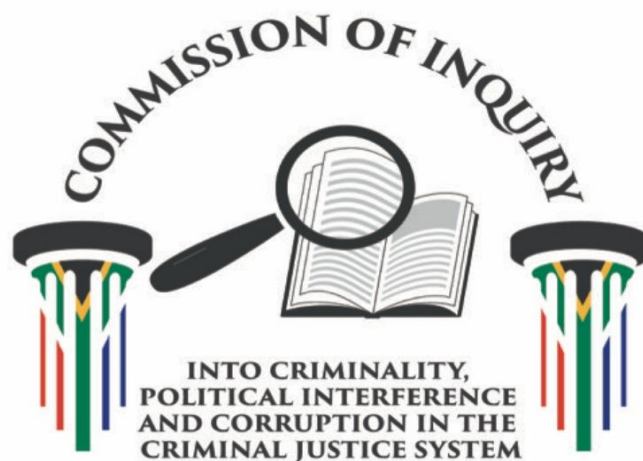


JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY,
POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM

HELD AT
BRIGITTE MABANDLA JUSTICE COLLEGE

8 JUNE 2026

DAY 115



PROCEEDINGS HELD ON 8 JUNE 2026

CHAIRPERSON: Good morning, Ms Pooe.

ADV POOE: Good morning, Chair, Commissioners. Maybe if we can start with some housekeeping. Commissioners, this week we will be making reference to the Aeroton exhibits. So just you have everything in your possession, we will be making use of three exhibits files in particular. The first is the Steyn Exhibit File. The second is the exhibit file which is titled, Booyens CAS Number and it has docket
10 and Khan Disciplinary on its spine. The third is, it also says exhibit file, and there it has IPID Investigation. But for now, while we arrange that everything be organised ...[intervenes].

CHAIRPERSON: I do not see the one that says IPID.

ADV POOE: We will ensure that it is available by tea.

CHAIRPERSON: All right.

ADV POOE: But for this morning ...[intervenes].

CHAIRPERSON: Just check all of them, ja. I have seen Steyn, I have seen something else, ja, but IPID I do not
20 see. Maybe it is there.

ADV POOE: All right. We will check over tea. But for this morning you will need the exhibit file with the docket and the disciplinary, Khan Disciplinary, as well as the Steyn Exhibit Bundle. And then you will also need the statement of Colonel Sebola. And you would have also received a

supplementary statement.

CHAIRPERSON: So is the reference to General Khan on the spine?

ADV POOE: Yes, it says Exhibit Bundle, then it says Booyens CAS 98/07/2021, and says docket and Khan Disciplinary.

ADV BALOYI SC: The statement, it is the original statement?

ADV POOE: Yes, it is the original statement. And your
10 files should have also the supplementary, which is four pages.

ADV BALOYI SC: Four.

CHAIRPERSON: I did see an electronic version of the supplementary. I will have a look on the ...[indistinct] ...[intervenes].

ADV POOE: If I am not ...[intervenes].

CHAIRPERSON: I think the best is for us to just adjourn for a while. I will not indicate a time, and then you will tell us when to come back.

20 **ADV POOE**: All right, thank you, Chair.

CHAIRPERSON: Ja. If the attorneys have to go upstairs to get everything, so be it. We will just wait outside.

ADV POOE: All right, thank you, Chair.

CHAIRPERSON: Let us adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Are we sorted, Ms Poee?

ADV POOE: Chair, let us try this again. So, in front of you, Chair and Commissioners, there should be a file which has the witness statement. You will see that an updated index has been inserted and the supplementary statement starts at page 6 of that bundle.

If you turn around, you will see the Exhibit Bundle. The first is the statement, it should say Exhibit File, 10 Booyens CAS Number, with the Khan Disciplinary in one file. The third is IPID, and it is another Exhibit File. It should not have that witness name up top, that is just an error. And then the third is, it just has a Booyens CAS Number, it is where the presentation is situated. So those are the files we will be making use of.

CHAIRPERSON: Okay. Now they are in order. Thank you very much, Ms Poee.

ADV POOE: And then, for the purposes of going through the supplementary, I would ask that you take the file with 20 the presentation. We will be dealing with the supplementary statement alongside that presentation. Colonel, in front of you...

ADV BALOYI SC: It is the file with the presentation, what is it called?

ADV POOE: It is the fourth file. Colonel, in front of you

should be your witness statement, and the supplementary is inside of page 6. And then please have handy the file with the presentation. It is the fourth file.

CHAIRPERSON: Good morning, Colonel.

LT-COL SEBOLA: Good morning, Commissioners.

CHAIRPERSON: Let us take the oath again. Please place your full names on record.

LT-COL SEBOLA: Nkoana Joseph Sebola.

CHAIRPERSON: Do you swear that the evidence you are
10 going to give is the truth, the whole truth, nothing but the truth? If so, please raise your right hand and say, so help me God.

LT-COL SEBOLA: So help me God.

CHAIRPERSON: Thank you, Colonel.

LT-COL SEBOLA: Thanks, Commissioner.

NKOANA JOSEPH SEBOLA: (still under oath)

EXAMINATION BY ADV POOE: Colonel, can we first confirm your supplementary affidavit? If you go to page 6 in that file, the Statement File, can you confirm that this is a
20 statement that you prepared for purposes of your testimony this morning?

LT-COL SEBOLA: That is correct, Commissioners.

ADV POOE: And if you go to page 9, can you confirm that that is your signature at the end of that statement?

LT-COL SEBOLA: Indeed, it is mine.

ADV POOE: And can you confirm that the contents of the statement are true and correct?

LT-COL SEBOLA: Yes.

ADV POOE: Colonel, we can start going through your statement. When we get to paragraph 3, we will start looking at it alongside the presentation. And, Chair, Commissioners, just to note that the presentation was not prepared by Colonel Sabola. It was prepared by an analyst within their office for purposes of the investigation, but it is
10 a presentation that Colonel Sabola is familiar with. Colonel, can you confirm that?

LT-COL SEBOLA: Yes.

ADV POOE: Colonel, if you can then proceed to paragraph 1 of your statement?

LT-COL SEBOLA:

“On 2021-07-09, during the investigation of Booyens CAS 98/07/2021, I confiscated the cellular telephones of Marumo Magane, Boy Steve Phakula,
20 Samuel Mashaba, and Tumelo Nku as part of the investigations. The devices were placed in the following forensic seal bags. PA...” ...[intervenes].

ADV POOE: Colonel, it is not necessary to read those bag numbers. Thank you.

LT-COL SEBOLA: Thanks, Commissioners.

ADV POOE: You can then proceed to paragraph 2.

LT-COL SEBOLA:

10 “All the confiscated cellular telephones
 were subjected to forensic downloading
 and analysis. Upon receipt of the
 downloaded data and corresponding
 forensic report, I, together with my
 analyst, examined the contents of the
 devices. During the analysis, it was
 discovered that one of the screenshots
 found on the device of the accused
 person contained the communication
 between Philipp Plein, who was saved in
 the device as Tumelo Nku, and
 individuals identified as Alpha.”

20 **ADV POOE:** Thank you, Colonel. Commissioners, just to
 deal with the identity of Philipp Plein, if you can go to page
 15 of the presentation? Colonel, can you confirm that that
 is what you are talking about?

LT-COL SEBOLA: That is correct.

ADV POOE: And what methods did you use to determine
 that Philipp Plein is Mr Nku?

LT-COL SEBOLA: Then the Truecaller.

ADV POOE: And that would be the first screenshot there?

LT-COL SEBOLA: That would be the first screenshot.

ADV POOE: Okay. Thank you, Colonel. Then you can go to ...[intervenes].

CHAIRPERSON: Subject to necessary redacting, are we not going to be flighting these?

ADV POOE: My apologies, Chair, it was just a slight delay.

CHAIRPERSON: Just before I spoke, it was not up.

ADV POOE: Yes.

CHAIRPERSON: Thank you. And who is it that we see on
10 there? Is it one person, or is it two people?

LT-COL SEBOLA: The image does not reflect to the owner of the cellular telephone.

CHAIRPERSON: Okay.

LT-COL SEBOLA: Those were part of that was found inside the screenshots.

CHAIRPERSON: Okay.

ADV POOE: Colonel, are you saying that the two pictures of that person, that is somebody else?

LT-COL SEBOLA: I can say because these pictures are
20 just found inside this cell phone. So, it is someone else.

ADV POOE: It is somebody else completely?

LT-COL SEBOLA: Yes.

ADV POOE: Or were they included to show the clothing brand name?

LT-COL SEBOLA: I can just confirm to say maybe they

were shown ...[intervenes].

CHAIRPERSON: Can we please short circuit this? Is that Mr Nku that we see in the middle photo and the photo on the right?

LT-COL SEBOLA: Ja. If I still recall, it is Mr Nku.

ADV KHUMALO SC: Yes, thank you.

ADV POOE: Okay. And then we can move to paragraph 3 of your statement.

LT-COL SEBOLA:

10 “The communications referred to General Mashaba of Hawks. Further examination of Tumelo Nku's contact list revealed that the person saved as General Mashaba of Hawks was identified as Samuel Mashaba. This information was extracted from the digital evidence obtained during the forensic examination of the confiscated cellular telephone and formed part of the material considered

20 during the investigation.”

ADV POOE: Paragraph 4.

LT-COL SEBOLA:

“Further examination of Tumelo Nku's device revealed several screenshots containing communications relating to

vessels, containers, and piers. The communications include the discussion regarding the taking of photographs of container and its seal.”

ADV POOE: And its seal.

LT-COL SEBOLA: And its seal.

ADV POOE: Okay ...[intervenes].

LT-COL SEBOLA: The sentence must end with its seal.

ADV POOE: Thank you, Colonel. Colonel, if we could then
10 go to page 7 of the presentation? My apologies, page 6.

LT-COL SEBOLA: Page 6?

ADV POOE: Yes. You explained during your last appearance that from the devices you noted screenshots from a particular app called Threema.

LT-COL SEBOLA: Yes.

ADV POOE: Is this then what is being referred to on this page? If you look, it says:

20 “During the analysis of the images that were saved on the above device, I then discovered the following screenshots of messages saved from an encrypted messaging application. I then searched for keywords which related to shipment of containers in relation to Booyens CAS where illicit drugs were found inside a

container.”

LT-COL SEBOLA: That is correct.

ADV POOE: And can you confirm that those were the words that were searched in the devices?

LT-COL SEBOLA: That is correct.

ADV POOE: And then on page 7, can you confirm that that is what Threema looks like?

LT-COL SEBOLA: That is correct.

ADV POOE: And can you then explain why it is that an
10 individual would rely on screenshots from Threema and not the actual application itself?

LT-COL SEBOLA: Can you rephrase that question?

ADV POOE: You noted in the presentation, you note an explanation that Threema is unique in that it does not keep messages.

LT-COL SEBOLA: Correct.

ADV POOE: Is that then the reason why you rely on screenshots?

LT-COL SEBOLA: That would be the reason.

20 **ADV POOE**: Thank you.

ADV BALOYI SC: Let us check at page 6. Is that you who is giving a description or is it the analyst who is speaking at page 6?

LT-COL SEBOLA: This is what we are doing with the analyst, Commissioner.

ADV BALOYI SC: Okay. Maybe, Ms Poee, if we could just get a fuller explanation of this Threema app? Because I mean, there is an explanation at page 6. We are not familiar, we are not all familiar with it, so maybe how it works and why we have got the kind of screenshots we have on page 7.

ADV POOE: All right. Colonel, if we can then take a step back and maybe let us start here. You noted that there were different messaging applications that were used by the
10 individuals.

LT-COL SEBOLA: Yes.

ADV POOE: One of which was Threema.

LT-COL SEBOLA: That is correct.

ADV POOE: Can you explain to the Commissioners what Threema is?

LT-COL SEBOLA: Can I just go through the description?

ADV POOE: Yes.

LT-COL SEBOLA: And when we are doing the analyst because it will be...

20 **ADV POOE:** Maybe, Colonel, to assist you, look at the last paragraph on that page, on page 6.

LT-COL SEBOLA: Ja.

ADV POOE: Ja, thank you. The messaging app which most of the screenshots were taken from, okay, not this one:

“Threema messaging application uses encryption, open source technology, and does not require an email or phone number to sign up. It protects your metadata and permanently deletes messages after they are sent. The images below are from the application Threema with ID as it does not use a phone number.”

10 **CHAIRPERSON**: If messages are deleted after sending, what would you have been able to retrieve then? Can you please explain how that works?

LT-COL SEBOLA: Okay. That is why they are captured on – it might be ...[intervenes].

CHAIRPERSON: In fact, not just deleted, it says permanently.

LT-COL SEBOLA: One will need to either save it on its screenshot so that it can forward it to the next person. So that is why it was saved on Mashaba, on Tumelo Nku's
20 phone, because he wanted to relate what is in the message to the other person.

CHAIRPERSON: So all that you retrieved were those texts in respect of which screenshots were taken?

LT-COL SEBOLA: Screenshots were taken.

CHAIRPERSON: So if there had been no screenshots, you

would have found nothing on ...[intervenes].

LT-COL SEBOLA: Nothing. That is correct, Commissioner.

CHAIRPERSON: All right, okay.

ADV KHUMALO SC: Colonel, let us just take a step back. It can be that they disappear after they are sent because then the person they are sent to will not see them. Surely the proper explanation must be after the recipient has read it, then it disappears.

LT-COL SEBOLA: That is correct.

10 **ADV KHUMALO SC**: Because the recipient must at least read it because if it disappears when it is sent, then the recipient cannot read it.

LT-COL SEBOLA: Ja.

ADV KHUMALO SC: I understand it to be that it disappears automatically after it is opened and read so that when you look at it again, it is not there. And the only way you can keep it is if you use another phone and you take the screenshot of the very first message.

LT-COL SEBOLA: That is correct, Commissioner.

20 **ADV KHUMALO SC**: Thank you.

CHAIRPERSON: Perhaps more clarity on that. The reference to deletion after sending, that is about the sender, is it not?

LT-COL SEBOLA: It is about ...[intervenes].

CHAIRPERSON: On the sender's device. And if

...[intervenes].

LT-COL SEBOLA: It is just like a view-once, Commissioner.

CHAIRPERSON: No, no, no. I want to take it step by step. So on the sender's device, it disappears or gets deleted. So on the recipient's side, it is, as you say, like a view-once.

LT-COL SEBOLA: Correct.

CHAIRPERSON: So it gets killed on both sides.

10 **LT-COL SEBOLA**: I am not definitely sure about the sender. But what I am sure of, once I have read it, then it is done. It is no longer appearing on me. But with regard to the sender, that one I will not confirm, Commissioner.

CHAIRPERSON: Then the statement that it protects your metadata and permanently deletes messages after they are sent. So the reference to sending does not make much sense then if you are not able to comment on that side, that is the sending side.

LT-COL SEBOLA: Yes, on the sending side ...[intervenes].

20 **CHAIRPERSON**: Do you get what I mean? Do you get what I mean? Because I read this to suggest that it disappears after it has been sent.

LT-COL SEBOLA: It has been sent.

CHAIRPERSON: I am not mindful of the point Commissioner Khumalo made, but there seems to be

something that is sought to be made out of the reference to sent, which to my mind suggests that it disappears on the side of the sender as well. So it is not just a question of the view-once on the recipient's side. Am I making sense?

LT-COL SEBOLA: No, Commissioner.

CHAIRPERSON: Otherwise it would not make sense to refer to sending or sent. You want me to start again?

LT-COL SEBOLA: No, Commissioner. I think what I will state...

10 **CHAIRPERSON**: Yes?

LT-COL SEBOLA: I am saying I am the sender.

CHAIRPERSON: Yes, yes, yes.

LT-COL SEBOLA: I am sending it to the Commissioner.

CHAIRPERSON: Yes.

LT-COL SEBOLA: The Commissioner must read it and it is gone with him. It must not link the Commissioner with me.

CHAIRPERSON: Yes.

LT-COL SEBOLA: In fact, it creates a state wherein ...[intervenes].

20 **CHAIRPERSON**: And I have heard that. And what happens on your side, you the sender, what happens on your side? Does it remain on your device?

LT-COL SEBOLA: Commissioner, this one I think it will depend because we do not know the sender to how many people is he sending. It is ...[intervenes].

CHAIRPERSON: No, no, no. Let us just assume ...[intervenes].

LT-COL SEBOLA: Because it is photos ...[intervenes].

CHAIRPERSON: No, no, no. No, no, no. Let us just assume the example you have given, which is just two people you have sent to me.

LT-COL SEBOLA: Correct.

CHAIRPERSON: What happens on your side? Does it disappear or not?

10 **LT-COL SEBOLA:** That one, it has not yet been tested, but the belief is it cannot disappear. It must still remain with me.

CHAIRPERSON: Ja.

LT-COL SEBOLA: The only thing, it deletes the connection between me and the person who is receiving.

CHAIRPERSON: I will step off this, but I will again make a point that I have made already, which is that because your focus here in this report is on sent or sending, so I thought the permanent disappearance is on the sender's side. So, I
20 am surprised that you now say ...[intervenes].

LT-COL SEBOLA: No, it is on the receiver's side, Commissioner.

CHAIRPERSON: Okay.

LT-COL SEBOLA: That is why the receiver ...[intervenes].

CHAIRPERSON: All right, all right.

LT-COL SEBOLA: All right.

CHAIRPERSON: Thank you, thank you.

LT-COL SEBOLA: Thanks, Commissioner.

CHAIRPERSON: Thank you. Thank you.

ADV POOE: Chair, if it is of any assistance, we can ask our analyst to have a look at it, but...

CHAIRPERSON: We will not have a witness on this, but I will just read something that Commissioner Baloyi has found on Google. It says:

10 “No metadata. The app is designed to
 leave no data trail. Messages are
 deleted from the servers as soon as they
 are delivered.”

So, that to me suggests that it is ...[intervenes].

LT-COL SEBOLA: Both sides.

CHAIRPERSON: It is dead on both sides.

LT-COL SEBOLA: Correct.

CHAIRPERSON: And indeed on the server itself.

LT-COL SEBOLA: Correct, Commissioner.

20 **CHAIRPERSON:** Yes, yes.

ADV POOE: Thank you, Chair. Then ...[intervenes].

CHAIRPERSON: I am sure a number of people in the country are going to rush for Threema.

ADV POOE: Yes, Chair, you have created a problem after you clarified the disappearance on both sides. Colonel, and

then just to confirm on page 7 that that is what Threema looks like and it creates IDs.

LT-COL SEBOLA: Yes. On page 7, yes. This is what it looked like ...[indistinct].

ADV POOE: And then on page 8 is another example of what those screenshots look like.

LT-COL SEBOLA: Yes.

ADV POOE: And just to confirm, the first screenshot comes from which application? On the left, the first one on
10 the page.

LT-COL SEBOLA: The one that started with Salam?

ADV POOE: Yes, is that a Threema screenshot?

LT-COL SEBOLA: Yes.

ADV POOE: And ...[intervenes].

LT-COL SEBOLA: No, no, no, no. This one is not Threema, it is WhatsApp messages.

ADV POOE: Colonel, if you look at them, there are two sets, right? The left, the far left is one and you can see the colours are different from the second and third one, which
20 appear to be from WhatsApp. Or am I misreading that?

LT-COL SEBOLA: The one that starts with EB?

ADV POOE: Yes.

LT-COL SEBOLA: The middle one says EB and the ...[intervenes].

ADV POOE: The first one starts at the top, it says Alpha.

Can you see that?

LT-COL SEBOLA: Yes.

ADV POOE: I am asking, is that a screenshot from Threema? Maybe to assist you, Colonel, if you go to page 11, there are other screenshots that according to the presentation are from Threema. Can you see that? It looks like the first one.

