ICD, which later became IPID. Am I correct of that,  
20 the successor, that succession? Initially Independent Complaint Directorate.

**MAJ-GEN MABULA:** ICD, yes, Chair.

**CHAIRPERSON:** And later you became IPID.

**MAJ-GEN MABULA:** Yes.

**CHAIRPERSON:** Ms Williams, in relation to the question my

sister is posing to you regarding the delays, she gave an impression that she became frustrated sometimes in the execution of her investigative duties when she found that members of the SAPS, who were also conducting parallel investigation, were making it difficult for them to even access the crime scenes. And as the then Head of the Hawks, who got involved, were you aware of those challenges?

**MAJ-GEN MABULA:** They did mention, because at some stage we did interview Ms Williams. He was one of the people  
 10 that actually we interviewed. He did highlight the challenges that they had. But having said that, I do not think the province where I am coming from, where I used to work, I do not think there was no such interference. Actually, the first thing, what is happening currently, whenever there is a crime scene where it is clear that it is an IPID investigation, the members at the CSC immediately, there is already a number where they have to inform IPID.

And when IPID arrives at the crime scene, it is their  
 crime scene, it is handed immediately to them. That is the  
 20 arrangement. I think the Act also provides that. So in terms of investigation, they become actually our superiors. We become actually more, lesser than involved, because they are investigating us. That is my understanding.

**CHAIRPERSON:** So in the eyes of the public, especially those people who became victims because of the conduct of

the police, in this instance, the conduct of the Cato Manor members, and they see the IPID investigators not really getting to grasp the challenges or deal with the investigation properly, what then that makes of your office, IPD , you are supposed to police the police.

**MAJ-GEN MABULA:** Chair, I am actually not from IPID. I am not sure whether it is true.

**CHAIRPERSON:** Were you not Head of the Hawks?

**MAJ-GEN MABULA:** Yes, Chair.

10 **CHAIRPERSON:** And was that not IPID?

**MAJ-GEN MABULA:** No, no, Chair. Hawks is more linked to the police. IPID is an Independent Police Directorate.

**CHAIRPERSON:** Yes. I do not know why I get it wrong.

**MAJ-GEN MABULA:** Yes.

**CHAIRPERSON:** And who would have been responsible, the Head of the IPID then?

**MAJ-GEN MABULA:** Who would be?

**CHAIRPERSON:** Who would have been the head of the IPID then?

20 **MAJ-GEN MABULA:** By then, it was Mr Beekman. Frans Beekman, Beekman. He used to be the chairperson at Portfolio Committee when he left IPID.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** Right. But what role then did you play as the Head of the Hawks in relation to these issues that were

raised by Ms Williams?

**MAJ-GEN MABULA:** No, Chair, these were raised during the time when we were at work, focussing on the specific investigations. So, in other words, I could not have corrected. It is things that were brought to my attention, and then we pushed together with the IPID members, we did the criminal investigations.

**CHAIRPERSON:** Yes, thank you.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. General  
10 Mabula, I think the Chair's question is still a relevant one. Which is, we have a funny scenario in this case, where the disciplinary hearing is not proceeding, the one you have recommended.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** But at the same time, an external  
body like IPID, which is independent, is also not able to carry out its investigation because it is being blocked by the police.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** You see. And I think that is where  
20 the question arises, what then? Because an independent body cannot do its job because Cato Manor is resisting. Yourself, you mentioned in your statement, you are also being monitored and tracked and you are being blocked. And that is why the mother of Kwazi Ndlovu, the 16-year-old boy, will ask themselves the question, but who is going to look

after me as a member of the public if people like General Mabula cannot make progress because they are being monitored?

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** People like Ms Shamila Williams cannot make progress because they are being blocked and monitored.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** I think that is really what we should  
10 honestly account to South Africa about.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** I think you should give an explanation to the extent that you can in terms of what you encountered when you went to Cato Manor. Because it is truly astonishing that no one has been able to crack the problem of Cato Manor, even now. And we have Ms Batohi who just withdrew everything.

**MAJ-GEN MABULA:** Yes. Look, for me, my observations, if I have to come to my observations, when I was there, what I  
20 experienced, it was, for me, it is like the members of Cato Manor, they were actually a law unto themselves and they were actually respected for their own deeds because no one would actually stand against them. That is, in short, what I can say.

**ADV NGCUKAITOBI SC:** Yes. But I think that is fine. But

you cannot be a law unto yourself unless the system enables you to be a law unto yourself. So it is clear that there was a breakdown in the accountability systems. You cannot have a unit that just does it as it pleases unless it is enabled. So where was the enablement coming from?

**MAJ-GEN MABULA:** Well, I look always to the Head because if the Head is not right, things are always not well.

**ADV NGCUKAITOBI SC:** And what do you mean by that?

**MAJ-GEN MABULA:** So, like I said, in terms of the late  
10 Bongani Mkhize, to say the Head of the Hawks, General Booyesen, by then, he should actually set an example. That was a very perfect example where he should have actually started because it was very clear. Because he had an interdict with him, and then he knew what was his own responsibility. He should have communicated clearly to everyone to say this is how we are going to deal with this matter from now. It would have actually prevented a lot of loss of life.

**ADV NGCUKAITOBI SC:** Yes, thank you.

20 **MS RAMAGAGA:** I understand the concern of Advocate Ngcukaitobi to be exactly what you are now saying, that he is the law unto himself. He ought to have done one, two, three. But he is saying, but why is he allowed to do as he pleases? There was a court order granted, and to say, well, he is doing this cannot help us much. And it does not answer the

question, why are they allowed? And it will start, I think, from the top, from who is allowing. And why is the system like this? Put in other words, and if I am mischaracterising your question, you will correct me, Advocate Ngcukaitobi, but it is about why are we here? We have systems. And in this case, it is three heads that are put together. It is the IPC, the IDC, the SAPS, and even, but then still, this coach is not moving. You may correct, so that when he answers, he answers the correct question.

10 **ADV NGCUKAITOBI SC:** No, Madam Ramagaga, that is exactly the question. Especially because you have been assigned to investigate this.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** And you are from outside.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** And the system is rotten in KwaZulu Natal.

**MAJ-GEN MABULA:** Yes. No, like I said, I would still say, it is command and control. People are doing as it pleases  
20 them. There is no one who sees wrong. That is the observation that I could draw. I cannot say more than that. But it is also the responsibility of the top management structures, who sees these things, to make sure that it did not recur.

**CHAIRPERSON:** Would that have included the DPCI head,

General Dramat?

**MAJ-GEN MABULA:** It would have.

**CHAIRPERSON:** He was in the top structure somewhere in the police.

**MAJ-GEN MABULA:** It would have included him, Chair, according to me, if he is proven that he is aware. But for me, not talking on his behalf, I think we need to, by the time when he saw this on the newspapers, immediately assembled a team to say, go and find out what was happening. So to me, once he said that, I drew a conclusion to say, he might have seen this thing for the first time. That is my view.

**CHAIRPERSON:** He would, after seeing the publication, the Sunday Times publication in December 2011, correct?

**MAJ-GEN MABULA:** Yes, Chair.

**CHAIRPERSON:** That necessitated your appointment.

**MAJ-GEN MABULA:** Yes, Chair.

**CHAIRPERSON:** Remember the publication, the death squad, shoot to kill?

**MAJ-GEN MABULA:** Yes.

**CHAIRPERSON:** The publication in the Sunday Times.

**MAJ-GEN MABULA:** Yes.

**CHAIRPERSON:** That should then later have necessitated him to make a follow-up and check what was happening with these matters that was the public great concern.

**MAJ-GEN MABULA:** Yes. It is true.

**CHAIRPERSON:** Did he make a follow-up?

**MAJ-GEN MABULA:** No. The only time that I know he make a follow-up is when he assigned us to do the investigations. But also, I want to bring to the attention of the Commissioners to say, Chairperson, to say, there was something that actually bothered me in terms of what happens when this newspaper article was to the public domain. On the 14th, there was General Booyesen assigned his member to do internal investigations.

10 **CHAIRPERSON:** On the 14th of what?

**MAJ-GEN MABULA:** 14th of January.

**MAJ-GEN MABULA:** Is it January? Ja.

**CHAIRPERSON:** Following the publication in December.

**MAJ-GEN MABULA:** Following the publication. But what surprised that member did this investigation in one day, one day finalised. And then what I also realised, because it was based on this picture where people were having the same, where having NJM1, where people were having these firearms and having some drinks. Now, there is a statement  
20 there of a person from one of the chain stores who actually pulled ...[intervenes]

**ADV NGCUKAITOBI SC:** What is the name of the chain store?

**MAJ-GEN MABULA:** Spar.

**ADV NGCUKAITOBI SC:** Spar, okay.

**MAJ-GEN MABULA:** Ja, he pulled this crime scene to the office. Because according to us, this actually mostly happened in what you call it, Melmoth. Melmoth, yes. But in terms of his statement, what he says, no, these people actually assisted him to crack one case because they had a spate of armed robberies. And then as a reward, he actually offered them a party and he gave them this. Then he says, no, but this actually happened in their offices. Now, based on that ...[intervenes]

10 **ADV NGCUKAITOBI SC:** Sorry, just before, I think you are going to lose us. Let us just get to know what you are talking about. Now, there are three pictures at 7A1, 7A2, 7A3.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Now, which one was taken at Spar?