LT-COL SEBOLA: Yes, yes. The page 8 one and the page 11 one are the same.

10 **ADV POOE**: Yes, so those are from?

LT-COL SEBOLA: They are from Threema.

ADV POOE: And then the second and the third, those ones are from?

LT-COL SEBOLA: WhatsApp.

ADV POOE: Thank you. Now you say ...[intervenes].

CHAIRPERSON: Second and third on ...[intervenes].

ADV POOE: On page 8.

CHAIRPERSON: Page 8.

ADV POOE: Yes.

20 **ADV BALOYI SC**: And we know that the first sequence is from Threema. How do we know that? From looking at this, what tells us?

LT-COL SEBOLA: This is as it was captured on the device.

ADV BALOYI SC: I guess what I am asking, Colonel, is how do I know that the first sequence is from Threema and

the second sequence is from WhatsApp? I guess the second sequence is more obvious because we are familiar with that format.

LT-COL SEBOLA: Yes.

ADV BALOYI SC: So it is easy to see why you would say the second one is WhatsApp. What I am asking is what is it about the first one? What are the identifying features of the first sequence which tells us this is not WhatsApp but it is Threema? Is there anything in particular?

10 **LT-COL SEBOLA**: When I was with the analyst, Commissioners, I think if we can also look at the top side of the one that we say is on WhatsApp.

CHAIRPERSON: Page?

LT-COL SEBOLA: Page 8.

CHAIRPERSON: Okay.

LT-COL SEBOLA: The last two.

CHAIRPERSON: Yes.

20 **LT-COL SEBOLA**: There is difference between the captions there. The first one, we said it was sent, they got it via Threema, then captured on the screenshots of Tumelo. Even the second one, but these ones were captured on the indication on the phone, it shows WhatsApp. But on this one, it shows that it is through those encrypted chats of Threema. But looking at it here, I cannot say here the features and what, but what I understand, during the

downloading, I was told this is Threema, this is WhatsApp, Commissioners.

CHAIRPERSON: I want to – sorry, sorry. Okay. I want to take you back to a question that was asked by Commissioner Baloyi as to who compiled this report. And you said it was compiled by you and the analyst.

LT-COL SEBOLA: Ja.

CHAIRPERSON: I noticed that you have difficulties answering some of the questions we asked around the
10 report. Even as you responded to Commissioner Baloyi, I wondered whether your participation was more assisting the analyst and saying whatever you saw as necessary, but that it was more the analyst who prepared the report. Do not take this badly.

It does not impugn your expertise as a Colonel in SAPS, a Colonel who recently even got promoted to the position of Colonel. It does not, it does not, but we just want to be sure of the true factual position. Was this compiled by the analyst with you assisting where
20 necessary? As I say, this does not impugn your expertise as a SAPS officer.

LT-COL SEBOLA: Correct, Commissioner. In fact, the analyst is assisting me. I am not assisting the analyst.

CHAIRPERSON: No, no, no, no, no. There is a nuance here. We are talking about the preparation of the report,

the person who is doing all the analysis and so on and so on. But this is being done for you as the investigator. That I get, but there is a nuance between who is actually the person preparing the report.

LT-COL SEBOLA: The analyst.

CHAIRPERSON: That is what I wanted to establish. Thank you very much, Colonel.

LT-COL SEBOLA: Thank you.

CHAIRPERSON: Then we will understand your lack of
10 knowledge with regard to some of the technicalities better. We will understand that better.

LT-COL SEBOLA: Thanks, Commissioner.

CHAIRPERSON: You see what I mean? Thank you, thank you.

ADV POOE: Chair, just to say that the DPCI did provide us with the downloads of the phones. And how we were able to confirm that this is Threema is that all of these ones that are grey and a light green that have a bell and a little phone icon at the top were all found in the gallery of Mr Nku's
20 downloads.

And if you look at the metadata of it, it specifies just the phone that it was taken. So all of the ones that come from Threema appear like that. And what you can get from it is just the date on which the screenshot was taken and not necessarily when the messages themselves were

sent. That is on our end.

CHAIRPERSON: Thank you, Ms Pooe.

ADV POOE: Colonel ...[intervenes].

CHAIRPERSON: Just a minute. Ms Pooe, may we please be provided with a very short affidavit from the analyst specifically on how we identify what is what with regard to the texts?

ADV POOE: Yes, Chair.

CHAIRPERSON: Short, short affidavit.

10 **ADV POOE**: Our analyst or DPCI analyst?

CHAIRPERSON: The...

ADV POOE: The DPCI?

CHAIRPERSON: Ja.

ADV POOE: Yes, we will do so.

CHAIRPERSON: Yes, DPCI, yes. Yes, you may continue, Ms Pooe.

ADV POOE: Colonel, you then say in paragraph 3 that you were able to ascertain that the individual saved as General Mashaba of Hawks was Mr Mashaba who was one of the
20 suspects in this case.

LT-COL SEBOLA: Correct, Commissioner.

ADV POOE: Can we then go to page 9? My apologies, actually, page 10 of the presentation where you explain how this determination was made. Can you explain briefly how you were able to match Mr Mashaba, that this was indeed

the person who was one of your suspects?

LT-COL SEBOLA: Okay, page 10 says:

“The following conversation was extracted from WhatsApp conversation saved as Chat 168 on 2021-03-04 at about 04:19 TN Tumelo Nku who says the following. Salaam, boss. May I please come through at 9 a.m.? The General just asked me to pass by him at 7 a.m.”

10 Then it says see page 2 of 72.

ADV POOE: Colonel, just a reminder, on the second bullet point, please do not read out the name.

LT-COL SEBOLA: Okay, correct:

“On 2021-04-02 at 18:03, EB Boss...”

There are the names, it says the following:

“Where is General?”

Then on 2021-06-21, 09:57, to Tumelo Nku is quoted as saying:

“Sorry, boss, been busy with Mashaba.

20 The above quoted message confirmed that the two individuals are the same on the above and on many screenshots saved on the devices as they both addresses Samuel Mashaba as General. There is also a voice note on the audio of

Samuel Mashaba's device where an individual is mentioning the name General.”

That is that.

ADV POOE: So in the purpose of your analysis, your conclusion was that where EB Boss and Mr Nku talk about General or General Mashaba, that it is a reference to the suspect in your case.

LT-COL SEBOLA: It is referred to the suspect in my, in the
10 Booyens case 98/07/2021.

ADV BALOYI SC: Colonel, sorry, I am struggling to see how you connect this Mashaba, this General Mashaba that is referred to in the WhatsApp messages to your suspect. Can you maybe just explain again what is it that makes you connect him and say it is the same ...[intervenes].

LT-COL SEBOLA: If we can go to paragraph 3 of my statement?

ADV BALOYI SC: Of the statement.

LT-COL SEBOLA:
20 “The communication referred to General Mashaba of Hawks further examination of Tumelo Nku’s contact list revealed the person saved as General Mashaba of Hawks was identified as Samuel.”

In fact, in the communication of Tumelo Nku, the person

who has been identified, between...

ADV POOE: Mr Nku and EB Boss.

LT-COL SEBOLA: Mr Nku and...

ADV POOE: EB?

LT-COL SEBOLA: Alpha.

ADV POOE: Okay.

LT-COL SEBOLA: EB. It shows that the person is saved in whose phone as Samuel Mashaba. That is what we have picked up on this communication. That when they are
10 talking about the General of Hawks, they are referring to the person who is saved as – who is Samuel Mashaba, but the communication indicates the other names.

ADV BALOYI SC: Okay. So just to be clear, in Mr Nku's phone you have Samuel Mashaba, a contact, as one of the contacts. Is that?

LT-COL SEBOLA: No. In Mr Nku's phone, he is saved as General. Then that number that is saved as General belongs to Samuel Mashaba.

ADV BALOYI SC: Okay. So when you check, when you
20 check, you find the number that is saved under General Mashaba of Hawks is in fact the number of Samuel Mashaba?

LT-COL SEBOLA: Correct, Commissioner.

ADV BALOYI SC: You were able to make that link?

LT-COL SEBOLA: Correct, Commissioner.

ADV BALOYI SC: Okay, thank you. I understand.

ADV KHUMALO SC: Just to be clear, without reading it out, that number is the one we see on page 4 of the presentation. Do you see that on page 4? There is the person, there is the name, the ID, the rank, and then the cell phone number.

LT-COL SEBOLA: Correct. Correct, Commissioner.

ADV KHUMALO SC: That is the cell phone number that is saved in other devices as Mashaba General Hawks.

10 **LT-COL SEBOLA:** Correct, Commissioner.

ADV POOE: Colonel, if we can then go to paragraph 4 of your statement?

LT-COL SEBOLA:

20 “Further examination of Tumelo Nku’s device revealed several screenshots containing communications relating to vessels, containers and piers. The communications include the discussion regarding the taking of photographs of a container and its seal.”

ADV POOE: All right. Colonel, just to clarify, were these just general chats and not specific to the Booysens case, the ones that you are referring to in this paragraph?

LT-COL SEBOLA: Commissioners, if I may state, because this communication dates back to May 2021, which clearly

indicates that these people have been monitoring certain containers before the Booyens one. There is communication that dates back to 21 May 2021, which also, upon discovery, we realised that their operation was successful on that day.

ADV POOE: And just to go through some of those examples, Colonel, can we go to page 11 of the presentation?

LT-COL SEBOLA: Correct.

10 **ADV POOE**: So if you look at the first screenshot, can you explain to the Commissioners what we see there?

LT-COL SEBOLA: The first screenshot, it starts by saying:

“Can you get the pics of the container
and seal? The longer you take with it,
the more nervous they get...”
...[intervenes].

ADV BALOYI SC: And sorry, and you say this is communication between who and whom? Who are the people talking here?

20 **LT-COL SEBOLA**: This screenshot found in Tumelo Nku, which indicates that the communication is between him and Alpha.

ADV POOE: And just to clarify that, if you look at message number, the third one, perhaps at the top, the first participant is Alpha, and then if you look at the third

message, it is ...[intervenes].

LT-COL SEBOLA: The one that starts with other?

ADV POOE: After the second message, you will see it says Philipp Plein. So that is a quoted message ...[INTERVENES].

LT-COL SEBOLA: Okay ...[intervenes].

ADV POOE: It shows the other participant.

LT-COL SEBOLA: Philipp Plein. On top of – Philipp Plein is responding to the boss. Philipp Plein, Commissioners,
10 still takes us back to Tumelo Nku. Now he is communicating to the bosses. So it is not going to happen today.

ADV POOE: So the boss quotes a message from Philipp Plein, saying:

“So, it is not going to happen today.”

Right. And you see the message from Philipp Plein ...[intervenes].

LT-COL SEBOLA: Yes, because they are ...[intervenes].

ADV POOE: Is boss ...[intervenes].

20 **LT-COL SEBOLA**: Boss. The message of Philipp Plein says:

“Boss, the driver details.”

And then which means Philipp Plein now says it is not going to happen today.

CHAIRPERSON: No, no, no. It is the boss saying

...[intervenes].

LT-COL SEBOLA: The boss. Sorry, the boss, Commissioners.

CHAIRPERSON: The boss saying so. But what the boss has done is to indicate that he is responding to a much earlier text from Philipp Plein.

LT-COL SEBOLA: From Philipp Plein. Correct, Commissioner.

CHAIRPERSON: It appears just above, so it is not going to
10 happen today.

LT-COL SEBOLA: Yes.

CHAIRPERSON: If you look at the colour coding, that is still the same person as:

“Can you get the pics. The longer you
take...”

Same colour coding. So it is the boss saying this.

LT-COL SEBOLA: Yes.

CHAIRPERSON: Ja. So what Philipp Plein had said is:

“Boss, the driver details still have not
20 been loaded yet. The guys are
monitoring the app and the forklift guy is
our guy.”

LT-COL SEBOLA: Correct.

CHAIRPERSON: That is Philipp Plein.

LT-COL SEBOLA: That is Philipp Plein.

CHAIRPERSON: Yes.

ADV POOE: And, Colonel, does ...[intervenes].

ADV BALOYI SC: Sorry, Mr Pooe, can you just ...[intervenes].

CHAIRPERSON: Philipp Plein or Mr Nku.

LT-COL SEBOLA: Philipp Plein, Mr Nku. Yes.

CHAIRPERSON: Yes.

ADV BALOYI SC: Is the evidence, and I am just trying to understand to be clear, where do we locate this. Is the
10 evidence that this communication is about the Booyens container or has nothing to do with the Booyens but other containers?

LT-COL SEBOLA: This communication relates to the 21 May, not the Booyens one.

ADV BALOYI SC: No. The heading says the screenshots were captured on 21 May 2021. So you are saying it is other containers that ...[intervenes].

LT-COL SEBOLA: It is other containers, yes.

ADV BALOYI SC: That they are talking about.

20 **LT-COL SEBOLA**: Yes.

ADV BALOYI SC: Thank you.

ADV POOE: And from that message of Philipp Plein, you are able to identify that Alpha and Mr Nku at the port have a guy who works as a forklifter [sic].

LT-COL SEBOLA: That is correct.

ADV POOE: And then Mr Nku responds, can you see?
Can you go take it from there? Where he says other
companies are collecting.

LT-COL SEBOLA:

“Other companies are collecting. As the
stack reduced and boxes moved down,
we will get the pics.”

ADV POOE: Yes, you can continue.

LT-COL SEBOLA: So big companies, this one is Alpha.

10 Big ...[intervenes].

CHAIRPERSON: No, no, no, no, no. So ...[intervenes].

ADV POOE: It is Mr Nku.

CHAIRPERSON: This is ...[intervenes].

LT-COL SEBOLA: It is Mr Nku ...[intervenes].

CHAIRPERSON: This is confusing you, Colonel.

LT-COL SEBOLA: No, it is just that ...[intervenes].

CHAIRPERSON: It is still ...[intervenes].

LT-COL SEBOLA: No, it is still Mr Nku.

CHAIRPERSON: What he is doing here is to respond to
20 the message by Alpha.

LT-COL SEBOLA: By Alpha.

CHAIRPERSON: The message that said:

“So it is not going to happen today.”

I say that because you can see right above this response
now by Mr Nku, that he has, what do you call when you just

press the message you want to respond to and then it shows ...[intervenes].

LT-COL SEBOLA: Reset.

PROSECUTOR: Mr Poe, Mr Mosikili, you are younger and more tech savvy. But at least I do follow the conversations. What do you call it when you press a message to issue a responding and then it reflects just above your message? What is the technical term for that?

ADV POOE: It is a quoted text. So the one that you are
10 responding to appears in small and your response then appears bigger, below it.

CHAIRPERSON: Yes. You get my point?

LT-COL SEBOLA: I get it.

CHAIRPERSON: Yes.

LT-COL SEBOLA: I got the ...[intervenes].

CHAIRPERSON: So the response now is to:

“So it is not going to happen today.”

That is what he is responding to. So please read then, big companies do not.

20 **LT-COL SEBOLA**:

“Big companies do not usually...”

That is Mr Nku:

“Big companies do not usually want to incur unnecessary costs. It will probably be a bit later. Do not ...[indistinct] run

24...”

Eish:

“Do not ...[indistinct] run 24-hour logistics. Which means...”

ADV POOE: Service desk.

CHAIRPERSON: Service desk.

LT-COL SEBOLA: Service desk, yes:

“They should be able to upload the driver details at any moment.”

10 **ADV POOE:** And in response to that, Alpha also takes back to note that it is important for them to get pictures.

LT-COL SEBOLA:

“It is very important we get that pics ASAP. Other things are running through their heads. I think your custom guides need to take this serious. Everything is excuse.”

And so from this screenshot, you are able to identify multiple players.

20 **LT-COL SEBOLA:** Then we have the custom guides that is now being introduced on this chats, Commissioners.

ADV POOE: All right. And then, Commissioners, there are other screenshots. I am wary of going through all of the screenshots, but this is really to demonstrate that from the screenshots obtained from Mr Nku, you see different role

players. Is that correct?

LT-COL SEBOLA: That is correct.

ADV POOE: And that other operations have been run at the pier by Mr Nku and this individual called Alpha.

LT-COL SEBOLA: Correct.

ADV POOE: And then just, because there is other role players in the third screenshot, can we just go through that quickly?

LT-COL SEBOLA: The third one?

10 **ADV POOE**: Yes.

LT-COL SEBOLA:

“Our guys cannot...” ...[intervenes].

CHAIRPERSON: That is Alpha writing. Please read that. Am I correct?

LT-COL SEBOLA: Yes, Alpha.

CHAIRPERSON: Yes, yes.

LT-COL SEBOLA:

20 “Our guys cannot even give us pics of the container and seal. I am starting not believe anything anymore.”

There is supposed to be – no.

CHAIRPERSON: Yes? It is still Alpha. The ...[intervenes].

LT-COL SEBOLA: Ja, there is supposed to be.

ADV POOE: The bosses?

LT-COL SEBOLA: There is supposed to be the bosses or

the ...[intervenes].

ADV POOE: Yes.

LT-COL SEBOLA: The bosses at customs. Here, it is still custom.

ADV POOE: Sorry, on that, Colonel, does that then suggest that it is not just ordinary custom officials? It is ...[intervenes].

LT-COL SEBOLA: The bosses.

ADV POOE: It appears to be senior.

10 **LT-COL SEBOLA:** Yes.

ADV POOE: Okay. And then ...[intervenes].

CHAIRPERSON: Ms Pooe, it will probably be quicker if you read and you ask the General to confirm. And of course, in respect of each, you indicate who is speaking, who is writing.

ADV POOE: All right. And the last screenshot, Commissioners, that I would want us to note is on page 12.

CHAIRPERSON: And which one of the three?

20 **LT-COL SEBOLA:** The first one. And there, it starts with Alpha talking:

“If those containers are gone, me and you are in big bleep.”

CHAIRPERSON: [Indistinct] ...[microphone not switched on].

ADV POOE: Yes. To which Mr Nku responds and says:

“Those containers are still there, boss.”

Alpha responds and says:

“Then send the pics with the seal so I can show the people. I am getting heavy threats.”

Mr Nku responds and says:

“Give me till 7, boss. I am pressing all these guys.”

Alpha responds and says:

“Okay.”

10 Mr Nku says:

“The guy at cranes says we have. Please be a bit more patient. We will get pics as they offload. He will move each aside.”

Colonel, is that then another role player of the person who works with the cranes?

LT-COL SEBOLA: That is correct, Commissioners.

CHAIRPERSON: And the date is still the same. These are also in respect of 21 May 2021.

20 **LT-COL SEBOLA**: Correct, Commissioners.

CHAIRPERSON: Yes.

ADV POOE: And another noteworthy thing, Colonel, is that there is always this attempt to get the driver's details in their communications.

LT-COL SEBOLA: Yes.

ADV POOE: And what would be the import of that?

LT-COL SEBOLA: Even though I cannot say that much, but the thing is, even when we will go further, we will see on the details of the truck and its registration number was also found on the same pics. So, I do not know what will they ...[intervenes].

CHAIRPERSON: Because that one is quite important, I am sure you will go through that, Ms Pooe.

ADV POOE: Yes.

10 **CHAIRPERSON**: Yes.

ADV POOE: Colonel, I was just trying to get from you that generally, why in these kinds of operations it would be important to get the driver's details. Because the screenshots that we started with, you will see it started with them discussing the difficulties with obtaining the driver's details and they are talking about an application where those details would emerge. And as they continue, Mr Nku, again, on the second screenshot at page 12, says, the second message:

20 “Boss, the driver details still have not
 been uploaded yet. The guys are
 monitoring the app, and the forklift guy is
 our guy.”

Can you see that?

LT-COL SEBOLA: Where I am seated, when they were

discussing about the driver, Commissioners, it seems they will want to acquaint themselves with the person that maybe they can easily manipulate along the way, Commissioners.

ADV POOE: All right, thank you. And then in relation to this incident, the May incident, on page 13 of the presentation, you include there a map. Can you explain the significance of this? The map with Mr Nku's whereabouts. And remember, Colonel, this is still in May.

LT-COL SEBOLA: On this map, just to indicate that on that
10 same week, the week of the 21st and the 22nd, when they were communicating about the pic of the seal, the container, and all those things, Nku was in the vicinity of Durban. If you look on that map ...[intervenes].

CHAIRPERSON: And you are still talking May 2021?

LT-COL SEBOLA: May 2021.

CHAIRPERSON: You just mention the dates.

LT-COL SEBOLA: Yes.

CHAIRPERSON: Okay, all right.

LT-COL SEBOLA: He was on that, in the vicinity of
20 Durban.

ADV POOE: Colonel, just to confirm that even page 14 still deals with Mr Nku being in the facility of the harbour in Durban, in May?

LT-COL SEBOLA: That is correct.

ADV POOE: Then, Colonel, can we go to paragraph 5 of

your statement?

LT-COL SEBOLA:

“In addition, a screenshot of a computer display was found on the device. The screenshot reflected shipment information, indicating that the consignment was scheduled to depart on 2021-05-30 and arrive in Durban Harbour on 2021-06-11.”

10 **ADV POOE:** And for that, can we go to page 16 of the presentation?

LT-COL SEBOLA: Yes.

ADV POOE: And there is another screenshot depicting a conversation between Alpha and Mr Nku. Is that correct?

LT-COL SEBOLA: That is correct.

ADV POOE: And in the first picture in that screenshot, because it is not legible, is that what it says there on the far right of the page? It gives the description. It is like a shipping manifest.

20 **LT-COL SEBOLA:** Yes, a computer screenshot that indicates the departure time of the vessel from Coast West Africa.

ADV POOE: And then it indicates where it will arrive and when it will arrive.

LT-COL SEBOLA: It will arrive in Durban Terminal Pier 1.

ADV POOE: So it is ...[intervenes].

CHAIRPERSON: So you have, or rather, the essence of what is illegible on the computer screenshot is what is reflected on the far right of page 16. The substance of it, not necessarily everything. Is that it or not?

LT-COL SEBOLA: That is correct.

CHAIRPERSON: Okay.

LT-COL SEBOLA: I can even maybe explain to them. This computer screenshot, Commissioners, indicates that it
10 comes from the harbour itself. It is a property of Transnet, which means somebody from within Transnet captured this screenshot, forwarded it to this person.

ADV POOE: To Alpha?

LT-COL SEBOLA: Yes.

ADV POOE: And then in that ...[intervenes].

CHAIRPERSON: And your investigations, were they not – I am not going to get into the detail. I am not going to mention names or anything. But were you able to follow up on this?

20 **LT-COL SEBOLA:** I went ...[intervenes].

CHAIRPERSON: The computer information and so on.

LT-COL SEBOLA: Yes, Commissioner. I went to Durban ...[intervenes].

CHAIRPERSON: If it is going to negatively affect your investigations, you do not have to go into that detail.

LT-COL SEBOLA: I will just state, Commissioner, I went to Durban just to know those. Because most of the communications talk about Pier 1 and Pier 2. I just wanted to know the significance of those piers. Why are they so important in this? Because the direction, some of the communication will say they must direct it to Pier 1. And Pier 1, the Booyens, the Booyens one arrived in Pier 1.

CHAIRPERSON: If your answer is yes, we have followed up, or yes, we are following up, that is enough for my
10 purpose.

LT-COL SEBOLA: Yes, we have followed up.

CHAIRPERSON: Okay, thank you.

ADV POOE: Colonel, just to clarify, Chair is asking about the ...[intervenes].

CHAIRPERSON: Sorry, Ms Pooe.

ADV BALOYI SC: You may well be doing what I want.

ADV POOE: Chair is asking about, you know how you just testified that that screenshot comes from the harbour, Transnet in particular. Whether you have followed up on
20 who, or investigated who all may be involved with that?

LT-COL SEBOLA: I have followed up, Commissioners.

CHAIRPERSON: And you were able to establish the source?

LT-COL SEBOLA: Yes, I have established that, Commissioners.

CHAIRPERSON: Okay, thanks. Thank you.

ADV POOE: And then the two talk about Pier 1 and 2. And in particular, Mr Nku responds and says:

“Boss, can they not get Pier 2? We are going to have to pull another mission impossible.”

And Alpha responds and says:

10 “Look here, the vessel is already set. Let us do last one, Pier 1. We do a mission impossible. I will not put pressure. At least we know the system.”

LT-COL SEBOLA: Ja.

ADV POOE: And just for our own knowledge, what is significant about Pier 1 and Pier 2? Is there anything?

LT-COL SEBOLA: If you look at that communication, it seems they were worried about:

“Boss, can they not get to Pier 2? We are going to have to pull another mission impossible.”

20 Which means the request is for it not to go to Pier 2 because ...[intervenes].

ADV POOE: No, the request is for it to go to Pier 2.

LT-COL SEBOLA: Yes.

ADV POOE: It seems that Mr Nku is worried about it going to Pier 1. You see, Mr Nku says:

“Boss, can they not get Pier 2? We are going to have to pull another mission impossible.”

To which Alpha responds and says:

“Look here, the vessel is already set. Let us do last one, Pier 1.”

LT-COL SEBOLA: Okay, yes.

ADV POOE: Is that correct?

LT-COL SEBOLA: That is correct.

10 **ADV POOE**: All right.

ADV BALOYI SC: Can I just check, without you giving detail that concerns your investigations, I just want to understand what this seems to suggest. And please say if I am correct. It seems to suggest that someone within Transnet makes the decisions about where the ship should go. It is Pier 1 or Pier 2. And so is able to manipulate where it lands in order to facilitate the scheme of accessing the containers. Am I correct about ...[intervenes].

LT-COL SEBOLA: That is correct.

20 **ADV BALOYI SC**: [Indistinct]... Transnet people.

LT-COL SEBOLA: Yes.

ADV BALOYI SC: Okay, thank you.

CHAIRPERSON: I am not sure, maybe I missed it, I am not sure what your response to Ms Pooe's question as to the significance of Pier 1 and Pier 2 is. May I ask this, if you

know? It sounds like Mr Nku is saying it is going to be very difficult for them if the container is, the ship carrying the container offloads at Pier 1. It seems his sense is that it will be much easier if the ship offloads at Pier 2. Do you have any ideas as to why that is so?

LT-COL SEBOLA: That is on my own thinking that maybe when it is at Pier 2, he can easily get whatever he wants. Maybe ...[intervenes].

CHAIRPERSON: Why is that so? That is the essence of
10 my question, I guess.

LT-COL SEBOLA: Because he is creating this doubt to say going to Pier 1 will be doing mission impossible, which means everything is possible if it goes to Pier 2. This ...[intervenes].

CHAIRPERSON: You still have not answered my question. You are restating what he says here and what I said also or highlighted in my question. Do you know why that is so? If you do not know ...[intervenes].

LT-COL SEBOLA: Let me not ...[intervenes].

20 **CHAIRPERSON**: There is no problem at all if you do not know.

LT-COL SEBOLA: Yes.

CHAIRPERSON: You do not know? Do not feel bad about it. I mean, it is not your area of expertise. You are not involved in shipping, harbours and all those things. Do not

feel bad about it ...[intervenes].

LT-COL SEBOLA: No, I do not know ...[intervenes].

CHAIRPERSON: If you do not know, you do not know ...[intervenes].

LT-COL SEBOLA: No, there I do not know.

CHAIRPERSON: All right, thank you.

ADV POOE: All right. Colonel, let us then move to the next paragraph in your statement. It is ...[intervenes].

LT-COL SEBOLA: Yes:

10 “Further screenshot dated 2021-07-01
 were also identified on the device.
 Based on their contents, this screenshot
 appeared to relate to incident that
 approximate...”

That should be:

 “...incident that happened approximately
 one week earlier, which formed part of
 the Isipingo investigation. Screenshots
 contain communication and information
20 relating to drug prices.”

ADV POOE: For this paragraph, Commissioners, if you can go to page 18 of the presentation? Colonel, just to confirm, so these screenshots are related to Booyens, this ...[intervenes].

LT-COL SEBOLA: This screenshot ...[intervenes].

ADV POOE: The Aeroton drugs.

LT-COL SEBOLA: It relates to the Aeroton drugs, this one, screenshots.

ADV POOE: And the first screenshot there, again, it is a conversation between Alpha and Mr Nku. It begins with a message from Alpha, who says:

“I only got to know now.”

Mr Nku responds and says:

“But what is that container carrying?”

10 Alpha responds:

“No idea.”

And says:

“Behind door.”

Mr Nku responds and says:

“Boss, these people are really making
our job impossible by the day.”

And he also responds to the message of Alpha that said behind the door and says:

20 “Please ask them because if they load it on a car
or anything that can be mobile from the container,
it will be a bust.”

That is followed by another message from Mr Nku to Alpha saying:

“Boss, please tell the people that avoid
any containers with metal or anything

automobile. Only load goods or sugar. Anything that goes to Pier 1 or 2 is workable. Remember, there was a bust a week ago. Now we need to go offloading from trucks again.”

And there is an emoji.

CHAIRPERSON: I must just comment that this is really confusing because all of a sudden now there is no problem with Pier 1.

10 **LT-COL SEBOLA**: Yes.

CHAIRPERSON: When earlier it was going to be mission impossible to access.

ADV POOE: Chair, that was in May. I am not sure what may have happened between May and July ...[intervenes].

CHAIRPERSON: May and July.

ADV POOE: Which now makes 1 and 2 attractive. So in this screenshot, Colonel, can you confirm that they were speaking about the Booyens shipment?

LT-COL SEBOLA: Correct.

20 **ADV POOE**: And it appears there that ...[intervenes].

ADV BALOYI SC: Why do we say that? What is it in this line, in this sequence of communication that tells us that they are speaking about the Booyens shipment?

LT-COL SEBOLA: Commissioner, it is just that this screenshot, as I have indicated, not everything is in here.

Because there were a lot of communications that was also – so this was done for the purpose of presentations. But for the investigation, there were a lot of communications between the 1st of July up until the 8th, when the consignment arrived in Aeroton.

So, but in this instance that we are with here, this screenshot does not say anything, I will agree. Based on this, I cannot definitely say it relates to Booyens. But based on the investigation that we have done, I know what
10 was communicated in here, Commissioner.

CHAIRPERSON: So, is that based on texts that either followed or preceded what we see here? Is that what makes you to come up with that connection or to make that connection?

LT-COL SEBOLA: That is correct.

CHAIRPERSON: Did you actually see those?

LT-COL SEBOLA: Ja, because I remember there were communications that shows that even on the 4th, because I do not have them here, between the 1st and up until this 8th,
20 there were a lot of – there was something that was happening.

CHAIRPERSON: Are you able to explain why those would not have been included? I do hear you say that this was a presentation and so on, but I understand it to be a presentation that is capturing everything that was important.

So I would imagine to make the connection that this is about Aeroton and texts or chats that actually make the connection would have been quite crucial for that purpose. So are you able to tell us why those were not included?

LT-COL SEBOLA: Commissioners, I also tried to get hold of those who are the custodian of this. I was told that certain information cannot be traced back again now.

CHAIRPERSON: That is addressing the situation now ...[intervenes].

10 **LT-COL SEBOLA**: That is ...[intervenes].

CHAIRPERSON: I am asking you a question that relates to the compilation of this report. I am saying, do you know why those chats that make the connection to Aeroton were not included in this report as part of this presentation?

LT-COL SEBOLA: No, I do not know.

CHAIRPERSON: Thank you.

ADV POOE: Colonel, would you be able to get us some of those chats or that information that links these conversations better to Aeroton so that we can see those
20 links?

LT-COL SEBOLA: Commissioners, I do not want to commit myself on that because I was trying to say I tried to make follow-ups because after having seen these presentations, I found it necessary that I must also get the full information as to what was happening during the time I was

investigating, Commissioners. So I do not want to commit myself to say ...[intervenes].

ADV KHUMALO SC: Can I ask you this question, Colonel? What in these chats, especially the ones on page 80, leads you to believe that they are connected to the drugs that were discovered? I believe it was on the 9th of July 2021 at Aeroton. What in these chats leads you to believe that they are connected to that?

LT-COL SEBOLA: Commissioner, in this chat, none.

10 **ADV KHUMALO SC:** Say that again.

LT-COL SEBOLA: In this chat, I can say no, there is nothing. I do not have anything to back what I was saying.

ADV KHUMALO SC: Is it fair to say the best that you can do is that the suspects that were identified on that day were communicating in chats and they were communicating about drugs and their shipment into the country? And that is as far as you can go. Looking at these chats, there may be other chats somewhere that are not with us now. But looking at this, it is fair to say that Mr Nku is communicating
20 with somebody in the week leading up to this date and they are talking about drugs and shipments and piers at the harbour.

LT-COL SEBOLA: That would be fair, Commissioner.

ADV POOE: Commissioners, maybe just to say it may get better once we deal with the other pictures that were

retrieved around the same time. Because if you read those messages with the pictures that were shared from page 20 and 21, it may better link those conversations.

CHAIRPERSON: You are still going to take us ...[intervenes].

ADV POOE: Yes.

CHAIRPERSON: You are still going to take us there?

ADV POOE: Yes.

CHAIRPERSON: Thank you, thank you.

10 **ADV BALOYI SC**: You are asking us to be patient and quiet, basically.

ADV POOE: Commissioners, I dare not ask anyone to remain quiet. And then, Colonel, what is the significance of the other picture on page 18, the one that was in blue? Where was it? Where did you find that and what is its significance?

LT-COL SEBOLA: This picture was on the screenshot of Mr Nku.

20 **ADV POOE**: And was this on the same day as the screenshot of the Threema conversation with Alpha?

LT-COL SEBOLA: This screenshot indicates that it was taken on the 1st of July. The screenshot, I do not know whether the communication was, but the screenshot was taken on the 1st of July.

ADV POOE: And what is the significance?

LT-COL SEBOLA: As I indicated, I do not want the communications, I cannot. But the significance of the price list of drugs, the one that is reflected in blue, that is the price list of drugs. And it also reflects that the price list is in Euros, not South African currency.

CHAIRPERSON: That is Pounds. That is Pounds.

LT-COL SEBOLA: In Pounds. Sorry, Commissioners. Sorry.

ADV POOE: All right. And then let us deal with the other
10 screenshots that were found together, or in the days after the one on the 1st of July. Can you read paragraph 7 of your statement?

LT-COL SEBOLA:

“Another computer screenshot was
identified depicting Yellow Jersey drug
that was indicated as being designated to
collect the container. These screenshots
were extracted and preserved as part of
the digital evidence obtained during the
20 forensic examination of the device.”

ADV POOE: And to explain this, can you go to page 20 of the presentation?

LT-COL SEBOLA: Yes.

ADV POOE: Colonel, the picture, the first picture, what is that?

LT-COL SEBOLA: That is the screenshot of the computer.

ADV POOE: And that computer, is it the same one that we saw earlier?

LT-COL SEBOLA: Yes, we can see at the bottom there, it will also indicate Transnet.

ADV POOE: At the bottom of the picture. And then in the screenshot itself ...[INTERVENES].

CHAIRPERSON: Where about is Transnet? I do not see it.

LT-COL SEBOLA: There is something written in red,
10 Commissioners.

ADV POOE: Yes, can you – there at the bottom?

CHAIRPERSON: Okay.

ADV POOE: And the detail of what is written in the picture is on the far right of the page ...[intervenes].

LT-COL SEBOLA: The details ...[intervenes].

ADV POOE: Is that correct?

LT-COL SEBOLA: Yes, the details on the computer is the details of this drug that is found in Aeroton, Commissioners.

ADV POOE: And the picture on the right is the, what is
20 that picture?

LT-COL SEBOLA: The picture on the right is the drug at Aeroton.

ADV POOE: And from that you can see that it corresponds with the picture from Mr Nku's phone?

LT-COL SEBOLA: It corresponds with the picture from Mr

Nku's phone, correct, Commissioners.

ADV BALOYI SC: Sorry, what features of it correspond?

LT-COL SEBOLA: The picture, the screenshot of the computer on the left, it has got the details of this drug.

ADV BALOYI SC: The registration number?

LT-COL SEBOLA: The registration number. If...

ADV BALOYI SC: No, sorry. I am asking, Colonel, because this screenshot is, it is not, I cannot quite see the detail of it. So when you say they correspond, I do not
10 know what the reference is to.

LT-COL SEBOLA: It ...[intervenes].

ADV POOE: Commissioner Baloyi ...[intervenes].

LT-COL SEBOLA: Because here it is just a photo. What is written on the far right?

ADV BALOYI SC: On the far right, it is the details of ...[intervenes].

LT-COL SEBOLA: The details of what is happening on this computer, Commissioner.

ADV BALOYI SC: I see.

20 **LT-COL SEBOLA:** It shows the gate, trucking company, the licence.

ADV BALOYI SC: Yes.

LT-COL SEBOLA: Yes.

ADV BALOYI SC: Okay, thank you. I see that.

LT-COL SEBOLA: This is what is reflected on this,

Commissioners.

ADV POOE: And this picture was retrieved from, well, the metadata of it shows that this picture was taken on the 8th. That would be the day before the Aeroton bust.

LT-COL SEBOLA: That was the date before the Aeroton bust.

ADV POOE: And then the next picture is on page 21. Just to confirm, Colonel, what is on the left is what was found on Mr Nku's phone?

10 **LT-COL SEBOLA**: This is what was found on Mr Nku's phone, Commissioners.

ADV POOE: And again, this is a screenshot from Transnet.

LT-COL SEBOLA: That is correct, Commissioners.

ADV POOE: And ...[intervenes].

CHAIRPERSON: To the left. On the left.

ADV POOE: Yes.

LT-COL SEBOLA: On the left.

ADV POOE: And on the right is a picture of the truck that was involved in the Aeroton scene.

20 **LT-COL SEBOLA**: Correct, Commissioner.

ADV POOE: And ...[intervenes].

CHAIRPERSON: And it is already in Aeroton.

LT-COL SEBOLA: Yes, this was taken when it was in Aeroton.

ADV KHUMALO SC: Is this on the left? Let us just focus

on the left. The heading says track and trace. I am assuming this is how Transnet tracks this truck from Durban to Johannesburg.

LT-COL SEBOLA: That might be correct, Commissioner.

ADV KHUMALO SC: Because it has the details of the registration number, the time in, time out. And then it has details of where it stops and stuff like that.

LT-COL SEBOLA: Even on the top, Commissioner, is the registration number of the – that one that starts with BEA.

10 **ADV KHUMALO SC:** Yes.

LT-COL SEBOLA: Is the registration number of the container.

ADV KHUMALO SC: Of the container itself.

LT-COL SEBOLA: Correct.

ADV KHUMALO SC: Correct.

ADV POOE: And, Colonel, do you know when this screenshot was taken? Is it the same day as the one that we just looked at on page 20?

20 **LT-COL SEBOLA:** This screenshot was found on Mr Nku's on the 8th before they bust.

ADV POOE: Okay. And then in the presentation, at now on page 22, you also did a tracking exercise. Can you explain what we are seeing there?

LT-COL SEBOLA: This is what was checked. Mr Nku's cell phone, through the cell phone towers, was tracked

along the entry, which indicates that on the same day the truck was – it shows, let me just first say, it shows the movement of Mr Nku's cell phone. And ...[intervenes].