**MAJ-GEN MABULA:** No, look, what is happening here, Chair, this person who did the investigation, this member, he actually combined the pictures as it is. So in other words, if you want to derail that investigation, you want to derail it. And then I say, but this thing actually happened. Somebody  
20 says, it happens at this crime scene. It happens at the offices. It did not happen at where all the public is looking at. Now, based on that, now you kill this case. So in other words, you are actually shifting the crime scene to another place as an internal investigation. That is one thing that actually bothered me. I came across that to say, but this kind

of a serious case like this, this conduct is done today, it is finalised today. So I am coming back to what I am saying. It was like some people, it is law unto themselves.

**ADV NGCUKAITOBI SC:** Yes, I understand, but I am still trying to understand the involvement of Spar. So you said that one of the pictures where these policemen are celebrating, drinking, and they have got firearms, that was taken inside the premises of Spar.

**MAJ-GEN MABULA:** No, no, no. I am not saying that.

10 **ADV NGCUKAITOBI SC:** I see.

**MAJ-GEN MABULA:** I am saying a person submitted a statement from Spar to justify why these people had these drinks. He is the one who bought these drinks. And then they were celebrating among themselves as a result of the reward. He actually rewarded them for the work well done in terms of preventing that robberies that were taking place around Spar.

**ADV NGCUKAITOBI SC:** I see.

**MAJ-GEN MABULA:** Yes.

20 **ADV NGCUKAITOBI SC:** So they could have been celebrating elsewhere, but the money came from Spar.

**MAJ-GEN MABULA:** According to that statement.

**ADV NGCUKAITOBI SC:** Yes, I understand.

**MAJ-GEN MABULA:** Yes, according to the statement.

**ADV NGCUKAITOBI SC:** Now it is all alleged, but I want to

know what is the allegation. That they helped a Spar shop where?

**MAJ-GEN MABULA**: No, no. At some stage there was these chain stores.

**ADV NGCUKAITOBI SC**: Yes, I understand.

**MAJ-GEN MABULA**: Spar and so on.

**ADV NGCUKAITOBI SC**: Yes.

**MAJ-GEN MABULA**: My suspicion is there were a number of chain stores that were actually robbed where people are  
10 complaining. And now they approach the police to say, hey, we have got this problem. It is a threat to us. Now the police, through their own assistance, they managed now to neutralise that threat. Now as a thank you, then people are offered this to say, get some liquor and so on. Enjoy yourselves.

**ADV NGCUKAITOBI SC**: I understand that.

**MAJ-GEN MABULA**: Yes.

**ADV NGCUKAITOBI SC**: But I want to know where did this  
20 take place? Where the police do their job, which is to prevent crime. Or maybe they do not because they kill people. And then an owner of a shop takes it upon themselves to buy them alcohol.

**MAJ-GEN MABULA**: Well, I am just referring to the statement itself.

**ADV NGCUKAITOBI SC**: No, I understand. I want to know

what the statement says. Because it is an extremely serious thing that in this country we have shop owners that are bribing the police. So what was the statement actually saying?

**MAJ-GEN MABULA:** Well, I do not have the statement with me.

**ADV NGCUKAITOBI SC:** I understand. We can find the statement easily. But I want to know from your recollection.

**MAJ-GEN MABULA:** My recollection is what I have said.

10 These members, their assistance in terms of a threat, which was actually a spate of robberies. And as a result of that, a thank you for them. That is why they were celebrating that way. If I have to summarise the statement.

**ADV NGCUKAITOBI SC:** I understand. But this money was taken from, it came from Spar as a thank you to the members of the police.

**MAJ-GEN MABULA:** Obviously, if the statement says, one can conclude.

**ADV NGCUKAITOBI SC:** Yes.

20 **MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Now, there are three files that you read. There was the Mkhize file. We know that has got nothing to do with Spar. And then we have got the Howick file. That has got nothing to do with Spar.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** And there is a third one, which is Camperdown.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Is that the one?

**MAJ-GEN MABULA:** No. I am not sure whether it is the one.

**ADV NGCUKAITOBI SC:** Yes, okay, I mean, what were the facts in Camperdown? I thought Camperdown was where the spate of robberies.

10 **MAJ-GEN MABULA:** No. I think, ja, it was spate of – I am not sure whether this statement is linked with Camperdown. I am not sure.

**ADV NGCUKAITOBI SC:** Yes. Well, just go back to your report. Because I think when you read Camperdown, you mentioned robberies.

**MAJ-GEN MABULA:** Yes. I did. But what I am trying to say, I am not sure whether it is a robbery in terms of Spar itself or other businesses. I am not. I can read the report.

20 **ADV NGCUKAITOBI SC:** Yes. I understand. Because I need to know where we are going to find the allegation that a shop owner is buying alcohol for the police.

**MAJ-GEN MABULA:** I think I will just check in my files.

**ADV NGCUKAITOBI SC:** Yes. Because that must be looked at very closely.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Because it is one of the problems this country is experiencing. Yes. Now, so you are saying that there was an allegation that someone from Spar had bought alcohol for the police.

**MAJ-GEN MABULA:** In terms of that report of the disciplinary, as a result of these media articles, it was being said. But on the same, I think they said two people they already left the police, only one person was actually given a warning, a verbal warning. And the rest, nothing happened.

10 **ADV NGCUKAITOBI SC:** Yes, now we can deal with the internal issues of the police because we have already covered that.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** There is widespread misconduct, it is not being dealt with. There is IPID, it is ineffective. The angle we had not looked at is the fact that there are private businessmen that are buying alcohol for the police as a thank you when the police have allegedly done their job. So that is what I was asking, that is the substance of the allegation that  
20 you read.

**MAJ-GEN MABULA:** Yes, that is what the allegation says.

**ADV NGCUKAITOBI SC:** Thank you very much. Now, we were still at paragraph 48. I think we have covered that. The Minister then issues an instruction, correct?

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Which is paragraph 49.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** And what is the instruction?

**MAJ-GEN MABULA:**

“Minister directed that IPID and DPCI teams be integrated into a single joint task team. This would be an IPID investigation, but I would lead the team of investigators.”

**ADV NGCUKAITOBI SC:** Yes. And now they say, look, the  
10 fragmentation does not work, you have got to work as a unit.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** All right. And then were you the  
team leader?

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** All right.

**MAJ-GEN MABULA:** And then you continue going back to  
KZN as per paragraph 50?

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Then you deal thereafter with the  
20 involvement of the NPA?

**MAJ-GEN MABULA:** Okay.

“Following the Minister's directive that the investigation proceeds as a joint criminal investigation, I formed the view that given the scale, complexity, and sensitivity of the

matter, the investigation required active prosecutorial guidance from an early stage. I accordingly contacted the acting Director of Public Prosecutions for KwaZulu Natal, Advocate Simphiwe Mlotshwa, with a view to arrange a meeting to discuss the matter. During that call, Advocate Mlotshwa indicated that he was unwilling to meet at the offices of the National Prosecuting Authority, which is NPA. He requested that we meet later that day in a parking area outside SAPS Provincial Headquarters in Durban. I regarded this request as unusual. However, I nevertheless complied with it.”

10

**ADV NGCUKAITOBI SC:** So, just explain this to me because it is also another unique aspect of this case. You know, we know that IPID is being frustrated because of the evidence we have heard. We know that you yourselves are being tracked by Cato Manor. What we did not know until now is that even the NPA officials were doing things in a very odd way. So, can you explain this idea that, do not come to my office, I will see you in a parking lot from Advocate Mlotshwa?

20

**MAJ-GEN MABULA:** Well, look, I did not understand why because for me, I was a little taken aback because it is a high office where official matters need to be discussed into that.

But when you take them out of that high office and to the street, so for me, that time I did not understand why by that time before I met him.

**ADV NGCUKAITOBI SC:** I see. But you said, okay, if you want to meet in a parking lot, so be it.

**MAJ-GEN MABULA:** Yes. Because I was desperate. Because I realised there was no, actually, when we interacted with IPID, I could see that there was a lack in terms of prosecution's involvement into the matter.

10 **ADV NGCUKAITOBI SC:** Thank you.

**MAJ-GEN MABULA:** Yes.

**MS RAMAGAGA:** I am a bit slow. There are times when I am a bit slow in my thinking. Advocate Mlotshwa is the Head of the NPA in KZN at the time, is it not?

**MAJ-GEN MABULA:** Yes, yes, Chair.

**MS RAMAGAGA:** And he does not want you to meet him at his head office?

**MAJ-GEN MABULA:** Exactly, Chair.

**MS RAMAGAGA:** He wants to be somewhere in a parking  
20 lot. Okay. Then I think I understood well.

**ADV NGCUKAITOBI SC:** Yes, thank you. And then you meet him at the venue that he has suggested, which is paragraph 54.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** And then what happens there?