CHAIRPERSON: Is his the yellow? Because there is yellow and blue. Is his the yellow or the blue?

ADV POOE: Chair, it is all him, all the colours, it is just different dates.

CHAIRPERSON: Yes.

ADV POOE: The key is in that little box there, is that
10 correct?

LT-COL SEBOLA: That is correct.

CHAIRPERSON: The key top right, okay. Top left, I am sorry, top left.

ADV POOE: And so does this thing, what does this show? What was Mr Nku doing?

LT-COL SEBOLA: This movement was on the same, some of the movement was on the same date. This tracking company was from Durban, and it also shows that on the same date, Mr Nku was from Durban, either following the
20 truck or, because he was on the same route as the truck.

ADV POOE: So, you are saying that it showed that he was either following the truck or moving alongside it?

LT-COL SEBOLA: That can be the ...[intervenes].

ADV POOE: No, I am asking ...[intervenes].

LT-COL SEBOLA: Following it can be.

ADV POOE: Following it?

LT-COL SEBOLA: Yes.

ADV BALOYI SC: Do we have the movement of the truck itself that corresponds to this at page 22?

LT-COL SEBOLA: I remember the tracking company, sorry, we had it. Even this screenshot, even though does not explain the one on page 21, but that says track and trace.

ADV BALOYI SC: Sorry, so you are saying that page 21 is the movement of the truck?

10 **LT-COL SEBOLA:** But it is not that much explanatory as the one that appears on Mr Nku's cell phone data. But that one I can definitely confirm to say the truck was on the N3 and arrived in Aeroton on the 8th around, if I can still remember, it arrived around 20:00 in the evening on the 8th. But for now, I do not have anything to back that which I am saying, but on the day of the investigation, I tracked the movement, which is not attached in here, Commissioners.

CHAIRPERSON: For this to make sense, Colonel, the yellow on the 7th of July must be coming down from Gauteng
20 to Durban.

LT-COL SEBOLA: The yellow?

CHAIRPERSON: The yellow, yellow.

LT-COL SEBOLA: The yellow, it is the truck.

CHAIRPERSON: No, no, no, I am not talking about the truck. I am talking about Mr Nku's telephone.

LT-COL SEBOLA: Commissioner, I could not ...[intervenes].

CHAIRPERSON: If we say the blue, maroon, and yellow, if we say that is Mr Nku, what I am saying is for this to make sense, then on the yellow, Mr Nku must have been coming down from Gauteng to Durban.

LT-COL SEBOLA: That would be correct.

CHAIRPERSON: The date being the 7th of July.

LT-COL SEBOLA: If we look ...[intervenes].

10 **CHAIRPERSON**: Then the blue must be Mr Nku moving from Durban back to Gauteng.

LT-COL SEBOLA: Correct.

CHAIRPERSON: That is the, the date is the 8th of July there.

LT-COL SEBOLA: It is even shown on the left corner, Commissioner.

CHAIRPERSON: Then the maroon is the date of the bust.

LT-COL SEBOLA: Correct.

CHAIRPERSON: Thank you, thank you.

20 **ADV POOE**: Then, Chair, I am not sure if this is an opportune time to take the tea adjournment, or if we should keep going until half past.

CHAIRPERSON: Let us continue until half past.

ADV POOE: All right. And then, Colonel, if we can then go to paragraph 8 of your statement?

ADV BALOYI SC: Before that, I might have missed the explanation. Page 22, you confirmed to the Chair that this is Mr Nku's movements, the yellow indicates Mr Nku's movements on the 7th.

LT-COL SEBOLA: From the 7th ...[intervenes].

ADV BALOYI SC: From just from Gauteng to KZN.

LT-COL SEBOLA: To KZN.

ADV BALOYI SC: Okay. And then page 23 is the 8th. Okay. So at page 23, the blue is the 8th, him going, does
10 that mean going back from, I suppose, from Durban to Gauteng?

LT-COL SEBOLA: If I look on the top left-hand side, the blue is reflected on top, dated 2021-07-08.

ADV BALOYI SC: And is this when the truck came up?

LT-COL SEBOLA: That is when the truck was coming from Durban to Gauteng.

ADV BALOYI SC: Okay, we know that for a fact? That is when it came up?

LT-COL SEBOLA: That is correct.

20 **ADV BALOYI SC:** Okay. All right, thank you.

ADV KHUMALO SC: It must have stopped for quite some time in the Free State. I am just noting that if you look at the maroons, there is a lot of circling around the Free State on the 9th. So 09-07-2021, if you look at that maroon. Because anything below Vanderbijlpark is the Free State.

And that once you get into Gauteng, that is where you are. But you see there is the three, I do not know what you call them, circles ...[intervenes].

LT-COL SEBOLA: Circles, ja.

ADV KHUMALO SC: In the Free State, and it appears to be on the 9th. So I am assuming there is a truck stop somewhere in the Free State where they spent some time before they got into the Gauteng Province.

LT-COL SEBOLA: On which page are we, Commissioner?

10 **ADV KHUMALO SC:** 22.

LT-COL SEBOLA: 22.

ADV KHUMALO SC: Look at where the blue and the yellow and the red converge. Do you see that?

LT-COL SEBOLA: Yes.

ADV KHUMALO SC: And that is before Vanderbijlpark and slightly before Sasolburg. So it must be the Free State. But it is usually a case of if there is a truck stop there, then maybe the truck stopped for quite some time before it moved into the Gauteng Province.

20 **LT-COL SEBOLA:** Commissioner, sorry, on page 22, is the movement of Nku.

ADV KHUMALO SC: Yes.

LT-COL SEBOLA: Not of the truck.

ADV KHUMALO SC: Yes. No, no, I – ja. So let us focus on Nku's movement. As Chair has said, on the 7th, he

appears to have gone to Durban. On the 8th, he was coming back, and that is the blue circles. And then the red is now the 9th.

LT-COL SEBOLA: Yes.

ADV KHUMALO SC: And you see that there is a lot of movement in that part where red and blue and yellow converge. And then we see later on, if you look at now Aeroton or Johannesburg, there is another, a lot of movement there where you see a lot of red circles next to a
10 lot of yellow circles.

LT-COL SEBOLA: Yes.

ADV KHUMALO SC: But nothing turns on it. It was just a sequence of how they appear to have moved.

ADV POOE: And just to confirm, Colonel, just in regards to when the truck left the harbour, if you go to page 21, is that then the time in for the truck and when it then leaves the harbour? Can you see that Transnet track and trace?

LT-COL SEBOLA: Yes.

ADV POOE: Is that how we know that it left on the 8th, the
20 truck?

LT-COL SEBOLA: Correct.

ADV POOE: Okay. Now you can go to paragraph 8 of your statement.

LT-COL SEBOLA:

“On 2021-07-09, Tumelo Nku...”

...[intervenes].

ADV BALOYI SC: No, sorry, you say time in is when it left the harbour. What does time out mean?

ADV POOE: When the truck...

ADV BALOYI SC: There is a time in and a time out.

ADV POOE: Yes.

ADV BALOYI SC: If we are accounting for time in, we have to account for time out as well to complete our ...[intervenes].

10 **ADV POOE:** Colonel, I was just clarifying that time in would have been when the truck gets to the harbour and time out being when the truck departs from the harbour.

LT-COL SEBOLA: Departing from the harbour. Correct.

ADV POOE: Then you can go to paragraph 8.

LT-COL SEBOLA:

20 “On 2021-07-09, Tumelo Nku sent Samuel Mashaba a location through Telegram. The location happens to be Roodekop, Yellow Jersey Logistics. On the same date, Samuel Mashaba called Warrant Officer Phakula from Albertan SAPS, Phokungwana [?]...”

Sorry, sorry, sorry. He phoned – okay, let me repeat:

“On the same date, Samuel Mashaba called Warrant Officer Phokungwana from

Albertan SAPS, who then, via WhatsApp, gave the contact number of Warrant Officer Magane of Zonkizizwe SAPS to Samuel Mashaba. The same date, then Samuel Mashaba sent Warrant Officer Magane the location of Yellow Jersey that was confirmed by Google Earth.”

Because he sent the pin drop. Then that pin drop happened to be at Yellow Jersey Logistics, Commissioners:

10 “Warrant Officer Magane then called
Warrant Officer Phakula.”

Those are the chats.

ADV POOE: Thanks, Colonel. Then ...[intervenes].

ADV BALOYI SC: I know you will still go to the pictures, but maybe let me just make sure that I am not making a mistake in my assumptions. This Samuel Mashaba that is saved is Samuel Mashaba of the Hawks, and you say it is a suspect in Booyens, this is the same person that was referred to in your evidence area as the Gauteng Traffic
20 person?

LT-COL SEBOLA: Yes.

ADV BALOYI SC: Okay, thank you.

LT-COL SEBOLA: Commissioner.

ADV POOE: And ...[intervenes].

CHAIRPERSON: And Telegram is a social media app

similar to WhatsApp and others similar to that. Correct?

LT-COL SEBOLA: That is correct, Commissioner.

ADV POOE: Then let us go to page 26 of the presentation.

And can you confirm, Colonel, that that was what was retrieved from Telegram, 26 of the presentation?

LT-COL SEBOLA: Yes. It is ...[intervenes].

ADV POOE: Colonel, sometimes your yes is so soft that I am not sure if ...[intervenes].

LT-COL SEBOLA: Yes, yes, yes, Commissioner, sorry.

10 **ADV POOE**: Okay. And there you detail the three messages, right? So the first one is Mr Nku sending to Mr Mashaba the coordinates of Yellow Jersey. Is that correct?

LT-COL SEBOLA: That is correct.

ADV POOE: And then there is also a message that is sent by Mr Nku, and the body of the message says:

“We need to go.”

LT-COL SEBOLA: Yes.

ADV POOE: And then there is a third message that was also retrieved, which is before 06:30. That is the last one.

20 Can you see that?

LT-COL SEBOLA: Yes.

ADV POOE: And this happens on the 8th, the day before.

LT-COL SEBOLA: The day before.

ADV POOE: At 22, well, between 22:25.

LT-COL SEBOLA: That is correct.

ADV POOE: And 22:28.

LT-COL SEBOLA: 22, ja, 28.

ADV POOE: That is the last message.

LT-COL SEBOLA: That is correct.

ADV POOE: And ...[intervenes].

CHAIRPERSON: And why do we not have the communications themselves?

LT-COL SEBOLA: Communications?

CHAIRPERSON: Why do we have somewhat of a narrative
10 about them? Why do we not have the communications themselves?

LT-COL SEBOLA: This is what was ...[intervenes].

CHAIRPERSON: From Telegram itself, in the same way you have been showing us what comes from Threema and also what comes from WhatsApp. Here we are having a narration or narrative or explanation. Why do we not have the chats or communications themselves on Telegram?

LT-COL SEBOLA: I do not want to commit myself, but my understanding is, like Threema, also my understanding is
20 this Telegram is sometimes encrypted. But the line of communication ...[intervenes].

CHAIRPERSON: Ms Pooe, am I making sense, or is it I who is not understanding this? It seems to me to be an explanation or narration and not the communications themselves.

ADV POOE: Yes.

CHAIRPERSON: That is what I am trying to communicate to the Colonel. The Colonel does not seem to be understanding me.

ADV POOE: Colonel, if we can go to page 8 of the presentation? Remember, you told us that for Threema you would see these kind of screenshots.

LT-COL SEBOLA: Correct.

ADV POOE: So that is from the app. And then from
10 WhatsApp, because we are familiar with it, it is the ones, the two on that page.

LT-COL SEBOLA: Correct.

ADV POOE: Now, for the extraction from Telegram, what we have is what looks like a narrative of this person sent this at this time and what the body of the message sent and not the actual extraction of the picture or depiction of the actual application. Chair's asking why this is.

LT-COL SEBOLA: I cannot explain, Commissioners.

ADV POOE: And then, Colonel, you on the on page 27, we
20 see there the calls that Chief Mashaba makes to Warrant Officer Phokungwana.

LT-COL SEBOLA: Yes.

ADV POOE: And then the call that has been made to Warrant Officer Magane.

LT-COL SEBOLA: Correct.

ADV POOE: So that is just a representation of what you said in paragraph 8.

LT-COL SEBOLA: Yes.

ADV POOE: Okay. Just to clarify ...[intervenes].

ADV BALOYI SC: You say it is calls made by?

ADV POOE: Calls made by Mr Mashaba.

ADV BALOYI SC: What does it mean that the first part of it shows the name of Phokungwana and then Mashaba follows after that and then Magane?

10 **ADV POOE:** If you look at the arrow, if you see the second one, the one that says Mashaba, Samuel Mashaba, you see the arrow goes up to Phokungwana to depict the call. Is that correct, Colonel?

LT-COL SEBOLA: It shows, in fact, what happened here. Mashaba phoned Phokungwana.

ADV BALOYI SC: And you say we see that on this depiction by what? By the arrow facing up from Mashaba it goes up to Phokungwana? Is that what tells us that Mashaba called Phokungwana on the day?

20 **LT-COL SEBOLA:** Then Mashaba, Phokungwana is on top.

ADV BALOYI SC: Yes.

LT-COL SEBOLA: And in the middle is Mashaba.

ADV BALOYI SC: Yes.

LT-COL SEBOLA: At the bottom is Magane.

ADV BALOYI SC: Yes.

ADV POOE: Yes. So we just need confirmation that it is Mashaba who calls Phokungwana. How do we see that? Is it the arrow?

LT-COL SEBOLA: There is this screenshot. There is this, the one in blue, before this.

ADV POOE: Yes.

LT-COL SEBOLA: If you look on top, it shows this one of Alberton. The first one, I think, is for Phokungwana. Let me check.

10 **CHAIRPERSON:** I do not see any names that I recognise there. You are referring to the one right at the top. That is blue and light blue.

LT-COL SEBOLA: If we can ...[intervenes].

CHAIRPERSON: You are referring to that.

LT-COL SEBOLA: Okay, Commissioner, let me just ...[intervenes].

CHAIRPERSON: I do not see any names that I recognise.

LT-COL SEBOLA: The first one on this arrow, on this one ...[intervenes].

20 **CHAIRPERSON:** Yes, yes, bottom.

LT-COL SEBOLA: Let us look at the number. That will end with 794.

CHAIRPERSON: Yes, I see that. Just above the ...[intervenes].

LT-COL SEBOLA: On top of that screen, there is the 714

number, 2794.

ADV POOE: So on that table, Commissioners, it indicates the two participants of the chat.

CHAIRPERSON: Oh.

ADV POOE: It starts with a number.

CHAIRPERSON: Now I see.

ADV POOE: Yes. And if you look, the first number which ends with 794, if you look at the diagram there, it shows you that the number of, the RICAd number of Warrant
10 Officer Phokungwana is the one that ends with 794. You see that?

Similarly, the second participant in that conversation, the number ends with 598. And if you look at the picture again, you will see that it is for Mr Mashaba, Chief Mashaba. And then the other number is 347, which is not in this communication. That is not in the blue table. The blue table is only the communication between Mashaba and Phokungwana. Is that correct, Colonel?

LT-COL SEBOLA: The blue one?

20 **ADV POOE**: Yes.

LT-COL SEBOLA: Is Mashaba and ...[intervenes].

ADV POOE: And Phokungwana.

LT-COL SEBOLA: Yes, it is Mashaba and Phokungwana. But it can be corrected because it was not mine who drafted this. But the issue is Mashaba called Phokungwana, and

Phokungwana sent the WhatsApp to Mashaba. Then Mashaba started communicating with...

ADV POOE: Magane.

LT-COL SEBOLA: Magane. If we can also – I do not know as to whether maybe I will be ...[intervenes].

CHAIRPERSON: Can I just try to, in fact, I would like to have your confirmation. Does this suggest that Chief Mashaba called Phokungwana? That is the first red going up towards Phokungwana. Am I correct?

10 **LT-COL SEBOLA**: That is correct.

CHAIRPERSON: And then there is the blue far right going down. So Phokungwana called Magane. Correct?

LT-COL SEBOLA: Let me just say it can be correct, Commissioners.

CHAIRPERSON: You are supposed to be interpreting this for us. I am following the arrow. I am following ...[intervenes].

LT-COL SEBOLA: Yes, I am also following, but I cannot commit much because I did not – but what I know on the
20 ...[intervenes].

CHAIRPERSON: If we do a correlation with your confirmation with regards to the first red going up, then it is only logical that the blue coming from the line where Phokungwana is must mean that Phokungwana called Magane.

LT-COL SEBOLA: Correct.

CHAIRPERSON: And then Magane called Phokungwana. That is the long red going up from the line where Magane is. There is a long red going all the way up to where Phokungwana is. Correct? So Magane also called Phokungwana.

LT-COL SEBOLA: It is reflected ...[intervenes].

CHAIRPERSON: You see, I seem to understand your graph or whatever this thing is. It is not a graph. Your figure, I
10 seem to understand it better than you do.

LT-COL SEBOLA: Correct. You are correct, Commissioner.

ADV POOE: And then ...[intervenes].

ADV BALOYI SC: I am anxious that we get a proper explanation of these graphics. The Colonel has just agreed with the Chairperson that Magane speaks to Phokungwana, calls Phokungwana, but paragraph 8 of the statement does not say that. So I am just anxious that we end with evidence that is questioned on the basis that it is not
20 reliable because of the witness's uncertainty. Is there a reason that we cannot get a proper explanation from the analyst? What ...[intervenes].

ADV POOE: There is no reason that we cannot get the analyst, and we will get the analyst.

CHAIRPERSON: Ja, and our focus earlier was on the one

aspect we were dealing with then. So the analyst must just cover everything because the witness testifying on these things does not seem to understand them perfectly himself. We are trying to make sense of what we see.

ADV POOE: Yes, Chair. No, we appreciate that. For purposes of proceeding, Chair, my proposal is that we focus largely on the statement and complete and then we call or obtain a comprehensive statement from the analyst. That way ...[intervenes].

10 **CHAIRPERSON**: Yes, yes.

ADV POOE: We can avoid confusion.

CHAIRPERSON: Yes. So basically they must explain everything, everything.

ADV POOE: And, Chair, we went beyond 11:30. Might this be an opportune time to take the tea adjournment?

CHAIRPERSON: Let us adjourn and resume at 12 o'clock.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Ms Pooe.

20 **ADV POOE**: Chair, my proposal is to allow the witness to read the rest of the supplementary statement.

CHAIRPERSON: Yes.

ADV POOE: There will be one or two questions after that and then for a comprehensive explanation of the presentation, we will endeavour to call the analyst to

provide that.

CHAIRPERSON: Yes, yes, that makes perfect sense.

ADV POOE: But there is one other picture I just want the Colonel to deal with from the presentation. Colonel, if we can go to paragraph 9.

LT-COL SEBOLA: [Indistinct]... [microphone off].

ADV POOE: Oh, my apologies, Colonel, can you switch on your mics and then we can start again.

LT-COL SEBOLA: Sorry, sorry, sorry.

10 **ADV POOE**: Thank you.

LT-COL SEBOLA: Okay, thanks. Sorry.

“On 2021-07-07 there were images served in the gallery of Tumelo Nku of three black bags which looked similar to the one found in the black bakkie at Aeroton. On 2021-07-07 Tumelo Nku was in Durban. The cellphone towers placed him that he was in Durban and the container was still in Durban.”

20 **ADV POOE**: And then just to give a visual representation of that, Commissioners, if we can go to page 30 of the presentation. Colonel, just confirm that the first three pictures were those seen or retrieved from Mr Nku’s phone.

LT-COL SEBOLA: That is correct.

ADV POOE: And they were dated the 7th of July 2021.

LT-COL SEBOLA: Correct.

ADV POOE: And that would have been two days before they arrived at Aeroton.