**MAJ-GEN MABULA:**

“Late in the afternoon, but after hours, Advocate Mlotshwa and I, accompanied by team members, met at the venue. During that meeting, I briefed Advocate Mlotshwa on the nature of the investigations, including the allegations arising from the Sunday Times exposé and subsequent developments following the ministerial briefing. Advocate Mlotshwa informed me that, in his assessment, prosecutors within KwaZulu Natal would be reluctant to become involved in a matter of this nature. He explicitly stated that members of Cato Manor Organised Crime Unit were dangerous and that this created a real concern for prosecutors who were working within the province. In light of these concerns, he advised that prosecutorial support should be sourced from outside KwaZulu Natal and indicated that the matter ought to be escalated to the acting National Director of Public Prosecution, Advocate Nomgcobo Jiba. He undertook to make contact with Advocate Jiba on my behalf and revert to

10

20

me. Later that same day, Advocate Mlotshwa confirmed that he had spoken to Advocate Jiba and that she was available to meet. Arrangements were thereafter made for a meeting at the NPA National Office in Pretoria.”

**ADV NGCUKAITOBI SC:** Yes, if you could just stop there.

I mean, again, we are now learning for the first time that actually one of the reasons for the involvement of external  
10 prosecutors was because the Head of the NPA in KwaZulu Natal was himself too scared of the Cato Manor Unit. Is that correct?

**MAJ-GEN MABULA:** Yes, it is correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. And that he said no one in KwaZulu Natal will touch a case involving this unit.

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** Yes. Now, I want to link then this issue to why there were no prosecutions emanating from this case, because these dockets on the evidence we have heard  
20 were in fact sent to the NPA and it declined to prosecute all of them, the NPA in KwaZulu Natal.

**MAJ-GEN MABULA:** So that might confirm what the advocate actually related to me, if that is the case.

**ADV NGCUKAITOBI SC:** Yes. It might confirm that at least one of the explanations is that these people were just too

scared of this unit.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Yes. And then he then decides that he would rather go to head office.

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** Now, the reason why this is crucial is because the impression so far we have seen from the documents prepared by Advocate, Mlotshwa is that he is approached by Advocate Jiba with no context that the head office involvement emanates from his office. So he has created the impression that he just got this call, which he did not know where it was coming from, and then he was told that we would be bringing advocates from outside.

**MAJ-GEN MABULA:** Not according to my knowledge. What I am presenting to the Commission is what I know it happened.

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** The other question I do not know.

**ADV NGCUKAITOBI SC:** And I am just putting to you that the impression he has created was that this was just done by Advocate Jiba on her own account.

**MAJ-GEN MABULA:** Okay. So my side, it is not true.

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Well, and why did you speak to

him as yourself, as you said, look, let me talk to the prosecutors?

**MAJ-GEN MABULA**: I spoke to him because for me it makes sense. Because I am new in that province, and then I realised we need the support of his own staff members, which are prosecutors. The same way I did with Advocate Jiba, where he referred me to. He is the boss of that province, and then I must explain to him, these are the frustration of the team. Can you please assist? So that is the reason why I have to  
10 speak to him.

**ADV NGCUKAITOBI SC**: Yes. I mean, one of the requirements of a prosecutor is the prosecution without fear.

**MAJ-GEN MABULA**: Yes.

**ADV NGCUKAITOBI SC**: Do you want to comment on that?

**MAJ-GEN MABULA**: No, it is true, yes. That is one of, he should act without fear or favour, the same as us, without prejudice.

**ADV NGCUKAITOBI SC**: Yes, I mean, the thing that is startling for me in this narrative contained in paragraph 53 to  
20 58 of your statement is the fear.

**MAJ-GEN MABULA**: Yes.

**ADV NGCUKAITOBI SC**: Then you do in fact go to Advocate Jiba from paragraph 59.

**MAJ-GEN MABULA**: Yes.

**ADV NGCUKAITOBI SC**: And then what happens thereafter?

**MAJ-GEN MABULA:** Must I go to paragraph 59?

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** Okay.

10 “Earlier in the week of the 5th March 2012, I met with Advocate Jiba in Pretoria, VGM building, accompanied by late Colonel Tsietsi Mano. At that meeting, we presented the same briefing previously given to the Minister. I indicate that the investigation into certain dockets was nearing completion and prosecutorial support was required to provide the necessary guidance in the investigation. I conveyed the concerns regarding the reluctance of KwaZulu Natal-based prosecutors as communicated by Advocate Mlotshwa.”

**ADV NGCUKAITOBI SC:** Yes. And then, paragraph 61?

**MAJ-GEN MABULA:**

20 “Advocate Jiba then enquired whether I had a preference...”

Which actually I want to mention to the Commission. I was actually taken, I was surprised because that was actually not my expectation to say if you require help, someone would say, are you able to choose? I could know General Dramat gave me opportunity to choose, but for the second time, I am

afforded the same opportunity anyway. [Laughter] So...

**CHAIRPERSON:** In other words, you could not choose prosecutors.

**MAJ-GEN MABULA:** Ja, but I could. [Laughter]

**CHAIRPERSON:** But you are not even in that, how should I put it, because you have also studied law, but you are not a practitioner, a legal practitioner in the sense that you will be in a position to even exercise that invitation to make a choice.

**MAJ-GEN MABULA:** Ja, but maybe let us not, maybe choose  
10 is a big word, maybe prefer. Let us go to prefer. [Laughter]  
Preference.

**CHAIRPERSON:** Does not it make it worse? [Laughter]

**MAJ-GEN MABULA:** Okay, then I withdraw, Chair.  
[Laughter]

**MAJ-GEN MABULA:** Okay, all right.

**ADV NGCUKAITOBI SC:** So, paragraph 61.

**MAJ-GEN MABULA:** Okay, and then:

20 “Advocate Jiba then enquired whether I had preference or not a prosecutor who could lead the prosecution team. I indicated the only prosecutor I knew with the required expertise to assist with the investigation was Advocate Sello Maema in North West Province.”

Because obviously I am from North West, he is the only one

that I knew by that time.

“Advocate Jiba indicated that he has no objections and also proposed Advocate Mathenjwa.”

Because he specifically asked me when I came with – but my observation, I do not think he knew Advocate Maema as I know him because when I said Advocate Maema, before he responded, I think he was trying to figure out who is this advocate. But on the same breath, he said to me, but do you  
10 know Advocate Mathenjwa? I said no, I do not know. Because honestly speaking, I did not know Advocate Mathenjwa, but he said he was referring to a case of Jub. He said, man, that is the advocate that was dealing with this matter of Jub Jub. I said, okay. I heard about him. Then I have confidence also in Advocate Mathenjwa because he dealt with Jub Jub matter. [Laughter] Yes. So, can I carry on?

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** Okay.

20 “Shortly thereafter, Advocate Jiba indicated that she had engaged Advocate JJ Smith, the Director of Public Prosecutions in North West, to facilitate the secondment of Advocate Sello Maema to lead the prosecution team.”

But also what I want to add here, the way I was so surprised, when I left the office of Advocate Jiba, I immediately phoned Advocate Maema to apologise, to say, advocate, I went there, I made a mistake, I mentioned your name, you might be called. He did not even know about it.

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** So, the way I was actually surprised.

10                    “So, subsequently thereto, I attended an introductory meeting in Durban with Advocate Mathenjwa, Ntlakaza, Futshane, Jabulani Mlotshwa, and Moleko. I was leading the DPCI team and Mr Khuba led the IPID team at the meeting. At that meeting, the prosecutors were briefed on the progress of the investigations and provided with approximately 52 case documents for a prosecutorial consideration.”

**CHAIRPERSON:** This Advocate Jabulani Mlotshwa is not Advocate Simphiwe Mlotshwa that you met.

20                    **MAJ-GEN MABULA:** No, no.

**CHAIRPERSON:** Who said that, expressed the fear that the Cato Manor Unit was considered dangerous by the prosecutors in KZN.

**MAJ-GEN MABULA:** No, it is not the same.

**CHAIRPERSON:** It is not the same?

**MAJ-GEN MABULA:** No, it is not the same.

**CHAIRPERSON:** Where was he from, this Advocate Jabulani Mlotshwa?

**ADV NGCUKAITOBI SC:** He was from the Office of Advocate Chauke, under correction?

**ADV NGCUKAITOBI SC:** Ja, from Gauteng DPP.

**CHAIRPERSON:** From Gauteng South. Yes, thank you.

**MAJ-GEN MABULA:**

10                   “During this engagement, Advocate Mlotshwa indicated that Advocate Maema would assume the role of lead prosecutor, but that he was temporarily unavailable as he was finalising existing commitments in North West Province prior to joining the team. Following the briefing, Advocate Mathenjwa indicated that he intended to meet with Advocate Simphiwe Mlotshwa at KwaZulu Natal office of the National Prosecuting Authority to formally advise of

20                   the team's arrival and to also provide an update on the engagement with the investigation team. The meeting thereafter concluded. Ultimately, Advocate Maema and Mathenjwa assumed leadership of the prosecution team.”

**ADV NGCUKAITOBI SC:** Yes. And then you were – I mean, at this point in time, the prosecutors have been engaged, you have been engaged to work in an integrated fashion with the IPID, and you have also now been beefed up with the forensic expertise you were asking for.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** And was there any shift then in the gear of the investigation? Did you get the sense that we are making progress, we are getting somewhere?

10 **MAJ-GEN MABULA:** There was. That is why ultimately there were people charged.