LT-COL SEBOLA: That is correct.

ADV POOE: And the picture on the far right is the packages that were retrieved in Aeroton and loaded on to Warrant Officer Magane's bakkie.

LT-COL SEBOLA: That is correct.

ADV POOE: And your suspicion is that ...[intervenes].

10 **ADV BALOYI SC**: [Indistinct]... [microphone off].

ADV POOE: Oh, my apologies. Can you please explain what it is that we are seeing?

LT-COL SEBOLA: The first three images that were found on Tumelo Nku's cellphone and the images that are on this black bakkie are the same, Commissioners.

CHAIRPERSON: Can you state that, are you able to state that categorically?

LT-COL SEBOLA: Not the same, there are similarities in terms of packaging, Commissioners.

20 **ADV POOE**: And if you look at the pictures themselves, can you tell with the first three pictures where they are taken from, just judging by the, I guess, the container they are in.

LT-COL SEBOLA: Commissioners, when I was looking at, these three pictures, to me, they seem to have been taken inside the container.

ADV BALOYI SC: You say this was on the 7th, the download itself? Or what you found in the phone, it was on what date?

LT-COL SEBOLA: On the 7th.

ADV BALOYI SC: And that was before the container got to Gauteng.

LT-COL SEBOLA: That was before the container got to Gauteng.

ADV BALOYI SC: Thank you.

10 **ADV POOE:** Then ...[intervenes].

LT-COL SEBOLA: Sorry, Commissioner, they indicated they were saved on the 7th.

ADV BALOYI SC: Yes, thank you. That is what I was ...[indistinct] [intervenes].

LT-COL SEBOLA: Okay, thank you.

ADV BALOYI SC: Thank you.

ADV POOE: Thank you. And from the phone, did you establish whether Mr Nku took the phone with that device or was it pictures that were sent to him? Was there anything
20 in the metadata that explained where the pictures came from?

LT-COL SEBOLA: These were not sent. It seems even if they were sent, it is either they were sent and saved in the gallery, because this was found in the gallery of the phone, not as sent.

ADV POOE: Oh, so they were found in the gallery, okay.

LT-COL SEBOLA: Correct.

ADV POOE: Thank you, Colonel. Then we can go back to your statement.

ADV BALOYI SC: Is it the same for the van with those plastic bags?

LT-COL SEBOLA: There are similarities between these pictures ...[intervenes].

ADV BALOYI SC: Okay.

10 **LT-COL SEBOLA**: And the one in the black bakkie.

ADV BALOYI SC: Okay, no, I understand. Thank you.

LT-COL SEBOLA: In terms of packaging and wrapping.

ADV BALOYI SC: Thank you.

ADV POOE: Commissioners, I do not think the picture here is the best. Perhaps if we can check the Steyn exhibit bundle. The pictures start at page 4. Sorry, Colonel, did you find it?

LT-COL SEBOLA: Page 4.

20 **ADV POOE**: Yes. The best picture of the bags is at page 4 and a close-up is at page 5.

LT-COL SEBOLA: Yes.

ADV POOE: I think at the corner there, you can see that the duct tape that was used has particular markings. Is that the similarity you are referring to? Or what is the similarity that you say exists between the two pictures?

LT-COL SEBOLA: I am referring to the same, to say there are similarities in terms of wrapping.

ADV POOE: Okay.

ADV BALOYI SC: Let us also confirm that what is the picture on page 4, where is it taken, page 4 of the Steyn bundle, if you would just explain.

LT-COL SEBOLA: These pictures reflect the one at Aeroton.

ADV BALOYI SC: Okay.

10 **LT-COL SEBOLA**: The one that was in the exhibit.

ADV BALOYI SC: Okay, thank you.

ADV POOE: Thank you, Colonel. If you can then return to your statement from paragraph 10.

LT-COL SEBOLA: -:

“On 2021-07-08, the truck was released from the port of Durban to Gauteng, the same day Tumelo Nku travelled to Gauteng. This is a clear indication that Tumelo Nku was monitoring the truck.”

20 **ADV POOE**: Colonel, you can continue. We have already dealt with these aspects earlier.

LT-COL SEBOLA: -:

“Analysis of the location data associated with Tumelo Nku's cellular telephone indicated that on 2021-05-21

to 2021-05-22, the device was in the same vicinity in Durban. The date corresponds with the cellular telephone communication in which requests were made of the photograph and the container. The communication attributed to an individual identified as Alpha.”

12:

10 “Further analysis of the extracted data revealed that on 2021-05-25, a screenshot was found in which the individual identified as Alpha requested Tumelo Nku to pick him up and analysis of cellular telephone record and associated cellular tower data for Tumelo Nku's device indicated that on the same day, the device was located in the vicinity of Bedfordville.”

20 **ADV POOE**: Yes, you can continue.

LT-COL SEBOLA: -:

“Analysis of the cellular data records revealed communication and contact information indicated that Tumelo Nku and Samuel Mashaba were acquainted

with one another. The record reflected interactions between the two individuals dated back to 2019. I have carefully reviewed IPID report concerning the investigation conducted against myself and my colleagues. Upon the consideration of the report, it appears that the recommendations therein were based primarily on complaints by Mashaba, Magane, and Phakula. Furthermore, the allegations and complaints appear to have been supported by statements of information provided by Lieutenant Colonel Maluleke, Sergeant Phakula, and Sergeant Sape. The recommendations do not appear to have adequately considered the objective evidence obtained during the investigations, including the digital forensic investigation and the cellular telephone data records. It is my view that a proper assessment of all available evidence should have been undertaken before any conclusion or

recommendations are made.”

ADV POOE: Colonel, before you move on to deal with the next report, at paragraph 16, you indicate that there had been adequate consideration of objective evidence obtained during the investigation. Did you provide the docket to IPID?

LT-COL SEBOLA: As I indicated the last time, I indicated that the only communication I got from IPID it was at the initial stage of my investigation to the matter. From there
10 on, I have never received any communication from IPID up until the date I was made to submit a warning statement.

ADV POOE: Perhaps a more direct question, did IPID request the docket from you?

LT-COL SEBOLA: The caller was requesting the docket, yes.

ADV POOE: And your response was?

LT-COL SEBOLA: Can that communication be on emails or be directed to my office, not me.

ADV POOE: According to the IPID investigator, they did
20 send a request to your supervisors and they refused to provide the docket.

LT-COL SEBOLA: It is strange, Commissioners. That will be strange to me because I have never got that communication.

ADV POOE: My apologies, Colonel, you said?

LT-COL SEBOLA: I said, in my response to that, it will be strange because I was never told. The only time I heard of IPID was when I was submitting the warning statement.

ADV POOE: So you are saying that it is strange that they would not have been provided with the docket?

LT-COL SEBOLA: Strange that I was ...[intervenes].

ADV POOE: Or what is strange?

LT-COL SEBOLA: It is strange that my supervisors that you are mentioning never communicated such to me.

10 **ADV POOE**: All right.

CHAIRPERSON: And if my recollection is correct, I think Director Maphosho? Yes, is it Maphosho? Yes, Director Maphosho says that she contacted you directly, that she asked for the docket. You said that she must come over and an arrangement was made for her to meet you to pick up the docket. Am I correct in my recollection, Ms Pooe?

ADV POOE: Yes, that is ...[intervenes].

CHAIRPERSON: Yes. So that is, that differs from what you have just said now. And when she got there, you were not
20 there. That is what she says.

LT-COL SEBOLA: I cannot remember her, Commissioner.

ADV POOE: Maybe, Chair, just to read what she says from the statement.

CHAIRPERSON: Please, please, please.

ADV POOE: She says:

“On 21 October 2021 I made contact with the investigating Officer of DPCI, Captain Sebola, requesting the copy of the docket. He said we must come to his office at Germiston on the 22nd to collect it. My colleague and I went to Germiston as agreed, but to our surprise on arrival Captain Sebola was not in the office. He was contacted on his cellphone and he indicated that he was not going to give IPID a copy of the docket. The matter was escalated to Brigadier Sekgobela, Captain Sebola's Commander, and she said she will talk to Captain Sebola and she will give us feedback. A follow-up was made with Brigadier Sekgobela on her cellphone, but was always on voicemail, and she never returned the call.”

CHAIRPERSON: You see, that differs altogether from what you are saying.

LT-COL SEBOLA: I received only one call requesting the docket. I gave the direction, but on the appointment I cannot remember making any appointment.

CHAIRPERSON: There is a difference between not remembering and not ever having made the arrangement. Which is which?

LT-COL SEBOLA: I have never made an arrangement with them.

CHAIRPERSON: All right.

ADV BALOYI SC: How does it normally work, Colonel, and my question assumes that you have had previous, before this, you had had previous engagements with IPID about
10 other cases. When they do their investigation, how does it work, their engagement with the SAPS for purposes of getting information? Do they ask for a docket and do they ask for it from the investigating officer? What are those processes, if you know?

LT-COL SEBOLA: In this instance, I think what they are saying that that that is the correct procedure, that they communicate with the office, the office referring the, the office of the Provisional Commander, which is, in this case, Brigadier Sekgobela. Or they should have communicated
20 with the Unit Commander, which in that case was Colonel Zondi who will then call me to the office to say, come with this docket, there is something that is needed, because if that cannot happen that I will share information with each and every one that comes to the office, but then they should have, at least communication should have been done, not

telephonically.

They should have written to the office that this is the matter we are investigating, we understand your office is investigating the same. We have got a complaint on the matter, can we meet? That is what was supposed to happen. But I was never informed that there is a letter or communication of that.

ADV BALOYI SC: Before this Booyesen's case, have you personally been involved with this process of IPID, where
10 you were the investigating officer and they required information?

LT-COL SEBOLA: Yes.

ADV BALOYI SC: And how did that process go? To get access to your information, how did it play out?

LT-COL SEBOLA: Access to information must just follow through the correct procedure, not to the IO direct.

ADV BALOYI SC: So in the previous case that you have done, is that what happened?

LT-COL SEBOLA: It happens like that way.

20 **ADV BALOYI SC:** Okay, they communicated formally.

LT-COL SEBOLA: No cellphone contact, Commissioners.

ADV BALOYI SC: Yes.

LT-COL SEBOLA: There should be a paper trail to say there was this communication.

ADV BALOYI SC: Yes.

LT-COL SEBOLA: Because we sometimes as investigating officers we get strange calls that seek information in our dockets.

ADV BALOYI SC: Okay, thank you.

ADV POOE: Just to say, Colonel, IPID did send formal communication. Ms Maphosho indicated that:

10 “On the 28th an email was sent to
General Kadwa, seeking his
intervention, and a meeting was
arranged between IPID and DPCI for
the 5th of November 2011. And on the
4th of November, at 15h00, the Staff
Officer of General Kadwa called and
said the meeting was cancelled due to
unavailability of General Kadwa and
Legal Services, however, there was no
other date provided. IPID also sought
intervention from General Lebeya and
requested assistance there. A letter
20 was drafted on the 24th of November.
General Lebeya did not assist with the
request. Instead, he indicated that
IPID must investigate without copies of
the docket.”

So they did follow procedure in trying to obtain

copies of the docket, but ultimately did not succeed.

LT-COL SEBOLA: That is correct.

ADV POOE: And do you have any observations why it would be that DPCI, at all its ranks, refused to assist IPID?

LT-COL SEBOLA: I cannot respond to General Kadwa for not adhering to the request and also for General Lebeya, for not, but I think the direction to General Lebeya was for IPID to investigate, of which I do not know how they communicated, Commissioners. So I cannot comment on
10 ...[incomplete].

ADV POOE: And so you are saying that neither General, Brigadier Sekgobela or General Kadwa, or even General Lebeya at any point talked to you about IPID's communication?

LT-COL SEBOLA: Commissioners, the only time I got a call from General Lebeya was when I was in Limpopo to sign the letter for misconduct, nothing else.

ADV POOE: The letter for misconduct related to this investigation?

20 **LT-COL SEBOLA**: To this investigation.

ADV POOE: Oh. So that would have been at the point that IPID had made the recommendation?

LT-COL SEBOLA: That is maybe correct.

ADV POOE: Maybe correct?

LT-COL SEBOLA: I do not know what made them come to

that decision, Commissioners, but indeed there is a communication between them and the office. Maybe they were aggrieved by the outcome of their meetings with my bosses, then they ended up reaching that conclusion.

ADV POOE: All right. You can continue with the statement. Let us deal with what Major General Kadwa had to say, paragraph 18.

LT-COL SEBOLA: -:

10 “I have also reviewed the findings of
Major General Kadwa. According to his
findings, he was unable to identify any
evidence that would warrant the
findings of misconduct against any
DPCI members implicated in the IPID
report. The findings indicate, after the
consideration of the evidence
available, there was no evidentiary
basis to support allegations of
misconduct against implicated
20 members. These findings should be
considered alongside all other
evidence and reports relevant to the
matter.”

ADV POOE: Now, if you go to Major General Gerber’s report, let us go to the exhibit file. The report itself starts

at page 81. Have you found it?

LT-COL SEBOLA: Yes, Commissioner.

ADV POOE: You will see there that General Gerber, General Gerber found, oh, my apologies. If you can go to page 106. That is where the findings are. Are you there?

LT-COL SEBOLA: Yes, Commissioners.

ADV POOE: So you will see the first finding relates to the fact that he or she found no evidence indicating wrongdoing on the part of the DPCI members, including yourself.

10 **LT-COL SEBOLA:** Correct.

ADV POOE: And the finding is also that you acted *bona fide* within the scope of your mandate of the DPCI. However, she goes on to say that:

“There were fundamental administrative errors made by the investigators assigned to the team and highlighted ...” [intervenes]

LT-COL SEBOLA: Sorry, which paragraph is that?

ADV POOE: It is just after the list of names. Can you see
20 that?

LT-COL SEBOLA: After?

ADV POOE: After the list of names, so ...[intervenes].

LT-COL SEBOLA: Okay, yes.

ADV POOE: You, Lieutenant Colonel Sebola, and then it says ...[intervenes].

LT-COL SEBOLA: Yes, okay.

ADV POOE: In any wrongdoing. So, the sentence starts with:

“I could find no evidence implicating
any of the following members ...”

List the members.

“... in any wrongdoing.”

It goes on to say:

10 “On the contrary, they acted *bona fide*
within the scope and mandate of the
DPCI. There were fundamental
administrative errors made by the
investigators assigned to the team, and
I highlight this, although they have no
bearing on the IPID recommendations.”

You see that?

LT-COL SEBOLA: Yes.

ADV POOE: And there, she lists seven fundamental errors.

LT-COL SEBOLA: Yes.

20 **ADV POOE:** And in your statement, when you deal with
this report, you do not deal with these, so, can we have a
look at them?

LT-COL SEBOLA: Yes, I am looking at them.

ADV POOE: Now, they note there that there were errors in
relation to serial numbers on the evidence bags. Did you

witness or see any of this?

LT-COL SEBOLA: No.

ADV POOE: Were you told of any of this, the administrative errors?

LT-COL SEBOLA: No.

ADV POOE: It goes on to say:

“Statement of Captain Nortje and
Warrant Officer Morris, who performed
the seizure together, differs, but was
10 rectified and found to be an
administrative error.”

So, she notes there that the two officers that were
in charge of the counting, their statements initially differed.

LT-COL SEBOLA: Yes, I still remember. I cannot
remember that there was a statement that was rectified and
sent to the docket by Captain Nortje.

ADV POOE: Sent to who?

LT-COL SEBOLA: To me.

ADV POOE: To you.

20 **LT-COL SEBOLA:** That was with regard to, but at that
time, if I still remember, it was with regard to the last bricks
that was alleged to have been left out, but not with regard
to the packaging. He was making an additional statement
to say, this thing was also left out. Then it was sent
together with those, it was sent to where those, the first

package was sent.

ADV POOE: No, it appears you will see there that the error relating to the one brick that was recovered later is dealt with as point 4.

LT-COL SEBOLA: Yes. Ja, I can see it.

ADV POOE: So this appears ...[intervenes].

LT-COL SEBOLA: But other than that ...[intervenes].

ADV POOE: To have been a different mistake.

LT-COL SEBOLA: Commissioners, other than that, I was
10 never informed of any other error. This is the only one that I know.

ADV POOE: All right. And then you will see the third bullet talks to number of evidence collected. Statements indicate, 700. FSL received, 715. Several witness statements also confirm, 715. Can you see that?

LT-COL SEBOLA: Yes.

ADV POOE: And we heard testimony, and I think we did the numbers as well, there was a difference between what the officers on the scene recorded as well as in the SAP13
20 register. Those, the numbers got up to 700, but it was at the lab where they said 715.

LT-COL SEBOLA: Correct. I am aware of that.

ADV POOE: You are aware of that error?

LT-COL SEBOLA: Yes.

ADV POOE: And then there is the one brick that was

recovered by LCRC and handed over to DPCI.

LT-COL SEBOLA: That is one, that is right.

ADV POOE: And the criticism there is that it indicates members did not fully explore and receive all exhibits. It is categorized as a human error in her view.

LT-COL SEBOLA: Yes, yes.

ADV POOE: And were you aware of this error?

LT-COL SEBOLA: Yes, I am aware of those errors.

ADV POOE: And when did you become aware?

10 **LT-COL SEBOLA**: I cannot recall, but what I know, when they were taking the exhibit there, even if a forensic bag can have, that is what Colonel, Captain Nortje told me, that they had to put another bag, or to put the first forensic bag in the other one. That one I was aware.

ADV POOE: I think you are talking about a different error. There where they put the bag in another bag was when FSL refused to take the bags because some of the evidence bags were damaged.

LT-COL SEBOLA: Were damaged, that is what I know.

20 **ADV POOE**: This point refers to the one brick that was recovered by LCRC. Do you know what happened with that one brick?

LT-COL SEBOLA: I know ...[intervenes].

ADV POOE: How it was missed?

LT-COL SEBOLA: I know when Captain Nortje said he was

called to come and collect that brick and he sent it to FSL.

ADV POOE: I am asking if you know how that happened.

LT-COL SEBOLA: I think that can be contained in Captain Nortje's statement, Commissioners.

ADV POOE: Okay, and when Captain Nortje informed you of this, you did not ask how it happened, why exhibits were missed?

LT-COL SEBOLA: The only thing that I can remember is that it was left in one of those bags. How ...[incomplete].

10 **ADV POOE:** When you say one of those bags, what bags?

LT-COL SEBOLA: The bricks were taken out of the black sports bags.

ADV POOE: Yes.

LT-COL SEBOLA: Then the indication, even though I am speaking on what I was told by Captain Nortje and what should be, I think it should be covered by his own statement because he submitted the statement of sending late the other exhibit.

20 **ADV POOE:** I am not, Colonel, I am not sure I understand, but I hope the Commissioners do. I will move past that and go to the next issue that Gerber identified, and that was the premature arrest of the police officers.

“Albeit justified based on the
circumstances at the crime scene if
allowed time to investigate a different

outcome may have been achieved.”

You see that? So one of the criticisms is that there was a premature arrest of the police officers.

LT-COL SEBOLA: As I indicated earlier, Commissioners, premature in terms of, but in terms of dealing in drugs and possession of drugs, but in terms of their purpose of trying to defeat the end of justice, Commissioners, I am still against these findings.

ADV POOE: So you accept ...[intervenes].

10 **LT-COL SEBOLA:** Had it not been for me to say, the main purpose of these members to be there had other motives other than that of assisting the state. If we can go back, if maybe I had to advise General Gerber to say the very same members, they are contravening their own instruction. When it says crime scene management, how the crime scene must be managed, we have got National Instructions that guide us to say this is how we approach a crime scene, which means deviating from that itself I think in General Gerbert’s report he should have noticed that the very same
20 members deviated from National Instruction 1/2024, that of crime scene management.