**ADV NGCUKAITOBI SC:** Yes. Just to come back to Simphiwe – Advocate Simphiwe Mlotshwa's expression of fear, I mean, so that is one angle of explanation about why the NPA-KZN was not involved. But we also have other evidence that it is – in fact, the NPA KZN that aided and abetted Cato Manor just by not prosecuting them, constantly shifting the goalposts and referring to inquests and then issuing *nolle prosequi* prosecutor certificates. Names have  
20 been mentioned, like Advocate Steinberg, who was working in the office of Advocate Shamila Batohi, specifically mentioned by Ms Shamila Williams as one of the people that just refused to prosecute the Cato Manor cases and put obstacles every time the IPID brought dockets for prosecution. So it would seem that there is that explanation.

Maybe the two are not necessarily inconsistent, but it seems that inside the NPA, people worked hand-in-glove with the Cato Manor, and then those who were not inside then used this excuse of being afraid. I mean, were you aware of those – the fact that the people like Advocate – I think it was Anton Steinberg, just would not touch Cato Manor cases and, in fact, actively dissuaded people from prosecuting them?

**MAJ-GEN MABULA:** No, I do not have much – I do not know much of prosecutors in KwaZulu Natal.

10 **ADV NGCUKAITOBI SC:** Yes. And we also have evidence from Mr Mhlongo speaking about the current DPP, Advocate Harrison, who actually worked with one of the police officers in a case to prosecute Mr Mhlongo and was accused of making a false insertion on an affidavit. She is the one who ultimately withdrew all of the cases against the Cato Manor police officers.

**MAJ-GEN MABULA:** I take note, but I cannot comment on that.

**ADV NGCUKAITOBI SC:** No, I put both of those  
20 explanations to you because you have mentioned this issue of the fear of Advocate Mlotshwa.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Yes, thank you. Now, at this point in time, Advocate Chauke is not yet involved, or at least you do not know about his involvement.

**MAJ-GEN MABULA:** No, I do not know about his involvement at that time.

**ADV NGCUKAITOBI SC:** Yes, the two prosecutors that are in charge of the prosecution.

**MAJ-GEN MABULA:** Yes, Advocate Maema and Advocate Mathenjwa.

**ADV NGCUKAITOBI SC:** Advocate Mathenjwa.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** You mentioned Advocate Chauke  
10 at paragraph 70.

**MAJ-GEN MABULA:** Paragraph 70?

**ADV NGCUKAITOBI SC:** Yes, of your statement.

**MAJ-GEN MABULA:** Yes. Can I read?

**ADV NGCUKAITOBI SC:** Yes, please.

**MAJ-GEN MABULA:** Okay.

“We did not interact with Advocate Chauke.

We only met him during the first appearance  
of the accused persons in the Regional  
Court in Durban.”

20 **ADV NGCUKAITOBI SC:** Yes. So he was just there  
attending?

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Yes, but not playing any role that  
you could see?

**MAJ-GEN MABULA:** No, because I remember that the

person who was even opposing bail, it was Advocate Mathenjwa.

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** And then from paragraph 71, you deal with the subsequent developments after the appearance in the Regional Court. So that appearance, we know it was in June 2012. I think, yes, I think sometime around the 19th or 20th of June 2012. But that was before a decision was  
10 made to authorise racketeering charges, which only came on the 17th of August 2012.

**MAJ-GEN MABULA:** Yes, Chair.

**ADV NGCUKAITOBI SC:** You said after that they were charged?

**MAJ-GEN MABULA:** Must I go to 71?

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:**

20 “Following the conclusion of the investigation phase, Major Johan Booysen and members of the Cato Manor Organised Crime Unit were arrested and formally charged. The matter was subsequently transferred to High Court Durban, where it was at the time, pending the postponed, and postponed to 4 October 2019. I came to

learn that the charges were withdrawn by Advocate Shamila Batohi in her capacity as the National Director of Public Prosecution.”

**ADV NGCUKAITOBI SC:** So that 2019 must be wrong, because that postponement would have been 2019? Is that correct? Let me ask him.

**MAJ-GEN MABULA:** I am not sure. I thought it is correct. Maybe I just have to go to the notes.

**ADV NGCUKAITOBI SC:** All right. I suppose they are talking  
10 about the postponement after Advocate Sean Abrahams, because at the time this was still under Advocate Jiba.

**MAJ-GEN MABULA:** 2019? No.

**ADV NGCUKAITOBI SC:** No. I am saying this postponement could only be the postponement during the time of Advocate Sean Abrahams.

**MAJ-GEN MABULA:** The postponement.

**ADV NGCUKAITOBI SC:** Because Advocate Batohi assumed office in February 2019.

**MAJ-GEN MABULA:** 2019? Ja. Maybe I might be confusing.

20 **ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** Ja, I might be confusing both of them.

**ADV NGCUKAITOBI SC:** I mean, nothing turns on it.

**MAJ-GEN MABULA:** Okay.

**ADV NGCUKAITOBI SC:** But you may proceed.

**MAJ-GEN MABULA:** Okay.

“In January 2015, I was removed from my position as a Provincial Head of Directorate for Priority Crime Investigation in North West by Major General Ntlemeza and transferred to SAPS Detective Service. Notwithstanding this, I remained involved in the investigation. I expressly requested to be excused from further involvement on the basis that the matter fell within the mandate of DPCI, and that request was refused.

10

Following the appointment of Lieutenant General Libeya as the National Head of DPCI 2018, I again requested to be released from any involvement in the Cato Manor investigations. That request was likewise refused. A copy of correspondence

reflecting this request and refusal is attached as Annexure NJM6. I ultimately retired from SAPS as a Deputy Provincial Commissioner of Crime Detection on the 31st December 2019. That is where I excused myself.”

20

**ADV NGCUKAITOBI SC:** So, if you look at 7A13.

**MAJ-GEN MABULA:** 7?

**ADV NGCUKAITOBI SC:** 7A13.

**ADV NGCUKAITOBI SC:** This is a letter from, I think at the time, the head of the Hawks, General Libeya.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Saying that you are not going to be excused until the matter is finalised.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Yes. And that is in 2018.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Yes.

10 **MAJ-GEN MABULA:** Correct.

**ADV NGCUKAITOBI SC:** And then you caught yourself excused by retirement.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Yes.

**CHAIRPERSON:** General, given the fact that you were involved right from the time when, after the publication in the newspapers in 2011...

**MAJ-GEN MABULA:** Yes, Chair.

20 **CHAIRPERSON:** ...was the refusal not, in hindsight, was the refusal not a fair one or a reasonable one?

**MAJ-GEN MABULA:** It might be fair. It might not have been fair.

**CHAIRPERSON:** Reasonable? As someone who has been involved right from the start?

**MAJ-GEN MABULA:** Ja. The only, ja, it would have been

reasonable, but the only problem is now I had a workload that would have actually prevented me to focus into this matter. But also, Chair, for me, the investigation was actually basically finalised. There was not much of me actually to input into the matter

**CHAIRPERSON:** In 2019?

**MAJ-GEN MABULA:** When I requested to be excused.

**CHAIRPERSON:** Was that in 2019 or a little bit earlier?

**MAJ-GEN MABULA:** It was a little earlier. 2015? Ja, 2015, 10 yes, almost, it was issues of people going to court, finalising, you know, it was, ja, so. But it was refused. I did not win. My request was never actually adhered to.

**CHAIRPERSON:** My next question, if you cannot answer it, say so. When you heard of the withdrawal of the charges by Advocate Batohi, were you not taken aback given what you had learned during your involvement in these matters?

**MAJ-GEN MABULA:** I was taken aback in terms of the knowledge that I had, what actually transpired during the time of investigation, the difficulties that we had, the work we were 20 working almost 24 hours around the clock on these matters with the prosecutors, the hard work. And then all of a sudden, it is just thrown out.

**CHAIRPERSON:** Why were you surprised?

**MAJ-GEN MABULA:** I was surprised because, though I am not a prosecutor and it is not my work to decide on, but the

little experience that I had, to me, it seems there was a *prima facie* case. That is why I was surprised. But I regard myself as a layperson. I am not in the space of prosecutors.

**CHAIRPERSON:** Thank you, General. I understand. Thank you.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Thank you.

**ADV BALOYI-MERE SC:** Before we proceed. General Mabula, when you requested to be removed in 2015, or let  
10 me preface, there was this general fear that you observed, starting from the witnesses that you wanted to consult with. As soon as you mentioned Cato Manor, they walk away. The fear that was displayed by Advocate Mlotshwa. Would you not say that got to you and you decided you want out in 2015?

**MAJ-GEN MABULA:** No.

**ADV BALOYI-MERE SC:** You were not scared of the Cato Manor at all?

**MAJ-GEN MABULA:** When I joined the police, I was told, when you joined the police in Delareyville, I was told to say  
20 this, when you join the police, it is either you survive or you do not survive, you serve the people. You are the shield of the people. So, that was my belief.

**CHAIRPERSON:** In 1983?

**MAJ-GEN MABULA:** Yes. So, that is why I never had a protector. I never had anything.

**ADV BALOYI-MERE SC:** Thank you.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair. You say that you feel it necessary to mention that you had no personal interest in the matter. Why? In paragraph 74.

**MAJ-GEN MABULA:** Because of some of the rumours that came. For example, I appeared before the Zondo Commission, partly because of the same. To say I had been captured by someone that I do not know. There were a lot of allegations that were levelled against me. So, but good  
10 enough, Judge Zondo did not actually take into consideration. He declared that, according to him, this is not a state capture, the police are doing their work.

**ADV NGCUKAITOBI SC:** Well, I mean, there have been consequences virtually to everyone involved in this case.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Mr Chauke is facing a disciplinary hearing on the same issue.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Mr Maema was purged out of the  
20 system.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Mr Mathenjwa is facing a disciplinary hearing. Advocate Shamila Williams was pushed out of the system.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Everyone who has had anything to do with the prosecution of Cato Manor has been visited with adverse consequences.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** What about you?

**MAJ-GEN MABULA:** I appeared before High Court. I was charged with 11 counts. Kidnapping, murder, torture. No, no, it is not murder. Torture, assault, 11 charges.

**ADV NGCUKAITOBI SC:** Yes.

10 **MAJ-GEN MABULA:** Before the High Court.

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** And I went through. The Judge even asked, because the, even the, what, you know, as a layperson, the money is in SAPS13 on one case of the airport. It is clear the money is there. Now you are charged with extortion. Now the Judge asked, where is the money? The judgment was one page. But I went through that. The same attempt with, it started also at the Zondo Commission. The same allegations were made to say this person and so on.

20 So, but I keep on going.

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** But, I mean, this pattern of retaliation, how is it possible that you are arrested? Is it simply because it is entrenched within the system that these

people you are dealing with were very powerful and they could retaliate?

**MAJ-GEN MABULA:** It is powerful people. It is powerful people. Because I can say many times my name was flung all over the news. You link with the same as Advocate Chauke sitting here, the same as Advocate Maema. Because of, and they always refer to the same case. Those are the people who did this. It is always the case. But because we have got this thick skin and we are actually loyal servant to  
10 the state, it did not actually deter us. Up until we have to appear before the Judge on 11 count of charges now. You know, it is not very easy to appear before the Judge. It is very difficult. I have experienced that.

**ADV NGCUKAITOBI SC:** Well, there is a Judge here.  
[Laughter]

**MAJ-GEN MABULA:** It is not easy.

**CHAIRPERSON:** And are you finding it easy to appear before me now that I announced that?

**MAJ-GEN MABULA:** No, no, but now I know I cannot be  
20 sentenced to somewhere. [Laughter] Yes.

**ADV BALOYI-MERE SC:** But if I may ask, the 11 counts, were they related to your investigation of the Cato Manor Unit?

**MAJ-GEN MABULA:** Like I said, I was very much unfortunate or maybe fortunate. All the complexities that

actually has a bearing to high profile people will always be directed to me. I do not know what would have been the reason. But it is a concoction of not only one case. And end of the day, all the people that I investigated, somewhere along the line, they became very close to one another. So I would say the High Court matter is also not separated from this one.

**CHAIRPERSON:** Probably because of your experience as a senior police officer, not so?

10 **MAJ-GEN MABULA:** I might not Judge myself, Chairperson. I do not know whether I am doing the correct things. But what I know, I will do everything to my best of ability.

**ADV NGCUKAITOBI SC:** Yes. And this case brought against you, you say it is a concoction. What did the Judge think about it?

**MAJ-GEN MABULA:** No, the Judge was very – the judgment is – he was saying this thing – he actually agreed to say he is surprised why people have been charged 11 counts, kidnapping. And kidnapping, he even said, the people that  
20 are kidnapped, they appear before the Regional Court Magistrate. Bail were opposed. And then some of them got bail, but where the kidnapping comes in, it was – but nevertheless.

**ADV NGCUKAITOBI SC:** But, I mean, the Judge acquitted you.

**MAJ-GEN MABULA:** He did.

**ADV NGCUKAITOBI SC:** In a judgment that was not more than a page.

**MAJ-GEN MABULA:** Not more than one page.

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** Yes, one page.

**ADV NGCUKAITOBI SC:** Yes, exactly.

**CHAIRPERSON:** I was certainly not a Judge involved in that matter. [Laughter]

10 **MAJ-GEN MABULA:** Oh no.

**ADV NGCUKAITOBI SC:** Which shows how baseless the whole thing was against you.

**MAJ-GEN MABULA:** Yes, Chair.

**ADV NGCUKAITOBI SC:** Which is why you are saying ultimately the source of the problem was Cato Manor.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Yes.

**MAJ-GEN MABULA:** It is one of those.

20 **ADV NGCUKAITOBI SC:** Because you touched the untouchables.

**MAJ-GEN MABULA:** Exactly.

**ADV NGCUKAITOBI SC:** Thank you very much. Do you have anything else? I think we have finished virtually what you are saying. Paragraph 75, 76, 77, 78, 79. You say you have made the statement voluntarily and in good faith.

**MAJ-GEN MABULA:** Correct, Chair.

**ADV NGCUKAITOBI SC:** You confirm that?

**MAJ-GEN MABULA:** I confirm, Chair.

**ADV NGCUKAITOBI SC:** Yes. Oh, yes. Your statement is not dated. When did you sign it?

**MAJ-GEN MABULA:** I signed it yesterday, as well.

**ADV NGCUKAITOBI SC:** Which is the 30th of March, 2026.

**MAJ-GEN MABULA:** Yes.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair.

10 **CHAIRPERSON:** Advocate Mtsweni, you had earlier expressed an indication that you will not cross-examine, but you might have revisited your earlier view. Would you like to ask the General some questions?

**ADV MTSWENI:** Yes, Madam Chair, with your permission, just one question. And I would like to put it under the clarification category, if I might, with your permission, Madam Chair.

**CHAIRPERSON:** Yes.

20 **CROSS-EXAMINATION BY ADV MTSWENI:** Good afternoon, General.

**MAJ-GEN MABULA:** Afternoon, Advocate.

**ADV MTSWENI:** Yes. General, just one question, and this is just a bit of a concern, because your evidence is given under oath, and so are all the documents given here under oath. Now, at paragraph 70 of your statement, you say:

“We did not interact with Advocate Chauke. We only met him during the first appearance of the accused persons in the Regional Court in Durban.”

Do you see that?

**MAJ-GEN MABULA:** Yes.

**ADV MTSWENI:** And the first appearance was the 21st of June, 2012.

**MAJ-GEN MABULA:** Yes.

10 **ADV MTSWENI:** Now, what is of a bit of concern to me, I am not sure whether would you have that document. There is a statement by Advocate Chauke wherein he gave his evidence before this Commission, which I just want to compare with what you say. I am not sure whether you have Advocate Chauke's statement, Madam Chair. Just the paragraph that I am concerned about is 117 of Advocate Chauke's statement. Does the Panel have it, Madam Chair?

**CHAIRPERSON:** Yes, 117.

20 **ADV MTSWENI:** Yes. What Advocate Chauke says: “That on or about 11 June, 2012, I met with Mr Beekman of IPID and Advocates Mathenjwa to review the status of the investigation, and on or about 12 June, I convened a meeting with General Mabula and the prosecution team to discuss

updates.”

Do you see that?

**MAJ-GEN MABULA**: Yes, I see that.

**ADV MTSWENI**: We suggest that you held a meeting with Advocate Chauke on the 12th of June, because we know that according to him, he convened a meeting with you and the prosecution team. Do you see that?

**MAJ-GEN MABULA**: I see.

**ADV MTSWENI**: Could which one of the two, and you say on  
10 your version, the only time you met Advocate Chauke was at the first appearance, which is almost seven days later.

**MAJ-GEN MABULA**: Correct.

**ADV MTSWENI**: Now, you would agree with me that the two statements are inconsistent with one another, where one says you met on the 12th and the other one says you met on the 21st, although yours, I am using the 21st because that was the date of the first appearance.

**MAJ-GEN MABULA**: Yes.

**ADV MTSWENI**: So you would agree that the two statements  
20 are inconsistent with one another?

**MAJ-GEN MABULA**: Yes, the two statements, but I met him first time at the appearance, first appearance.

**ADV MTSWENI**: You never met him before then?

**MAJ-GEN MABULA**: No, I never met him before.

**ADV MTSWENI**: Thank you, Madam Chair.

**CHAIRPERSON:** Did you attend that meeting?

**MAJ-GEN MABULA:** No.

**ADV MTSWENI:** No further questions, Madam Chair.

**CHAIRPERSON:** Advocate Ngcukaitobi?

**NO RE-EXAMINATION BY ADV NGCUKAITOBI SC:** Nothing else, Madam Chair. Thank you.

**NO FURTHER QUESTIONS**

**CHAIRPERSON:** General, we thank you for having made time to come and assist us to present this evidence. We know  
10 that you might have travelled to come here yesterday or the day before yesterday or whenever you came. We are deeply thankful to you for having made time. And I am sure I am expressing this gratitude also on behalf of my sisters and the Panel, and the two teams, the evidence leaders, NPA, and the team of lawyers on behalf of Advocate Chauke. You will be excused, and we wish you to travel safely.

**MAJ-GEN MABULA:** I also just want to thank the Chair and the Panel at large for the opportunity to come and share the little information that one has, and hopefully to add value to  
20 the decision that the Panel, the difficult decision that the Panel will take. Thank you. I want to thank you very much for that.

**CHAIRPERSON:** Yes, thank you. Thank you, General. Housekeeping matters. Advocate Ngcukaitobi?

**ADV NGCUKAITOBI SC:** Madam Chair, I will provisionally

close Mr Chauke's case. And if necessary, in due course, I will reapply to reopen it. But for now, the case is closed.