ADV KHUMALO SC: Colonel, is the issue not that when they were arrested, the section 35 certificate or notice that they had to sign said they are dealing with drugs. Now that is premature because at the point nobody even knew that

these are drugs. They were arrested at a point where all they had done was interfere with the crime scene. But that is not the charge for which they were arrested.

LT-COL SEBOLA: That is correct.

ADV KHUMALO SC: They were arrested for dealing in drugs. Now that is premature because ...[intervenes].

LT-COL SEBOLA: That one ...[intervenes].

ADV KHUMALO SC: On that day nobody could make even a presumption that they are dealing with drugs because
10 they say they were taking the drugs to the police station in Ekurhuleni. So to say they are dealing with drugs is premature if you do not even know where they are taking them. It may be that they were clueless about what the prescripts are, or they deliberately violated the prescripts, but it is a giant leap to say what they did amounted to dealing in drugs.

LT-COL SEBOLA: In that instance, Commissioner, I will concede.

ADV KHUMALO SC: Yes.

20 **LT-COL SEBOLA:** Thank you.

ADV POOE: Colonel, then the next is a lack of follow-up on alibis, thus allowing defence to obtain statements and providing such to the representations to DPP. Can you see that?

LT-COL SEBOLA: Lack of follow-up on alibis.

CHAIRPERSON: Just for context, Ms Pooe, please remind me what the alibis were. I am just thinking, for example, Warrant Officer Magane was there. He was at Aeroton. The bags were on his bakkie. Warrant Officer Phakula was physically there. He was found at the scene. Chief Mashaba was also there at the scene. Just remind me for context what alibis are referred to here.

ADV POOE: Chair ...[intervenes].

CHAIRPERSON: I am not saying there are not any. I have
10 just forgotten the context altogether.

ADV POOE: From the context, my understanding of this criticism relates to calling the supervisors of the various offices at the scene because from the interviews at the scene or the calls made, they were informed that Commanders did not know where these officers were. But subsequently, the statements that were filed by the various officers indicated, at least in the case of Officer Magane and Phakula, that they were aware of the members' operations. So perhaps it is not worded.

20 **CHAIRPERSON:** Oh, then it is probably a wrong use of the term alibis, because I understand it to refer to, I was not there, I was elsewhere.

ADV POOE: Yes, I discern it from the context.

CHAIRPERSON: But what you say makes sense in the context, ja.

ADV POOE: Yes, because if you also ...[intervenes].

CHAIRPERSON: So it is the person who wrote this that used alibi wrongly, it seems.

ADV POOE: General Gerber.

CHAIRPERSON: Yes. Thank you, thank you, Ms Pooe. Please repeat your question.

ADV POOE: Chair, I even forgot what the question was. No, Colonel, I was asking for your comment regarding the lack of following up with the supervisors because it is from
10 the criticism and I mean it is apparent from how the case then proceeded that that delay in talking to the supervisors resulted in the statements coming up much later where those supervisors then said that their members did inform them of this operation. And just to say that it is, this criticism is also shared by the NPA in their report.

ADV BALOYI SC: Is maybe the first question not to ask whether, Colonel Sebola, you know what alibis are referred to here, who are the – did you, do you know who the author of the report is referring, would have been referring to as
20 alibis that should have been followed up?

LT-COL SEBOLA: Commissioners, it is just that maybe I know what alibis are. I know for sure it is Section 36 and 37 of the Amendment Act with regard to certain properties, then one, if found, like if I found somebody in possession of something, he gave me certain information to say yes, I am

in possession of this, I got it from this person. That is the alibi that I can follow. But having some good coming from somewhere, I can even state in this instance I know Lieutenant Colonel Maluleka who is one of the people who wrote this statement, this.

His Commander was Colonel ...[indistinct] I phoned Colonel ...[indistinct] do you know where, because we are from the same division. He is not working narcotics. He is working EPR. So, if his, maybe what he was saying is alibi
 10 to say he was there at the scene, the question is what was his purpose? What did he do at the scene?

ADV BALOYI SC: No, my question ...[intervenes].

LT-COL SEBOLA: Those ...[intervenes].

ADV BALOYI SC: Maybe to go back to my question, Colonel, that so, there is a criticism here that you failed to follow up on alibis. So, my question is, go back to the scene. Who were the alibis here that you should have spoken to that it is said you failed to follow up on? Do you know who they are referring to?

20 **LT-COL SEBOLA:** No.

ADV BALOYI SC: Okay. All right. Ja, I cannot do more than that.

ADV POOE: Okay, that is fine. Maybe let us then deal with the last, well, I think it coincide statements from Commanders but initially indicated telephonically they were

not aware of what their members were doing but later changed their versions, should have been obtained immediately. What is your response to that criticism?

LT-COL SEBOLA: Which paragraph?

ADV POOE: It is the last bullet point.

LT-COL SEBOLA: Statement from Commanders. Commissioners, it is me who called the Station Commander of Zonkizizwe. It is me who sent Warrant Officer, I think it is Mpowane, to obtain the very same statement and to get
10 the job description of Warrant Officer Magane. So, I do not, I cannot understand this bullet point, Commissioners.

ADV POOE: Maybe just to remind you that if we start with Warrant Officer Magane, the statement is, if you can go to page 196 of the exhibit file that has the docket and disciplinary papers. Maybe to start here, what do you recall of your conversation with Warrant Officer Magane's supervisor? What did he say? Did he indicate that he was aware of his whereabouts or not on the phone?

LT-COL SEBOLA: Commissioners, even, after I even
20 communicated with, now I know it is Colonel Chauke, I talked to him personally.

ADV POOE: And what did he say?

LT-COL SEBOLA: He said he does not know the whereabouts of Magane, but Magane is supposed to be in the office because he is performing these duties, which is

CIMAC.

ADV POOE: Yes. So, you see, when on the phone with Colonel, with, I do not know the designation, Lieutenant Colonel Chauke, he informed you that he did not know Warrant Officer Magane's whereabouts. But if you go to his statement at page 196 and if you look at paragraph 3, he says:

10 “On Friday, the 9th of July 2021, around
8:05 in the morning, I received a call
whilst on duty from Warrant Officer
Magane, hereinafter referred to as a
member who is serving under my
command, and told me that he is
following information on drugs. I asked
him where is he following the
information and he replied by saying
that he is in Aeroton with other
members from provincial office. As a
Commander, I was not aware of the
20 operation since the member's duties
are office bound, doing crime
information management analysis
coordination, CIMAC, for the station as
per the attached.”

So what he does confirm is that he was told by

officer Magane that he was following information on drugs.

LT-COL SEBOLA: Commissioners, I did investigation on this matter. I know the communication chats of Warrant Officer Magane in the first place. The only office people that he called, the very same job was never called on that day. So if he is telling, on his statement he is saying he was called by Magane, that I will say was definitely lying because the same, I think the same numbers, the investigation could be done to those to indicate that he
10 never received a call from Magane.

CHAIRPERSON: Who did warrant officer Magane call, because I think he went so far as to say even before he actually got to Yellow Jersey, he called, he called a superior. I do not know, maybe my memory is failing me. He did not just arrive and only call someone when he was already at Aeroton, which is what this paragraph 3 suggests. After having been called by, who was it, after having been called by one of his colleagues, he called a superior. That is what he suggested.

20 **LT-COL SEBOLA:** Commissioner, when we were, certain calls made by Magane, they were made immediately after I informed him about their actions. He called by then one member from our office, which is Captain Gray, but the call could not go through. As I can remember, he tried to call Brigadier Lewele. At that time, Brigadier Lewele was

approaching the scene. The call also could not go through. The only calls that were made on the 9th, that started around 6, it was between him, Pokungwana and Mashaba.

By saying he called these people, I still maintain he would be lying. So this is the alibi that I could not follow, because, yes, at the initial stage, but during the investigation, I did not have anything to obtain from, or to get, except for the Station Commander to see where was his member. I communicated with, I even informed my
 10 superior, who was Brigadier Sekgobela, to say we need to get somebody to obtain the statement of Colonel Chauke. He is stating this way, but seeing his statement this way, it seems, I cannot understand what he was, what he is trying to hide.

CHAIRPERSON: And Pokungwana, which section does he work for? I know it is somewhere here, but ...[intervenes].

LT-COL SEBOLA: They are not working together.

CHAIRPERSON: They are not working together?

LT-COL SEBOLA: Pokungwana is Alberton, that one is
 20 Zonkizizwe.

CHAIRPERSON: Okay, okay. So Magane could not have gotten an instruction from Pokungwana?

LT-COL SEBOLA: No.

CHAIRPERSON: All right, all right.

ADV BALOYI SC: Just my understanding of this criticism,

if you like, it is that you delayed getting written statements, which, and these statements contradict what you were told on the phone. That is really the criticism, as I understand it. It is about the time lapse between your call on the scene, where the Commander said to you, they do not know where their people are, and then in their later statements, now when they do written statements, they say different, they speak differently, they contradict what they told you on the phone.

10 So the criticism is really about between the day of the operation itself, the 9th of July, and the date of the statements, there was a delay, which allowed for people to change what they told you on the phone. So the statement of Chauke, for example, of Magane's superior, is dated the 19th of July. The operation was on the 9th of July, so there is a good 10 days in between, and you are being criticized for failing to take a statement. The writer says immediately, you should have taken the statement immediately. So the criticism is that really. It is not whether it is true or not,
20 what they told you on the phone, or what you say they told you on the phone, and what they said in the statement. It is the passage of time.

 And the suggestion, as I understand it, is had you taken Chauke's statement immediately, after you spoke to him on the phone, then you would not have had that

contradiction, or his changed position, where he now says in writing, he knew where Magane was. Do you have any comment to that why you did not take the statement, why you took the statement only 10 days later?

LT-COL SEBOLA: Commissioner, that criticism, first of all, I can say it is not fair to me. We did not take months to obtain this statement. In the process, when we are dealing with this, there are certain things that we have to give priority. Here I got confirmation from the Station
10 Commander that I believe there should have been no change in what he told me on the 9th, and that he is saying, he is stating on the 19th.

Even if I delayed, Commissioner, I think that does not give him the right to change what he told me, even if I delayed. But the delay is only for 10 days, that is why I am saying this comment to me, based on the volume of work that we had to do on the day in question, it was not fair. It is not a fair criticism, Commissioner.

ADV BALOYI SC: Thank you.

20 **ADV POOE:** And, Colonel, does your answer also then extend to the delays with Warrant Officer Phakula's supervisor?

LT-COL SEBOLA: That will be same.

ADV POOE: And, but you will recall that, I do not know his designation, but Sipungu was at the scene. Apologies,

Colonel Sipungu, who is Warrant Officer Pakula's supervisor.

LT-COL SEBOLA: What I can tell the Commissioner is that I heard, I did not see Colonel Sipungu on the scene, I only heard. Then I even heard from him that he was there at the scene. That is when, if I remember well, we met again on, the arrest was on Friday, we met at Alberton, Booyens police cells when we were obtaining fingerprints and other from the arrested people and the confrontation I had with
10 him.

The second time I met with Sipungu was on Monday, when we were placing the matter on the court roll, when he volunteered to give me the statement, on duty statement as the Commander. That is the two days that I interacted with Sipungu.

ADV KHUMALO SC: Was the issue not also that because he was on leave during the early part of July he should not even have been involved with these things?

LT-COL SEBOLA: I think I testified to that effect to say
20 ...[intervenes].

ADV KHUMALO SC: Because he came back on the 12th of July from leave.

LT-COL SEBOLA: Yes, it was ...[intervenes].

ADV KHUMALO SC: So when these things were happening, he should not have been anywhere there.

LT-COL SEBOLA: He should not have been there. That is why I said his interaction with me with regard to the case and the presence of Phakula there was not supposed to even have happened.

ADV POOE: All right, thank you, Colonel. If we can then move to what the NPA said. You were at paragraph 20.

LT-COL SEBOLA: -:

10 “I have also considered the decision
made taken by the National
Prosecuting Authority in relation to the
matter. Following the representation
submitted by the BTK Attorneys, the
Director of Public Prosecution for
Gauteng Local Division, Advocate JM
Sereko, ruled on 2022-06-23 that the
representations were unsuccessful and
prosecution should proceed.
Subsequently, on 2024-01-29, the
Deputy National Director of Public
20 Prosecution, Advocate RJ De Kock,
considered the matter and decided not
to pursue the prosecution. I further
considered the correspondence from
the Director of Public Prosecution,
Gauteng, Advocate JM Sereko in a

letter dated 2025-02-14 addressed to the Provincial Head of DPCI in Gauteng. Advocate Sereko confirmed that there was, in his view, a *prima facie* case relating to the alleged contravention of Drugs and Drug Trafficking Act. This is a clear indication that there were sufficient grounds for me to believe that the four
10 accused should have been charged in dealing in drugs, alternatively possession of drugs.”

ADV POOE: Thank you. Maybe, oh, my apologies. Are you done with that?

LT-COL SEBOLA: Yes, paragraph 22, I am done.

ADV POOE: If we go, just remind me, when did you stop being involved in the investigation when you moved to Limpopo?

LT-COL SEBOLA: The last time, it was when it was sent
20 for, it was requested to the DPP. Then I was transferred to West Rand. From West Rand, I went to Limpopo.

ADV POOE: When was it when you were transferred to West Rand?

LT-COL SEBOLA: It was around 2022.

ADV POOE: All right. So ...[intervenes].

LT-COL SEBOLA: It was around 2022 early, but towards the end, I left for Limpopo.

ADV BALOYI SC: So in your earlier statement, you said in November 2022, you were promoted to Limpopo.

LT-COL SEBOLA: Yes.

ADV BALOYI SC: Does it sound right?

LT-COL SEBOLA: In late, ja.

ADV POOE: Colonel, if you look at the reasons, so, just to recall the history, initially the matter was going to proceed
10 and then the prosecutor decided not to proceed with the prosecution. This was in 2022. Recall that?

LT-COL SEBOLA: Yes.

ADV POOE: And this was a decision taken by Advocate De Kock.

LT-COL SEBOLA: In 2022?

ADV POOE: Yes, in 2022. No, my apologies, 2024. Maybe let us just go to page 1 of the exhibit file with Booyens and Khan disciplinary.

LT-COL SEBOLA: Page?

20 **ADV POOE:** Page 1. You will see there it was a response to General Kadwa providing reasons why the NPA had decided not to prosecute.

LT-COL SEBOLA: Yes, that one I have seen.

ADV POOE: Yes. And they deal with the reasons at paragraph 6, so, if you just go to page 2.

LT-COL SEBOLA: Yes.

ADV POOE: You will see there that the prosecutor lists a number of reasons why they decided not to prosecute and a lot of them relate to this issue relating to supervisor's knowledge. So, if you look at the first one at 6.1 there was a statement from General Khan stating that he contacted Warrant Officer Phakula's supervisor, Colonel Sipungu who informed him that he did not know that Phakula was involved in the operation and it materially contradicts the
10 statement of Detective Sipungu who states that Phakula did inform him of the operation.

LT-COL SEBOLA: Yes, I am seeing that.

ADV POOE: Yes. Do you want to comment on this criticism, or you still maintain that it was because, I think it is ...[intervenes].

LT-COL SEBOLA: Commissioners, if I had to ...[intervenes].

ADV POOE: Commissioner Khumalo with the assist regarding Colonel Sipungu's role. So, the prosecutor is
20 essentially saying that there are material contradictions in the statements contained in the docket. It was one of the reasons.

LT-COL SEBOLA: That is one of the reasons?

ADV POOE: Yes. Okay, the second relates to again that if you look, consider Warrant Officer Phakula's role in

particular that he was invited by Warrant Officer Magane to assist and he only arrived at the scene after the drugs were loaded onto the truck.

LT-COL SEBOLA: I could see that reason.

ADV POOE: Yes, so that, essentially that he was not involved in that part, yet he is equally charged with the same offence.

LT-COL SEBOLA: I do not know how to comment on this reasoning, Commissioners, because ...[intervenes].

10 **ADV POOE:** Okay, you do not agree with the reasoning?

LT-COL SEBOLA: I do not agree with it, because it seems they were checking for what. If I will have to put it on my own way ...[intervenes].

ADV POOE: Yes.

LT-COL SEBOLA: Those who are deciding on this case they were only looking at the best reason that they can give or to convince me why we are not proceeding with your case. This is me sitting here reading these reports. They were not dealing with all these material facts that are within
20 the dockets. We have got other things that they have looked into. I do not even get clarity why they were not overlooked.

ADV POOE: So ...[intervenes].

LT-COL SEBOLA: But to me the reasonings are not fair.

ADV POOE: So your general response, we do not need to

go through all the reasons, your general response to the criticism is that you think there are critical things that they overlooked.

LT-COL SEBOLA: That is correct.

ADV POOE: And that the criticism is unfair.

LT-COL SEBOLA: Very unfair.

ADV POOE: Then we can go to paragraph 23 of your statement.

LT-COL SEBOLA: -:

10 “I was concerned by the contact of certain senior police officers and the role they played in the crime scene. Based on the information that I have reviewed, certain actions and decisions taken at the scene raise questions that, in my view, warrant further scrutiny and further investigation.

20 The circumstances surrounding their involvement create an appearance of possible improper motives or interests. However, I acknowledge that any determination in this regard should be based on thorough assessment of all available evidence and findings of the appropriate investigative authorities. It

is also noteworthy that certain senior officers sought to involve themselves in operational matters relating to the investigation. In my experience, the extent of their involvement in these operational activities was unusual and raised concerns in my mind regarding the nature and purpose of their participation. As a result, their level of involvement created doubts and prompted questions as to whether their actions were entirely consistent with the expected role and responsibilities.”

CHAIRPERSON: Who are you referring to specifically?

LT-COL SEBOLA: Commissioners, you can be aware that I was confronted with a certain statement, that of General Khan, and of which, when I was on my own going through the docket, I asked myself, does this man know how this scene could be ...[indistinct] because had he approached this scene the way it was supposed to be, we were not going to be confronted with this level of questioning, Commissioners, because that should have been resolved right away on the scene. But based on their interferences and other things, what was supposed to be a good case has been lost. That is my view, Commissioners.

ADV POOE: Just to read ...[intervenes].

LT-COL SEBOLA: And then, Commissioner ...[intervenes].

ADV BALOYI SC: No one senior ...[intervenes].

LT-COL SEBOLA: Also ...[intervenes].

ADV BALOYI SC: Were no one senior official that you have mentioned and that we know was on the scene, General Khan. Who else, because you speak in the plural. Who are the senior officials?

LT-COL SEBOLA: I am aware that General Kadwa was
10 present on the scene. I am aware that General Lekalakala was on the scene. But one can ask what role were they playing, but except for that of General Kadwa to say I was send ...[incomplete].

ADV BALOYI SC: Yes, Colonel.

LT-COL SEBOLA: And then also to the fact that I got instruction, because I am investigating the matter, then I am referred to obtain certain statements from the accused person, more in particular the one of Phakula.

ADV POOE: Just for clarity, Colonel, that instruction was
20 from General Kadwa?

LT-COL SEBOLA: I am sent by General Kadwa who is informed by General Khan go and obtain the statement of Phakula in prison. Then I interviewed Phakula. Phakula came up with certain allegations also. Then I related the same allegation to the person who sent me to prison.

ADV BALOYI SC: Okay. You ...[intervenes].

LT-COL SEBOLA: So I am saying, based on, sorry, Commissioner, I am listening.

ADV BALOYI SC: No, I was going to say, you have given us three names of senior officials and then you have now given us one instance that you consider or consider to be interference where you get instructions from Kadwa, from General Kadwa, who is giving instructions obtained from General Khan to go and speak with, I think it is Warrant
10 Officer Phakula, if I am not mistaken. What other interference, instances of interference are you referring to?