**DEFENCE CASE**

**CHAIRPERSON:** Thank you, Counsel. Advocate Mohlamonyane and Advocate Mtsweni and your team, we are going to adjourn as planned. Of course, unless you have a witness to start now and finish at 5 o'clock, please tell us what your plan is for the 8th when we are reconvened.

**ADV MOHLAMONYANE SC:** Not today, Madam Chair. The  
10 plan for the 8th is that General Booyesen should be here, as arrangements have been made that he should be here. But what frustrates me is that up to now, I do not have a statement. And I requested and requested and made so many requests.

**CHAIRPERSON:** Please speak louder. I cannot hear you.

**ADV MOHLAMONYANE SC:** I am saying up to now, I do not  
have a statement. And as I indicated last week, it is beyond me. I tried my best that the statement should at least have been in by the weekend. It was not and it is not up to now.  
20 But I have made arrangements with Advocate Setati on his security detail because he requested that. And his counsel wrote a letter and assured us that he will be starting on Tuesday, the 8th of April, 2026.

**CHAIRPERSON:** Is that not the Wednesday?

**ADV MOHLAMONYANE SC:** It is a Wednesday, sorry. Yes,

Wednesday. My apologies.

**CHAIRPERSON:** Yes, I understand the challenges that you are confronted with. Nonetheless, you had presented to us a list of witnesses that the evidence leaders intend to call. By now, we should be having witnesses lined up. If you would take out Major General Booyen from the list, you should be having other members or rather other witnesses who had been identified and should have been consulted with by now. Are statements ready in relation to those other witnesses?

10 **ADV MOHLAMONYANE SC:** Advocate Riley's statement was supposed to have been ready by this weekend, as I discussed with Advocate Mtsweni. But I am not sure yet whether it is ready or not.

**CHAIRPERSON:** Perhaps we should go back to your list, if you can remind us of the list of witnesses that you had given us last year.

**ADV MOHLAMONYANE SC:** Madam Chair, can we excuse Mr Mabula?

**CHAIRPERSON:** I beg your pardon. I had actually excused  
20 the General to walk out. Yes, General, I had excused you and said we are now dealing with housekeeping matters. But once again, thank you very much. You are excused. Sorry, I did not realise that you are still sitting there. But now that you have been sitting, you see how we work. You are excused, General, and safe journey. Thank you, sir. Thank

you, Counsel. I did not realise that the General is still here. As the General is preparing to walk out, we can proceed. Do you remember the list of witnesses that you presented to us last year?

**ADV MOHLAMONYANE SC:** Yes, I remember the list, Madam Chair.

**CHAIRPERSON:** Do you have it in front of you? I do not have it in front of me.

**CHAIRPERSON:** Perhaps we should tick boxes now that we  
10 know that some of these witnesses that you had identified have, for instance, Advocate Moipone Noko, have now testified. In the list that you presented to us, the first witness identified was Advocate Simphiwe Cyril Mlotshwa and you had anticipated that you will need five days for this witness. What is the position with regard to Advocate Mlotshwa's testimony? Has he been consulted with? Has a statement been prepared?

**ADV MOHLAMONYANE SC:** Yes, Madam Chair, his  
20 statement has been prepared. Advocate Hulley SC has taken over finalisation of the statement, and very soon it will be signed. The next one on the list...

**CHAIRPERSON:** Before you proceed to the next one, why is it that we have not even had a sight of that statement today, when this list was given to us last year? We are now going to adjourn for the Easter weekend, and we do not have a

single statement from the evidence leaders. What is the cause of the delay in relation to the statement of Advocate Mlotshwa? If he is still going to be called, by the way. Do you know?

**ADV MOHLAMONYANE SC:** Ja, initially I had prepared a statement for him, and I spoke to him, and I discussed the issue with him concerning his prior evidence in the Mokgoro Inquiry, as well as in the Zondo Commission. And he said to me he would like to go through that evidence before the  
10 statement could be finalised. And that is where it was, and he did not revert to me, but he spoke to my colleague thereafter.

**CHAIRPERSON:** Which of your colleagues? Who is that colleague?

**ADV MOHLAMONYANE SC:** I had requested that, I think it is my memory serves me well, it is Advocate Khoee, to speak to him and see to it that the statement is in. And thereafter I spoke to Advocate Hulley, and I gave him the draft that I had, and he said he will finalise the statement with him.

20 **CHAIRPERSON:** And when was that?

**ADV MOHLAMONYANE SC:** I think it was last week.

**CHAIRPERSON:** Last week?

**ADV MOHLAMONYANE SC:** Yes, Madam Chair. Now, another one who I spoke to ...[intervenes]

**CHAIRPERSON:** Let me give you the names according to

your list.

**ADV MOHLAMONYANE SC:** Yes, I have got it in front of me.

**CHAIRPERSON:** The second one is Advocate Riley. You anticipated that you will need four days to deal with Advocate Riley's evidence.

**ADV MOHLAMONYANE SC:** Ja, Advocate Riley is going to be called, and he will be led by Advocate Mtsweni, who informs me that his statement is 90 percent done. Number five on the list ...[intervenes]

10 **CHAIRPERSON:** No, no, no, before you proceed, Counsel, we want to know why are these statements taking so long? This is what we were speaking about last year, December. Now we are almost in April. We have not even been given any of the statements of the people that you have listed here. And we need to understand what the challenge is. We have had breaks, long breaks. We also had a recess break of about a week, not a long time ago. Nonetheless, we have not been given a single statement by the evidence leaders. That is a matter of concern to us.

20 **ADV MOHLAMONYANE SC:** It should be, Madam Chair.

**CHAIRPERSON:** Because you only have April. You remember you had the entire of December to proceed with the evidence of the witnesses that you had listed. That did not happen. You subsequently sought postponements. We have had some breaks. The time within which the evidence

leaders should have expedited finality of those statements. But today, we are back to square one. We do not have statements. We are going to adjourn without any statement to read in preparation of the hearing. How are we supposed to deal with that? Advocate Mtsweni? Why is the statement of Advocate Riley delayed?

**ADV MTSWENI:** Madam Chair, I would consider it as a bit of a delay. But I was comforted and relied on the fact and the undertakings that were provided that Major General Booyesen  
10 was coming on the 8th. And in fact, I do not know whether Advocate Mohlamonyane has seen, there is an email from Advocate Booyesen's advocate confirming that Major General Booyesen will be here on the 8th. So the intention was that it should be circulated as early as next – it should be settled over the weekend and then it will be circulated during the course of next week whilst Advocate Booyesen was giving evidence. That was the idea. I just need to discuss a few matters with Advocate Riley and then the anticipation was that I would start circulating it during the course of early next  
20 week whilst Advocate Booyesen was giving evidence. Because we have always been assured and given guarantees Advocate Booyesen, by Major General Booyesen's legal team that he will be here next week. And in fact, there is an email that we received I think during today or yesterday where there is still that undertaking that Major General Booyesen will be

here on the 8th.

**CHAIRPERSON:** But why is the finality of other witnesses dependent on General Booyesen's testifying or his statement being ready? Because we should be having all statements in a pack well prepared for us, timeously.

**ADV MTSWENI:** Well, Madam Chair, I appreciate that. But I was comforted by the directive that was issued that statements should be in at least two days before. And I am confident and I have always been confident that that  
10 statement will be in within the required time period insofar as I am concerned.

**CHAIRPERSON:** Perhaps you can read the third witness because this computer is... Who is the third witness?

**ADV MOHLAMONYANE SC:** The third on the list was Advocate Moipone Noko. She has already testified. The fourth on the list is General Johan Booyesen. The fifth on the list ...[intervenes]

**CHAIRPERSON:** Before you go to the fifth, Major General Booyesen's mention was made that his statement is very long.

20 **ADV MOHLAMONYANE SC:** It is true, Madam Chair.

**CHAIRPERSON:** And remember, we are aware that you started consulting with Major General Booyesen last year, November, before we even started with Advocate Batohi.

**ADV MOHLAMONYANE SC:** That is true, Madam Chair.

**CHAIRPERSON:** And today, we do not have a statement of

Major General Booysen. Are you going to prepare a summary of that statement for us, of the issues that you seek to focus on, at least in relation to the terms of reference? Because the terms of reference should guide all of us. You can have a statement of 10,000 pages, but we have to focus on what is relevant for the purpose of this enquiry. When are we going to know when the statement will be finally filed, Advocate Mohlamonyane? Because we are going to leave Gauteng, some of us. We may not even have access to connection, 10 wherever we will be. That poses a challenge.

**ADV MOHLAMONYANE SC:** I agree and I appreciate that, Madam Chair. If we do not receive a statement from Johan Booysen, I cannot prepare a statement. His evidence will be left out. I cannot prepare a statement because I was told right on my face that his lawyers will prepare a statement. And after I had begun with a draft, which draft I also indicated to the Chauke team that I am busy with the draft. But after that, they took over. And I spoke to Johan, to General Booysen and I asked him. He said, yes, I have given 20 instructions to my lawyers. So I backed off and sat back and waited for them to give me a statement. So I am not going to prepare a statement if I do not receive a statement from them.

**CHAIRPERSON:** Yes, I understand that. He is your witness and if he is not ready to come, you let us know.

**ADV MOHLAMONYANE SC:** I will let you know, Madam

Chair.

**CHAIRPERSON:** Thank you.

**ADV MOHLAMONYANE SC:** Thank you.

**CHAIRPERSON:** And Advocate Chris Macadam.

**ADV MOHLAMONYANE SC:** I spoke to Advocate Chris Macadam in a telephone conversation a month or so or two ago. And then we made an arrangement that we would talk on another arranged day. When I spoke to him on that day, he said to me, he was given, he was told by Dr Broughton  
10 that before he speaks to me, he must first speak to Advocate Karen van Rensburg. I said, Chris, do that. I will wait for you. He did not revert to me until a few weeks ago. I telephoned him and we arranged that, it was a Friday, and we arranged that we will talk on the Monday. And on the Monday, he wrote me a note that said he will no longer be able to, he will not assist me because he was not involved in the Cato Manor dockets, he has not read them and he will not be able to assist. He is busy in the TRC reviewing many dockets there. So I said, Chris, it is fine. So Chris Macadam is off.

20 **CHAIRPERSON:** And Ms Karen van Rensburg is the advocate in the NPA.

**ADV MOHLAMONYANE SC:** That is correct, Madam Chair.

**CHAIRPERSON:** General N Mkhwanazi?

**ADV MOHLAMONYANE SC:** I have a draft of General Mkhwanazi's statement and for the past few weeks, he has

been busy. The last time when I contacted his staff officer, he said to me he will not be able, he is not available. He is going to Parliament, to the Ad Hoc Committee. And up to now, he has not reverted to me.

**CHAIRPERSON:** Officer Makhubo.

**ADV MOHLAMONYANE SC:** I consulted with Officer Makhubo and finalised his statement and Officer Makhubo referred me to an advocate with whom he was working. I can mention in passing that Officer Makhubo was identified to us  
10 by Ms Mary de Haas. I took it from there. Now, when I consulted with the advocate who Makhubo referred me to, it came out that we are not going to proceed with this matter. I also prepared the statement of the advocate who was in the office of Advocate Chauke. And we were warned to stay away from this, because if you proceed with the second docket in the Senzo Meyiwa trial, Senzo Meyiwa case, your name is death, so leave this thing, do not proceed.

**CHAIRPERSON:** I do not understand.

**ADV MOHLAMONYANE SC:** Officer Makhubo was assigned  
20 to investigate the Senzo Meyiwa murder. According to him, he and another officer, Officer Joyce, who was a captain then, were summoned by the then Minister of Police to Cape Town and were assigned, they were four. They were assigned to deal with the Senzo Meyiwa case. Because apparently the Minister was not happy that the investigations were bearing

any fruit.

**CHAIRPERSON:** But how do we get to the Senzo Meyiwa matter? We are talking about this witness testifying here. Are you ready with this statement?

**ADV MOHLAMONYANE SC:** Officer Makhubo's statement?

**CHAIRPERSON:** Yes.

**ADV MOHLAMONYANE SC:** No, I am not going to call him.

**CHAIRPERSON:** Thank you. Colonel Roelofse?

**ADV MOHLAMONYANE SC:** I am told by my colleague that  
10 his statement by the end of this week will be ready. But they are not going to call him to testify *viva voce*.

**CHAIRPERSON:** It is not for them to decide. We will determine whether it will be appropriate for the witness to appear before us as a Panel or not. You have to make an indication, maybe make a request to us. Counsel, is that you, Advocate Mayet?

**ADV MAYET SC:** Indeed. Just to inform the panel, Colonel Roelofse, we have consulted with him. His statement is ready. He, however, does not speak to 3.1. It is just  
20 background history about the investigation. But we will make the appropriate application to the Panel.

**CHAIRPERSON:** Application to the request that he should not give oral testimony?

**ADV MAYET SC:** Indeed.

**CHAIRPERSON:** Not even virtually?

**ADV MAYET SC:** In the event that the Panel requires, it goes to 3.1.2. So it does depend on the extension of the amendment.

**CHAIRPERSON:** But we do not know. It may well be that we have other questions outside of 3.1.2 of the terms of reference.

**ADV MAYET SC:** Indeed, Judge. The statement will be ready, both of them, as well as number 9, Advocate van Zyl. Both statements will be ready by the end of this week.

10 **CHAIRPERSON:** Would you please explain the delay? Why only at the end of this week?

**ADV MAYET SC:** Judge, this is my third week on this panel. So it has taken, I have consulted with both witnesses. The statements are 90 percent prepared. They simply just have to be finalised by being sent to the witnesses to review.

**CHAIRPERSON:** And Officer Brian Padayachee?

**ADV MOHLAMONYANE SC:** On the aspect on which we wanted to call him, he says he is unable and he will not be called. I consulted with him and he said he will not be able  
20 to help us. So he is out.

**CHAIRPERSON:** Outside of this list, did you have any other witnesses that you have identified?

**ADV MOHLAMONYANE SC:** I may mention, Madam Chair, that there is an officer who was with the late Superintendent Choncho inside the vehicle when they were ambushed and

fired at. And I was made to believe that that is an important witness and he has to be called. His superintendent, Superintendent Khanyile, who has deposed to a statement which is in the docket Maphumulo 99/8/2008, if I am not wrong. The one which could not be traced. The one where the SAPS said they could not trace it. Now, we took steps to get Superintendent Khanyile's evidence before this Tribunal. We wrote a letter through the State Attorney.

**CHAIRPERSON:** Perhaps you can just tell us whether this  
10 witness is ready and if he is ready, where is his statement?

**ADV MOHLAMONYANE SC:** Madam Chair, I am getting to the point where I am going to indicate to the Panel that this witness has unfortunately passed on.

**CHAIRPERSON:** Yes.

**ADV MOHLAMONYANE SC:** And we are waiting for documents from SAPS in KwaZulu Natal proving that he has passed on. Among them, the death certificate.

**CHAIRPERSON:** Any other witness?

**ADV MOHLAMONYANE SC:** I just wanted to put this across,  
20 Madam Chair.

**CHAIRPERSON:** Yes, we understand. Any other witness, Counsel?

**ADV MOHLAMONYANE SC:** Before I proceed to another witness, can I put what I want to put across about Khanyile?

**CHAIRPERSON:** You may. You may, Counsel.

**ADV MOHLAMONYANE SC:** Superintendent Khanyile has made a statement and that statement is available. Now, we would approach this Panel in terms of the provisions of the Civil Proceedings Evidence Act for leave from this Panel to hand up the ...[intervenes]

**CHAIRPERSON:** . I request that you do that at that time. We are just trying to do housekeeping on the availability of your next witness, Advocate Mohlamonyane.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair.

10 **CHAIRPERSON:** That which you are planning to do will happen at the time when you do that.

**ADV MOHLAMONYANE SC:** I thought I should put this across so that my learned colleagues should also know I should not take them by surprise on the day on which I want to do that.

**CHAIRPERSON:** You can discuss this matter amongst yourselves.

**ADV MOHLAMONYANE SC:** Thank you, Madam Chair.

**CHAIRPERSON:** So, on the list, as we tick the boxes, Officer  
20 Padayachee can be scratched, correct?

**ADV MOHLAMONYANE SC:** Correct, Madam Chair.

**CHAIRPERSON:** And who is next? Colonel Roelofse? Is he a potential witness? Yes, we can tick him to be available. And then Officer Makhubo, not available. Correct, Advocate Mohlamonyane?

**ADV MOHLAMONYANE SC:** That is correct, Madam Chair.

**CHAIRPERSON:** General Mkhwanazi, not available.

**ADV MOHLAMONYANE SC:** He is a potential witness.

**CHAIRPERSON:** Is he a potential witness?

**ADV MOHLAMONYANE SC:** Yes, he is.

**CHAIRPERSON:** Advocate Macadam?

**ADV MOHLAMONYANE SC:** He is out.

**CHAIRPERSON:** General Booysen, potential witness.

**ADV MOHLAMONYANE SC:** Potential witness.

10 **CHAIRPERSON:** Advocate Riley?

**ADV MOHLAMONYANE SC:** He is a potential witness.

**CHAIRPERSON:** Now, yes, we have Advocate van Zyl and Roelofse together. Yes, they will be attacked together. Am I correct that Advocate Mayet, that Advocate Roelofse and Advocate van Zyl are in that category?

**ADV MAYET SC:** Indeed.

**CHAIRPERSON:** Together with Advocate D Barnard?

**ADV MAYET SC:** Indeed, Judge. I understand that Advocate Barnard is for the Chauke team, but as evidence leaders and  
20 we are obliged to assist the Panel and I have offered my learned friend that we have no problem calling him.

**CHAIRPERSON:** Yes, we see we have a number of advocates in this list. And I do not understand why it is difficult to get the statements of advocates. They can prepare their own statements. You are saying something,

Advocate Mtsweni? You can prepare their statements. They can prepare their statements and then pass them to you. And you can do a very short consultation to clarify issues with them. Why does it take so long for advocates to present their statements? I do not understand. Is there a problem?

**ADV MTSWENI:** There seems to be a problem, Madam Chair, which we do not know where it emanates from. One of the witnesses that I consulted was Advocate Bheki Mnyathi and I prepared his statement as well. Very short statement. He testified in the Mokgoro Commission, but he was not willing to testify at that stage. He said, let us first wait for Advocate Batohi's evidence to be finalised. So there seems to be problems that perhaps we are not aware of.