LT-COL SEBOLA: Let me just refrain and say specifically I am dealing with this one, not to mention any other thing that I still have to, I cannot, but I understand, or I understand what was happening on that day. Rather leave any other thing that I cannot state, Commissioners.

ADV POOE: Colonel, so are you saying ...[intervenes].

ADV BALOYI SC: Okay, you cannot state because you do not, you are holding back or because you do not have other
20 examples? You see, you make a statement here that there was interference with your investigation by senior officials. You have given us one example, that is fine. I just want to clarify, you are not giving more because there are not more than one, or what is the reason that you are stopping at just one?

LT-COL SEBOLA: No, it is this one, Commissioner.

ADV BALOYI SC: It is the only one there is. Okay. Sorry, Ms Poee.

ADV POOE: No, Commissioner Baloyi, I was on the same wavelength as you. Colonel, it seemed from your body language and just what you had said, that your reluctance was not that there was just the one incident. It was rather that you do not want to touch on the other incidents.

LT-COL SEBOLA: I think, let me touch on this one only,
10 Commissioner.

ADV POOE: No, Colonel, I do not mind you touching on only the one. I am saying, just to clarify, that you have other examples but you are not comfortable to deal with them, is that the case? Chair, to the extent that we are allowed to rely on body language, it seems to me that Colonel is reluctant to answer the question.

LT-COL SEBOLA: So ...[intervenes].

ADV BALOYI SC: Colonel, not to put you in a spot, but I
20 mean it is a serious allegation to make that there was interference in the investigation by senior officials and you probably have seen with other witnesses that we do probe the role of police officers in matters not being taken, being handled in certain ways, which is such a case with Aeroton. We are looking at the role of police officers on the scene. You say, you speak to your investigation being interfered

with.

It is for that reason that I am probing further. And it may be, if you are unable to say, as you are sitting there, that the Chairperson may well have to find another way to assist you assist us in presenting whatever it is that, the concern that you are expressing in paragraph 25.

LT-COL SEBOLA: Commissioners, it is not only one incident. Things have been happening. Things are happening. I will give an example, Commissioner. At one
10 stage, I was deployed at the airport. I worked at the OR Tambo airport. At one stage, we were forced to return what we confiscated there, back to the owner. I have got reference to that.

At one stage, we confiscated the dollars at OR Tambo. We sent them to the Reserve Bank as per procedure. We were instructed to give that money because it was false. In fact, the presentation there, when they were declaring, they declared something else other than the dollars. But we were instructed to take them back to those
20 who declared. So, there are a lot of incidents that were happening. So, that is why I am saying there was interference.

ADV BALOYI SC: In coming back to this case, is it the kind of interference, and I am trying to see if it will be of assistance to this discussion, is this, the interference in this

particular case, the Aeroton case that you are expressing a concern about, is it of the kind which, in your view, seeks to undermine the successful prosecution relating to the drugs discovered?

LT-COL SEBOLA: Commissioner, in some instances, some of our seniors or our Generals, if I may say it, we cannot even understand whether they are assisting or they are fixing, because, going back to Aeroton, and going back to what I have experienced before, then I could safely say
10 there is a lot of interference. I do not know what is pushing them. But the one that I have just indicated, Commissioners, I am still having reference to that. I still have documents to that, which can substantiate it at a later stage, if there is a dispute on that.

ADV BALOYI SC: And with Aeroton, are you, and Aeroton, I am now discussing not the three police officers and their arrest and their prosecution. I am focusing on the drugs themselves. Is your view that you are expressing now, and this is me trying to understand what you are saying, that in
20 respect of that drug bust, or that haul of drugs, that the role of senior officers, as you investigate the matter, you form the view, or you are not certain, whether they are assisting you or seeking to frustrate a successful investigation of that matter?

LT-COL SEBOLA: That is what I am saying.

ADV BALOYI SC: Okay. Can I follow up with a question, which I would have asked right at the end. We have looked at the graphics earlier today, which have people's names, who look like they are, well, it suggests, or in fact it shows, that the Alphas, the Nku, Philipp Plein and them, and there are customs officials, there is Transnet, all of those role players, crane drivers, is there a reason, and tell me, maybe I am assuming, wrongly assuming with my question, but bear with me, is there a reason that there has not been

10 prosecution of people who are clearly identified in these exchanges, including Mr Nku, who was at the scene, Aeroton scene, and we have seen his involvement on these WhatsApp messages, but he was at the scene, including Chief Mashaba, who according to these WhatsApp messages, or the three messages, he seems to be part of this, they suggest he is part of a scheme, but what we seem to see here, clearly, is there is an organized, there is organized conduct, where containers, vessels and jets seem to be monitored, not just this one, but generally, there

20 seems to be a scheme. Containers are monitored, the people speak of Nku and Alpha speak about, we have our guy there, we have our guy there, is there a reason that there hasn't been any prosecutions of people that have been identified?

LT-COL SEBOLA: I do not know the reason,

Commissioners, but according to me, people have been identified, there are communication chats, they can be identified through cell phones, or they were identified through cell phones, screenshots were taken from Transnet in KZN, there was a sort of, my investigation towards that, since then it has stopped, one can ask questions, why, then, but I cannot answer, because I am no longer directly involved in that. I do not know what people were pushing for, for those people not to be investigated, or a follow-up
10 on all those activities, because they are still there, there is still a trace.

ADV BALOYI SC: Yes. Now, just drawing from what I have learned through this process, it seems this is a typical case that falls within SANEB, right?

LT-COL SEBOLA: Correct.

ADV BALOYI SC: It seems that. Who in SANEB makes the decisions about, we are going to investigate this, we are allocating an investigator, we are putting resources for this to be investigated, and to be transparent with you, I am
20 asking really a question of, if we want to know, from DPCI SANEB, why this case, where there are identified people, but also their activities have been identified, if we want to know why is there no investigation going on, where is the investigation, has an investigating officer been allocated, who is doing what, who do we ask that question of?

LT-COL SEBOLA: Commissioners, in essence, SANEB fall, is, form part of the section within organized crime investigations. There is a unit command, in this instance, there was Colonel Zondi, he was never informed about this, that is the person that we ...[intervenes].

ADV BALOYI SC: You say he was never informed about ...[intervenes].

LT-COL SEBOLA: He was not involved.

ADV POOE: Okay.

10 **LT-COL SEBOLA:** Yes, you can see a lot of names keep on coming, but there is no Unit Commander. Then we were directly reporting to the Unit Commander who will, in turn, report to the Provincial Commander, who, in this instance, should have been Brigadier Sekgobel. She was the one who was supposed to be with us on the ground, who, if maybe there is, we are implicated in anything or in any wrongdoing, should have been the first, then followed us.

But, I also asked Brigadier Sekgobela to say, you never played that parental guidance, why? She said,
20 Sebola, if you are not involving me in your investigation, you jumped me, because there is this tendency of information not going through the culture of the SAPS. We will find a Sergeant somewhere being accountable to the General, which is not the case, it is not supposed to be. If I am the Section Commander of SANEB, those who are below

me, they are accountable to me. If there is anything, I am the one to answer. But, in real, real, real situation, we are not. We are not.

Information can jump me from the last man on the ground to the upper structure, of which that is not the culture, Commissioners, of the SAPS, of that is not what we have been told of going back to basics. That is not what we have been taught of the levels of communication and the instructions. So ...[intervenes].

- 10 **ADV BALOYI SC:** So, is your answer that Brigadier Sekgobela would be the person to account why this case of where drugs are found, and there is this bust, but also there are people identified, and I am not, keep in mind, I am not speaking about your SAPS members, the Phakula's and them, I am speaking about Mr Nku, I am speaking about the Alpha person. Ja, so, I am speaking about the people that are outside of the SAPS, but also anyone in the SAPS who may be part of that scheme. I am speaking about Chief Mashaba. I am speaking about those kind of, that kind of
- 20 case that are you saying to us that Brigadier Sekgobela is the one that must account or give an explanation why has no investigation and possibly, I know prosecution is a decision of the NPA eventually, but I am going to throw them in anyway, but starting with the investigation, why has there been no investigation of this matter to bring it to trial,

to bring Nku to trial, to bring whoever he has been working with to trial? Are you saying Brigadier Sekgobela is the person that would account for those decisions?

LT-COL SEBOLA: If the investigation did not jump her, then she was to ...[indistinct].

ADV BALOYI SC: And you say it jumped her, it ended where? Who other than Sekgobela who got involved here? Is it General Khan?

LT-COL SEBOLA: Commissioners, let me just explain it
10 this way. My understanding is that General Kadwa was informed.

ADV BALOYI SC: Kadwa?

LT-COL SEBOLA: Yes.

ADV BALOYI SC: Okay.

LT-COL SEBOLA: That is what I knew when we were going to the scene. Then he should have informed, I am not giving General the instruction, but the communication channel says, from him, from Brigadier Sekgobela, there is this and that information, which members have you
20 dispatched or which members can you dispatch.

ADV BALOYI SC: Okay.

LT-COL SEBOLA: That is a clear line of march.

ADV BALOYI SC: Okay, I understand. Thank you. Thank you.

ADV POOE: Colonel, just before I let you go, I just want,

there is two more role-players in the scheme that I just want you to quickly identify. In the course of the presentation, you identified Nku and Alpha, Mashaba. There was the crane guy. There is the forklift guy. There is reference to custom officials. You indicated that you also investigated the person within Transnet. There is two more that I would like you to deal with.

CHAIRPERSON: Who sent those computer screenshots.

ADV POOE: Yes, for the computer screenshots. There is
10 two more. If we can go to page 19 of the presentation. There, I will not mention the name just for fear of maybe still part of your ongoing investigation, but there is, did you, it seems that you found evidence of communication between Mr Nku and someone within Yellow Jersey.

LT-COL SEBOLA: And this lady, yes.

ADV POOE: And was she investigated?

LT-COL SEBOLA: She is currently for sure being investigated now.

ADV POOE: You think ...[intervenes].

20 **LT-COL SEBOLA:** I think so.

ADV POOE: Or you know?

LT-COL SEBOLA: I believe so because it seems now they are resuscitating the case docket.

ADV POOE: All right, so that is within Yellow Jersey. And then within Scania itself, have you identified any links that

side?

LT-COL SEBOLA: There was somebody who was working for the company. Then before the Apolonia ship could leave, that person was in Brazil and that is according to my information. He was working for Scania.

ADV BALOYI SC: Sorry, for Scania in South Africa?

LT-COL SEBOLA: For Scania in South Africa. But at the time, he was, so I was trying to link the dots to say this person was in Brazil weeks before this could leave. Then
10 he was in here when it arrived. Commissioners, through my investigations when I was communicating, it seems other people were getting or sourcing information from me. The person resigned.

ADV BALOYI SC: When you say other people were sourcing information, you mean SAPS?

LT-COL SEBOLA: No, I am saying it seems the information reached, because I was informed by one of the employees of Scania that they were asking us about this person. Then he resigned. Who gave him the information,
20 because if this can be followed up, there was somebody who resigned from in that Scania during the period of this investigation. I do not know whether he is still back in the, he is in the country or out, I do not know.

ADV POOE: So you suspect that somebody within your investigative team or who are you suspecting told him?

LT-COL SEBOLA: It is difficult to can pick up who, because at the level that it was investigated, but my team, I would not say they have, because some of them did not have, they were just going with me to Durban, doing this. Maybe, as and when we were doing the presentations on all those other things, we happened to give information to the wrong people, maybe.

ADV BALOYI SC: You think the person that would have been tipped by SAPS members, is that your suspicion?

10 **LT-COL SEBOLA:** That is my suspicion.

ADV BALOYI SC: Okay.

ADV POOE: And just for completeness, you say that you gave presentations about this case to other people. Do you recall on which forums or meetings did you give presentations about this case and who was in attendance?

LT-COL SEBOLA: Commissioners, normally, if I can just take you through drug investigation, when I was still here. When there is a bust or something that we discover that deals with drugs, we have our own group chat to check or to
20 investigate those activities. Up until when we were investigating, we know, sitting here, now understand why somebody would request the serial number or the seal, the photo of the seal, because normally they create a false seal. That is what they were doing. And again, they want, normally there have been some incidents along the entry

where they will stop these drugs. People will have their own roadblocks that specifically deals with this.

So, the question of rip-on, rip-off, that is where it came from, to say, they will find Sebola is the driver of the truck, like we have seen, they wanted to know the person. When they stop him on the roadblock, they know he has got, normally, he will have the invoices of what he is having. He does not know the content. He only have the invoices that he will have to submit. Then the thing is, we want to check
 10 inside ...[indistinct] do not worry. They will open, take whatever is theirs, show you that your invoice is still all right, then they lock.

They have created that, their own, that seal, a replica seal, so that when it reaches the owner, the consignment is still the same, look at the seal number, you open, you take what is yours. Never suspect, you do not even know what happened along the route, because the driver, at that time, would have cooperated with those who were on the road. That is the study that we were doing
 20 when we are investigating, Commissioners.

ADV POOE: I have more questions than where I started. When you say people, just to clarify who do those roadblocks, you mean police officers or law enforcement officers?

LT-COL SEBOLA: Law enforcement officers,

Commissioners.

ADV POOE: Okay, so that was the trend that you were seeing?

LT-COL SEBOLA: That was the trend.

ADV POOE: And then using this investigation, you did a presentation to other law enforcement?

ADV POOE: We do, that is correct, Commissioners. And your suspicion is that through those presentations, word may have gotten to the wrong officials to leak the
10 information?

LT-COL SEBOLA: Correct. Correct.

ADV POOE: Okay, and would you be able to provide us with information of these presentations, when they were done and to whom they were given?

LT-COL SEBOLA: It was done to different provincial heads. We did it in, here in, what is that hotel? I cannot remember, but we did it there.

ADV POOE: All right. Thank you, Colonel. Commissioners, I have no further questions for this witness.

20 **ADV KHUMALO SC:** I have just one. Colonel, I do not want an explanation, I just want a yes and no, and I do not want you to tell me why. I just need clarity on this. Magane, Phakula and Mashaba, as far as you know, were they charged internally for misconduct, for their part in interfering with the crime scene at Aeroton?

LT-COL SEBOLA: I will say I know of Magane and Phakula.

ADV KHUMALO SC: You know they were charged internally?

LT-COL SEBOLA: Yes.

ADV KHUMALO SC: And the outcome of that internal DC process, do you know?

LT-COL SEBOLA: I was, of Magane, he was, the investigation was conducted, but they could not find any
10 wrongdoing.

ADV KHUMALO SC: And let us just be clear, I am not talking about dealing in drugs, or I am talking about interfering with the scene.

LT-COL SEBOLA: Yes. Interfere, yes, Commissioner. They were charged separately.

ADV KHUMALO SC: Yes.

LT-COL SEBOLA: Magane, They understand what I was given, is that they could not find any wrongdoing in him. Phakula, yes, they did. He only came back through
20 arbitration.

ADV BALOYI SC: In that exhibit, you do not need to go there. You have just had a discussion with Ms Pooe about the different role players that were identified, and one of them is someone who's indicated as an employee at Yellow Jersey, and you say there is evidence of communication

between that employee and Mr Nku, I think, Tumelo Nku.
You remember that evidence?

LT-COL SEBOLA: When I said there was communication
between?

ADV BALOYI SC: If, between Mr Nku, Tumelo Nku.

LT-COL SEBOLA: Yes.

ADV BALOYI SC: And a Yellow Jersey employee. If you
would just go to page 19, if it would help.

LT-COL SEBOLA: Yes.

10 **ADV BALOYI SC:** You see that?

LT-COL SEBOLA: Yes.

ADV BALOYI SC: Okay. Can you see where I am looking?

LT-COL SEBOLA: Yes, I can see.

ADV BALOYI SC: Okay. Just to confirm, this was a day
before the truck came in from Durban. If you look at the,
and I just want you to confirm it. The way I read it, it looks
like it is on the 8th of July that they are in contact.

LT-COL SEBOLA: Yes.

ADV BALOYI SC: Am I correct?

20 **LT-COL SEBOLA:** Correct.

ADV BALOYI SC: Okay. And was this from the analysis
that was done or looking at whatever was found in the
devices of Mr Nku? Is this exchanges, written exchanges,
or is it a telephone call?

LT-COL SEBOLA: It is a telephone call. It was a

cellphone, then a landline.

ADV BALOYI SC: Then a landline.

LT-COL SEBOLA: Yes.

ADV BALOYI SC: Okay. And is this employee, during your investigations, is the person one of the people that you interviewed?

LT-COL SEBOLA: Yes.

ADV BALOYI SC: You spoke to them and they explained. Did they provide an explanation why they were speaking to

10 Mr Nku?

LT-COL SEBOLA: At that time, he said he could not remember who was calling her, but she will still go to check.

ADV BALOYI SC: Okay.

LT-COL SEBOLA: But he, she admitted that, yes, I am receiving calls, but I cannot state clearly on the day who did I talk to, but ...[intervenes].

ADV BALOYI SC: Okay.

LT-COL SEBOLA: But I was aware, aware on this.

ADV BALOYI SC: Okay. Lastly, you, I think you said
20 earlier, in answer to your question that I asked, that you have been, you have done these kind of operations before where there has been drug busts. I think you said that, am I correct in that recollection?

LT-COL SEBOLA: Operations, yes.

ADV BALOYI SC: Yes. The, in your experience, the role

of Crime Intelligence, if they happen to be on the scene, do they become involved in the operation?

LT-COL SEBOLA: No.

ADV BALOYI SC: They do not. And that is your experience?

LT-COL SEBOLA: They only supply us with information. If it is prior, they will give me their intelligence report. They can either submit an intelligence report on writing, they will just give you a file to start my investigation. If they happen
10 to be at the scene, I do not know, they do not have any role to play.

ADV BALOYI SC: They do not play a role in the operation.

LT-COL SEBOLA: They do not have to.

ADV BALOYI SC: Okay, thank you. Thank you, Chair.

CHAIRPERSON: Let us adjourn and resume at 25 to 3. Colonel, thank you very much, you are excused, and I hope this is the last time you are before us. Thank you. Thank you very much.

LT-COL SEBOLA: Thank you.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Good afternoon, Mr Mosikili.

ADV MOSIKILI: Good afternoon, Chair. Good afternoon, Commissioners. Chairperson, today, this afternoon at least, we have, Chair ...[intervenes].

CHAIRPERSON: What do we remain with in front of us?

ADV MOSIKILI: So, Chair, you should have three files. So there is one file which we will be using mostly today. It says Ms Maphosho, Zelda Maphosho, that is the file. And then there is one ...[intervenes].

CHAIRPERSON: Labelled Statements and Annexures, file 1?

ADV MOSIKILI: File 1.

CHAIRPERSON: Yes.

10 **ADV MOSIKILI:** And then the second file, Chair, but you do not need to go into that, it is the one that should say Exhibit Booyens and Khan Disciplinary Hearing. And then the last one, it should say the IPID report file. It is wrongly worded Magane on top, Chair.

CHAIRPERSON: Let us start as, I hope I will see them when we get to them.

ADV MOSIKILI: Yes.

CHAIRPERSON: If I do not, I will share with the ...[intervenes].

20 **ADV MOSIKILI:** Yes, Chair.

CHAIRPERSON: My co-Commissioners.

ADV MOSIKILI: And then, Chair, you will see on your desk, there should be a blue file as well, with a blue folder. That will be a file that, I would say it is a view-once file that we will discuss but not make public, Chairperson. We will

deal with it in due course, Chairperson.

CHAIRPERSON: Okay.