**CHAIRPERSON:** Now that we have spoken about this list, do you know whether Advocate Batohi is keen to come back?

**ADV MTSWENI:** We do not, Madam Chair.

**CHAIRPERSON:** From the application pending, she says she may come back, if she comes back. So we still do not know. Have you spoken to her?

**ADV MTSWENI:** No, we have not spoken to her, Madam Chair. We can only hope that she comes back. We thought we should perhaps wait for the application to be finalised.

**CHAIRPERSON:** But why so? Because you called this witness at the outset? I would imagine that you would want to finish the evidence?

**ADV MTSWENI:** Because she is still under oath. We thought because she is still under oath, let us perhaps not talk to her.

**CHAIRPERSON:** Yes, thank you.

**ADV MOHLAMONYANE SC:** Madam Chair, if I may, a message here has just got in from the advocate on behalf of General Booysen, who says, who confirms attendance of General Booysen on the 8th of April, if it helps. What?

**CHAIRPERSON:** Who confirms what?

**ADV MOHLAMONYANE SC:** Attendance of General Booysen  
10 on the 8th of April.

**CHAIRPERSON:** Does he say anything about his statement?

**ADV MOHLAMONYANE SC:** Yes, it does not help us. It says that the statement will be ready by the weekend. It does not help us. It does not help us, really.

**CHAIRPERSON:** Should you not find out, as the evidence leader, so that you can give us a definite indication about this witness, his statement, when it will be available?

**ADV MOHLAMONYANE SC:** Even earlier this morning, I wrote a note to say, please file a statement, but we will do  
20 that, Madam Chair. We will do that, and I will get in touch with her to find out when the statement will be available.

**CHAIRPERSON:** Do you have a plan as to whom you are going to call if Major General Booysen does not come? Or even if he comes, his statement comes late, because we will not start this hearing without having read his statement. So

you should be having plan B, at least.

**ADV MOHLAMONYANE SC:** Plan B will be Advocate Riley.

**CHAIRPERSON:** When should we expect his statement?

**ADV MTSWENI:** Madam Chair, if I might come in. Given the exigency of the matter, we will try and also have it circulated the latest over the weekend. It is not a long statement, like Major General Booysen's. And we will also make arrangements that if she cannot fly up here, then that necessary arrangements be made that she testifies virtually  
10 from Cape Town.

**CHAIRPERSON:** Who, Advocate Riley?

**ADV MTSWENI:** Advocate Riley, yes.

**CHAIRPERSON:** But if the statement is short, why cannot we have it tomorrow?

**ADV MTSWENI:** Because I still need to send it to her for her inputs. But it mainly talks to the report. We will do our best that it is by Friday, that it be filed by Friday. Or we will just have to forfeit our trips to Moriah and make sure that it is filed.

20 **CHAIRPERSON:** Well, we have tomorrow and Thursday. So you can file that statement by Thursday, which is a working day.

**ADV MTSWENI:** Yes.

**CHAIRPERSON:** Friday is not a working day. Nobody is going to pick up that statement online. So if you can file

Advocate Riley's statement by Thursday before the end of business so that it can be picked up by the Secretary, then we can be alerted wherever we will be.

**ADV MTSWENI:** Will do so.

**CHAIRPERSON:** It will also help Advocate Chauke's team also to access that statement. And make copies, whatever they would want to do.

**ADV MTSWENI:** Will do so, Madam Chair.

**CHAIRPERSON:** We are therefore placing you on terms to  
10 file that statement by Thursday, Advocate Mtsweni, please.

**ADV MTSWENI:** Will do so, Madam Chair.

**CHAIRPERSON:** The next statement will be that of? Because I am trying to assist you in lining up your witnesses.

**ADV MOHLAMONYANE SC:** I believe it will be that of Van Zyl, Advocate van Zyl. And Roelofse.

**CHAIRPERSON:** When will that be filed of record?

**ADV MAYET SC:** Similarly, Madam Chair, I can undertake to have them ready by Thursday. I do so provisionally. The statements are ready, but they need to be signed, Madam  
20 Chair. But I will undertake my level best.

**CHAIRPERSON:** You can file them unsigned, and then you can file the signed one later.

**ADV MAYET SC:** Thank you for the indulgence.

**CHAIRPERSON:** So that you can have the statement.

**ADV MAYET SC:** Thursday.

**CHAIRPERSON:** As long as they are not going to be, the content is not going to be changed.

**ADV MAYET SC:** Indeed. Thank you, Chair.

**CHAIRPERSON:** You will file those three statements.

**ADV MAYET SC:** Two, Madam Chair.

**CHAIRPERSON:** Colonel Roelofse and Advocate van Zyl?

**ADV MAYET SC:** Indeed.

**CHAIRPERSON:** The next statement, General Mkhwanazi, when is it going to be filed? You said it is a short statement.

10 Advocate Mohlamonyane?

**ADV MOHLAMONYANE SC:** I still have to consult with him. I cannot make an undertaking at this stage. I was intending to do that immediately after I shall have led and finalised the evidence of General Johan Booysen.

**CHAIRPERSON:** You said it is a short statement. I thought that the draft is there.

**ADV MOHLAMONYANE SC:** There is a draft, but I still need to sit with him.

20 **CHAIRPERSON:** Can you not give us a tentative day when that statement will be filed? We are trying to get our house in order.

**ADV MOHLAMONYANE SC:** It is difficult for me to say so because I still have to have General Mkhwanazi available. He should be available for my purposes to finalise the statement. And for the past two weeks, he was not available.

**CHAIRPERSON:** The next one in the list.

**ADV MOHLAMONYANE SC:** It is Mlotshwa.

**CHAIRPERSON:** When will his statement be ready?

**ADV MOHLAMONYANE SC:** It can be ready within a week.

Next week, before the end of next week.

**CHAIRPERSON:** Please give us the day.

**ADV MOHLAMONYANE SC:** On or before the 10th. Friday the 10th.

**CHAIRPERSON:** Might I request you, Counsel, that when  
10 you file the statements, do also file a list of documents that  
you are going to use, so that we can have them all lined up  
behind us to avoid what happened today. At least you would  
know which part of the records you are going to focus on.  
Please prepare that. And for a very long statement, you  
would have to give us a summary of the relevant part of those  
long statements. You would have consulted with witnesses.  
You know what the issues are. At least by now, you know  
what the real issues are. Then you can focus on the relevant  
issues. Should we therefore assume that on the 8th, we will  
20 start with either Major General Booysen or Advocate Riley?

**ADV MOHLAMONYANE SC:** Indeed, Madam Chair.

**CHAIRPERSON:** Advocate Mtsweni is nodding. The  
recording machine will not see your nodding. But we accept,  
Counsel, that we will work on that basis. Anything else that  
you would like to bring to our attention? Advocate

Ngcukaitobi?

**ADV NGCUKAITOBI SC:** Madam Chair, the only thing to say, it looks like the clearest witness that will be here on the 8th is Advocate Riley. If we could ask for that statement to be circulated on Thursday and perhaps for the Panel to actually make an order that it should be circulated on Thursday. Thank you, Madam Chair.

**CHAIRPERSON:** Well, I thought that I made an order, but I should expressly say so. That the evidence leaders are  
10 directed to file of record the statement of Advocate Riley by Thursday. What is the date? The 2nd, this coming Thursday, before the end of business. Also, on the same day, the evidence leaders should file of record the statement of Colonel Roelofse and Advocate van Zyl, the same day before the end of business. We so order.

**ADV NGCUKAITOBI SC:** Thank you, Madam Chair.

**ADV MOHLAMONYANE SC:** As it please Madam Chair.

**CHAIRPERSON:** We are going to adjourn until Wednesday, the 8th of April 2026 to resume with the evidence of the  
20 witnesses for the evidence leaders. We would like to place on record also that the time allocated for the witnesses called by the evidence leaders will be the entire of April. We are going to adjourn until the 8th of April 2026. We wish you a safe Easter weekend. Those who are travelling, travel safely and best wishes. Thank you.

**ENQUIRY POSTPONED UNTIL 8 APRIL 2026**

**ENQUIRY ADJOURNS**

-----



**ENQUIRY INTO THE  
SOUTH GAUTENG  
DIRECTOR OF PUBLIC  
PROSECUTIONS'  
FITNESS TO HOLD OFFICE**

## TRANSCRIBER'S CERTIFICATE

I, the undersigned, hereby certify that **so far as it is audible to me**, the foregoing is a true and correct transcript of the proceedings recorded by means of a digital recorder in the matter between:

### CHAUKE COMMISSION OF ENQUIRY

CASE NUMBER : N/A  
RECORDED AT : PRETORIA  
DATE HELD : 31 MARCH 2026  
NUMBER OF PAGES :

#### PROBLEMS EXPERIENCED WITH RECORDING

1. Verbatim transcript, no syntax or grammar alterations effected.
2. Unknown names spelled phonetically.
3. Microphone not always activated.

**NB: Transcriber can only transcribe what is recorded and clearly audible.**

DATE COMPLETED: 31/03/2026

TRANSCRIBERS:

*R Smit*

Riëtte Smit

*Anna-Mart Nel*

:

Anna-Mart Nel

*Lisa O'Connor*

Lisa O'Connor