ADV MOSIKILI: Thank you, Chair and Commissioners.
Chair, this afternoon we have Director Takalani Zalda Maphosho from IPID, Chair. She said she will take an oath.

CHAIRPERSON: Good afternoon, Director Maphosho.

ASSISTANT DIRECTOR MAPHOSHO: Afternoon, Commissioners.

CHAIRPERSON: Please state your full names for the
10 record.

ASSISTANT DIRECTOR MAPHOSHO: Takalani Zelda Maphosho.

CHAIRPERSON: Do you swear that the evidence you are going to give is the truth, the whole truth, nothing but the truth. If so, please raise your right hand and say, “So help me God”.

ASSISTANT DIRECTOR MAPHOSHO: So help me God.

TAKALANI ZELDA MAPHOSHO (duly sworn states)

CHAIRPERSON: Thank you, Director.

20 **EXAMINATION BY ADV MOSIKILI:** Thank you. Director, just to confirm, at least for the purpose of this afternoon, I need you to focus on the file that will say Ms Maphosho's statement and annexures. Do you have that in front of you?

ASSISTANT DIRECTOR MAPHOSHO: Yes, I do.

ADV MOSIKILI: Thank you. And then if you open that file,

you will see that on the first page, it is an index for a statement. And then if you flip over to page 1, it will say witness statement by Takalani Zelda Maphosho. Do you see that?

ASSISTANT DIRECTOR MAPHOSHO: Yes, I do.

ADV MOSIKILI: Thank you.

ASSISTANT DIRECTOR MAPHOSHO: I confirm.

ADV MOSIKILI: Okay, if you go to page 20 of that statement, you will see that there is a signature there,
10 bottom ...[intervenes].

ASSISTANT DIRECTOR MAPHOSHO: Ja, that is correct.

ADV MOSIKILI: Yes,, do you confirm that to be your statement?

ASSISTANT DIRECTOR MAPHOSHO: I confirm.

ADV MOSIKILI: Thank you. Chairperson, just for context, Director Maphosho conducted an investigation into the events that arose at Aeroton, which is what we are discussing a bit earlier only. Just to be clear, Chairperson, what she investigated was a complaint by Warrant Officer
20 Phakula, Warrant Officer Magane and Chief Mashaba who laid a complaint against General Khan, Kadwa and three others. So that is why she was investigating a case of defeating the ends of justice, Chairperson. So that will be a context of her testimony, Chair.

Chair, lastly, how I plan on dealing with her

evidence, Chair, is that because her statement contains subtopics, I will propose that we deal with the subtopics and then ask questions so that we get through the statement quicker, perhaps go through the statement and coming back to deal with the issues, Chairperson.

Thank you. Director Maphosho, then let us go to page 1 of your statement. When you start reading it into the record, under introduction, just do not read the PERSAL number that is there. So, please read that into the record
10 and go through your statement.

ASSISTANT DIRECTOR MAPHOSHO: Okay, thank you, Commissioner.

“I am the holder of PERSAL number this, employed by the National Department, Independent Police Investigative Directorate situated at 473 Benstra Building, Stanza Bopape Street in Pretoria. I am holding a rank of Assistant Director.”

20 Commissioner, you were referring me as a Director, I am an Assistant Director.

“Investigations at the head office with the following contact details. The following facts to which I depose hereto falls within my personal

knowledge and belief and are both true
and correct, unless otherwise stated.”

CHAIRPERSON: Just for the future perhaps, but I have noticed some people do exactly what has been done here. If you say the facts are within your personal knowledge and belief and are both true and correct, unless otherwise stated, what that means is that you are in the same document going to be stating facts that are not true and correct.

10 **ASSISTANT DIRECTOR MAPHOSHO:** No, Commissioner, I withdraw that.

CHAIRPERSON: But you see what you are saying there that unless otherwise, usually refers to what is within your personal knowledge and belief.

ASSISTANT DIRECTOR MAPHOSHO: Ja.

CHAIRPERSON: So the otherwise blah, blah, blah relates to that.

ASSISTANT DIRECTOR MAPHOSHO: Oh, I ...[intervenes].

CHAIRPERSON: But not the truth.

20 **ASSISTANT DIRECTOR MAPHOSHO:** Okay.

CHAIRPERSON: Thank you.

ASSISTANT DIRECTOR MAPHOSHO: Okay. I continue:

“On 2026-05-04, I received a notice in
terms of Rule 10(6) from the
Commission of Inquiry into Criminality,

Political Interference and Corruption in
the Criminal Justice System, referred
to as ...” [intervenes]

CHAIRPERSON: Should we not skip what the notice said?

ASSISTANT DIRECTOR MAPHOSHO: Okay. Should I skip
that?

CHAIRPERSON: Yes.

ADV MOSIKILI: [Indistinct]... [cross-talking].

ASSISTANT DIRECTOR MAPHOSHO: Okay.

10 **CHAIRPERSON:** Yes, yes.

ADV MOSIKILI: Perhaps go to 3.3, then you can go to 4.

ASSISTANT DIRECTOR MAPHOSHO: Okay.

ADV MOSIKILI: On page 2. Thank you.

ASSISTANT DIRECTOR MAPHOSHO: Okay, 3.3:

20 “I was also asked to provide a summary
of the recommendations made with a
focus on recommendations made
against the key role players, in
particular senior law enforcement
officials related to these, an update on
the status of the recommendations.”

Should I go to 4?

ADV MOSIKILI: Yes, let us go to 4 under academic
qualifications and in-house training.

ASSISTANT DIRECTOR MAPHOSHO: Okay.

“I matriculated at Rondeor Secondary School. I have a Diploma in Policing obtained from UNISA. I also obtained my BTech degree in Policing from UNISA. Also an LLB degree from UNISA. I have completed the following training course. South African Police Basic Training Course in 2003 at Pretoria West College Training Academy. Detective Learning Program, that is Resolving of Crime Course in 2010 at Hammanskraal SAPS Training Academy. Detective Commander's Learning Program in 2014 at SAPS Paarl Training Academy.”

ADV MOSIKILI: Please continue on the work experience.

ASSISTANT DIRECTOR MAPHOSHO: Okay.

“I have started working as a Constable at the SAPS in 2003, stationed at Sandton Police Station, working in the Client Service Centre. I was transferred to Sandton Detective Service in 2008. In 2011, I was promoted and transferred to the

Independence Complaints Directorate,
ICD, as a Senior Investigator, stationed
at Gauteng Provincial Office. In 2012,
ICD changed to IPID.

I was then appointed in terms of
Section 22 of the Independent Police
Investigative Directorate Act, 1 of
2011. The objective of the
Independent Police Investigative
10 Directorate is to give effect to the
provision of Section 206(6) of the
Constitution, to ensure independent
oversight of the South African Police
Service and Municipal Police Service,
to provide for independent and
impartial investigation of identified
criminal offences allegedly committed
by members of South African Police
Service and Municipal Police Service.
20 I perform my duties in terms of Section
24 of the Independent Police
Directorate Act, 1 of 2011, read with
Section 206 of the Constitution of the
Republic of South Africa, Act 108 of
1996.

In 2015, I was promoted to be an Assistant Director Investigation at IPID Gauteng Provincial Office to supervise Senior Investigators and Investigators.”

CHAIRPERSON: The IPID positions, do they have equivalent positions within SAPS? I just want to get an idea of where exactly Assistant Director is in relation to SAPS ranks.

ASSISTANT DIRECTOR MAPHOSHO: Yes, the equivalent
10 with SAPS it is Lieutenant Colonel.

CHAIRPERSON: Oh, thank you.

ASSISTANT DIRECTOR MAPHOSHO: That is within SAPS.

CHAIRPERSON: Thank you. That is relatively senior.

ADV MOSIKILI: Right, you can continue.

ASSISTANT DIRECTOR MAPHOSHO: Okay.

“In 2020, I was transferred to IPID National Office working at National Specialized Investigative Team that is called NSIT in short. It is a unit within
20 IPID that deals with the high-profile cases and the complex cases that are reported at IPID.”

ADV MOSIKILI: Okay, before you move on, just on that last sentence, Director, what do you mean by high-profile cases? How do you classify that?

ASSISTANT DIRECTOR MAPHOSHO: We classify high-profile cases in terms of the suspects involved, if it is high-ranking officers, or it is a case that is on the media. Ja, I can, the rank of the person involved and the media enquiries, we classify those as high-profile cases.

ADV MOSIKILI: Okay, and out of interest, the case that we are concerned with today of Aeroton, would you classify it or consider it to be a high-profile case?

ASSISTANT DIRECTOR MAPHOSHO: It was a high-profile
10 case.

ADV MOSIKILI: All right, thank you so much. Let us move to the next page, and there we are dealing with the Booyens ...[intervenes].

ADV BALOYI SC: Maybe before you do that, what makes the Aeroton case a high-profile case?

ASSISTANT DIRECTOR MAPHOSHO: The rank of the people that were involved.

ADV BALOYI SC: Against whom the complaint was laid?

ASSISTANT DIRECTOR MAPHOSHO: Yes.

20 **ADV BALOYI SC:** Okay, thank you.

ADV MOSIKILI: Thank you, Commissioner. Can we then move to the next page? We are dealing with the Booyens CAS 252/10/2021 investigation and there we are dealing with the complainant.

ASSISTANT DIRECTOR MAPHOSHO: The complaint.

ADV MOSIKILI: Yes.

ASSISTANT DIRECTOR MAPHOSHO: Okay.

10 “The matter was referred from the
Office of Executive Director. On 2021-
10-13, the complainants, that is, Chief
Mashaba, Warrant Officer Phakula, and
Warrant Officer Magane, came to IPID
National Office to lodge a complaint of
defeating the ends of justice. The
complainants were interviewed by the
members of NSIT, and I was part of the
interview.

20 The complainants were .advised to
open a case at the police station and
provide IPID with the case number.
The case was opened at Booysens
Police Station and registered as
Booyens CAS 252/10/2021. After
receiving a case number, on
2021-10-19, a referral memorandum
was drafted for the approval by the
Executive Director or someone
delegated by the Executive Director to
register a case in terms of Section
28(1)(h) of IPID Act.

This Section 28(1)(h) of IPID Act, it refers to any other cases that the police officers are involved, but they are not mentioned in terms of the Act between paragraph A to G of the IPID Act. So if it is a case that was referred by the Executive Director, we register that as Section 28(1)(h). The referral memorandum was approved.”

10 And then I have attached the memo as my TK1.”

“And the file was registered as CCN number 2021-10-0314 in terms of Section 28(1)(h). That was defeating the ends of justice.”

Paragraph 16:

20 “In essence, Section 28(1)(h) gives IPID the authority to investigate the police conduct that acts unlawfully and intentionally obstruct the course of administrative of justice. The case was then assigned to me for further investigation. On 2021-10-28, NSIT members interviewed the informer, Tumelo, who gave the complainant Mashaba information about the drugs.”

ADV MOSIKILI: Before we move on, can I just then get a better understanding on, let us go to paragraph 12. You seem to suggest that on the 13th of October 2021, you have the three complainants coming to your office, and out of that, you interviewed them, and the question is that you advised them to go and open a case.

ASSISTANT DIRECTOR MAPHOSHO: Yes.

ADV MOSIKILI: Is that a normal standard?

ASSISTANT DIRECTOR MAPHOSHO: It is a normal
10 standard, because when they came to IPID, they were under the impression that they are coming to open a case with IPID, whereas IPID, we investigate cases after they have been opened at the police station.

ADV MOSIKILI: So without which you cannot move on?

ASSISTANT DIRECTOR MAPHOSHO: Yes.

ADV MOSIKILI: Okay. And then just to understand, so the three came to your office on that day, and you interviewed them. Did you interview them ever again after this, what I would call probably a preliminary assessment?

20 **ASSISTANT DIRECTOR MAPHOSHO:** They handed their statements in the docket, but we also had another encounter when they were giving their supplementary statements.

ADV MOSIKILI: So besides the statements that they provided, so what I am trying to ascertain is that did you

have a, because this seems to me, because they have not opened a case, after they have opened a case, as it were, did you sit down with them again to get a fuller version of their complaints?

ASSISTANT DIRECTOR MAPHOSHO: No, other than them giving us the statement, the supplementary statement, we never had any other engagements in terms of interviewing them about the matter.

ADV MOSIKILI: Okay.

10 **CHAIRPERSON:** I assume that Tumelo is Mr Nku?

ASSISTANT DIRECTOR MAPHOSHO: Ja, Tumelo is Mr Nku.

CHAIRPERSON: Why do you call him an informer?

ASSISTANT DIRECTOR MAPHOSHO: During our interview, he indicated that he is the informer who used to give information to a certain General that I did not mention on the statement. I did not want to mention the name of the General because it is information that was never verified.

CHAIRPERSON: Beyond what he told you, did you
20 establish that he is indeed an informer?

ASSISTANT DIRECTOR MAPHOSHO: The person that he was mentioning ...[intervenes].

CHAIRPERSON: And that, and that there was not anything beyond him being an informer? Let me give you the background of why I am asking this.

ASSISTANT DIRECTOR MAPHOSHO: Okay.

CHAIRPERSON: Evidence that has been led before us suggests, and I use suggests advisedly because I am not in a position to conclude on this aspect. Evidence given before us suggests that he was actually actively involved and complicit in the matter concerning the suspected drugs, that is the consignment of those drugs, or at least the receipt or intended receipt of those suspected drugs here in South Africa. So it is in that context that I am asking you,
10 why do you call him an informer? Does it mean that you accepted that he was an informer, because you are stating it as a fact that he is an informer.

ASSISTANT DIRECTOR MAPHOSHO: Ja, I am stating this because that is the information that he gave us. However, the information was not verified because he mentioned the handler as a certain General who already passed on. So that is the information that was never verified.

CHAIRPERSON: Would it not have been more accurate to refer to somebody who was referred to as an informer rather
20 than to state it as a fact that he is or was an informer?

ASSISTANT DIRECTOR MAPHOSHO: Oh, okay. No, it is ...[indistinct].

CHAIRPERSON: Yes. All right, thank you. Please continue.

ADV MOSIKILI: Thank you, Chair. Director Maphosho, at

paragraph 15, you make reference to Annexure TK01.

ASSISTANT DIRECTOR MAPHOSHO: Yes.

ADV MOSIKILI: Chair, just to clarify, the witness makes reference to about 30 documents, or close to 40 in fact. We are not going to go through each and every annexure, but we will go through some of them and she is more than welcome as well to point me where she wants to go. But for now, can we then go to TK1. It will be on page 1, Chair, of the same annexures. It is the same bundle, Chair. So you
10 might need to keep one hand on where we are on the file as you go through the annexures, Chair. Director Maphosho, can you just briefly go again, what is the purpose of this memorandum?

ASSISTANT DIRECTOR MAPHOSHO: The purpose of this memorandum is to seek approval from the Executive Director or someone delegated by the Executive Director to give IPID permission to investigate these kinds of cases where the SAPS members are involved. But those are not the cases that are mentioned in terms of Section 28(1)(a) to
20 (g).

ADV MOSIKILI: Okay, and then you give a brief description of what you call the merits of the complaint. Would that be based on the statements or based on the initial interview or it is a consideration of both having met with them and having received their statements when you make, when you

at least compile this memorandum?

ASSISTANT DIRECTOR MAPHOSHO: It is after we receive their statement. Remember, we only registered this after they have already registered the case. So with the statement of the complainant, that is when we can generate this document for approval.

ADV MOSIKILI: All right, can you then, for the record, and because this narrative goes through, even find its way to your final report, can you read through for the record the
10 description you have there in bold?

ASSISTANT DIRECTOR MAPHOSHO: Okay.

“It is alleged that on Thursday, 8 July 2021, Chief Mashaba received an information about the suspected drugs that were to be transported from Durban to Alberton. The following day, on the 9th, the information was followed and indeed the truck was followed to the depot where it was parked. Chief
20 Mashaba asked for assistance and he was assisted by Warrant Officer Magane and Warrant Officer Phakula. The truck was then escorted to its destination at Aeroton where it was opened by the owner.

The police searched the container and drugs were found in the container. The driver of the truck and the person who were to receive the whole cargo were placed under arrest. However, the Hawks members arrived at the scene and the member who recovered the drugs were later arrested. The driver and the owner of the cargo were then released.”

ADV MOSIKILI: All right, I will raise my concern with you with this description and then you can comment if you want.

ASSISTANT DIRECTOR MAPHOSHO: Okay.

ADV MOSIKILI: And my concern really is that it does not seem to capture the heart of the case. I know it is a brief summary but it seems to be omitting at least very crucial information. For example, I will mention to you that it does not, it says nothing about the informer, Mr Nku. It says nothing about Warrant Officer Magane's designation. It says nothing about people from Pretoria attending to an incident in Soweto. It says nothing about the drugs allegedly being solicited to be moved to Germiston. And it certainly says nothing about the loading of the drugs by the certain, by the very same complainants into what they call Mr Magane's bakkie.

So it gives a very, I would say, sanitized account of events based on their version only. I am just concerned that it does not give the full picture of that. And this information obviously is used to inform you as the IPID whether to proceed with the matter or not. And having seen and having consulted with other witnesses and having been aware of the fuller picture, is there any comment you want to make on that observation?

ASSISTANT DIRECTOR MAPHOSHO: This document is
10 prepared on the very early stage, before even the investigation was conducted. At this particular time, we will only have maybe the statement of the complainant coupled with what come out from the interviews that we had with the complainants. It is not the fuller version of what transpired during the investigation, because at this particular time, we have not even started with the investigation.

ADV MOSIKILI: That is correct, and that is my very concern that you did not have a proper, or at least you were not provided with a full version by the complainants.

20 **ASSISTANT DIRECTOR MAPHOSHO:** Yes.

ADV MOSIKILI: But let us move to page 2, just out of interest. It says there in the middle of the page, when you deal with the prospect of successful investigation. What does that mean, and how do you arrive to that scoring of 50%?

ASSISTANT DIRECTOR MAPHOSHO: Because we have not even started with the investigation, because we do not have the version of the other members, the suspects. So for us, it is 50-50 chances, whether they are telling the truth or not. So we cannot say it is above 50 or below 50, because we do not have the version of the other members who are involved.

ADV MOSIKILI: Okay. But I would assume because there is a below and above, there are circumstances where you
10 might score below and above.

ASSISTANT DIRECTOR MAPHOSHO: I have not even found something like that. For me, it is always 50-50.

ADV MOSIKILI: Ja, just here on the document it does give an option of ...[intervenes].

ASSISTANT DIRECTOR MAPHOSHO: Ja, in the document, yes.

ADV MOSIKILI: Yes. All right, thank you, Director. Can we then proceed on page 5. You deal with a, so we are going back to the statement, Chair. We deal with a
20 summary of allegations. Can you pick it up at paragraph 18, where you deal with, it is in A1 of Mr Samuel Ziani-Mashaba.

ASSISTANT DIRECTOR MAPHOSHO: Okay.

“The complainant alleged that on
Thursday, 2021-07-09, they were

following up on an information about drugs from Brazil, that they were in a container and were going to be delivered at Scania, Aeroton. He was assisted by Warrant Officer Magane from Zonkizizwe SAPS, who was referred to him by Warrant Officer Pokungwana. This annexure 3 and 4 is the statement of Mashaba and the statement of Warrant Officer Pokungwana.”

ADV MOSIKILI: Ja, you can proceed.

ASSISTANT DIRECTOR MAPHOSHO: Okay.

“They arrived at Aeroton at about 8 o'clock. The information was positive and the drugs were found inside the container. The driver of the truck, the lady who was about to receive the goods, and the manager who was present, were placed under arrest by Warrant Officer Phakula. I have attached Warrant Officer Phakula's statement as an annexure as well. While the police officers were busy at the crime scene, opening the case and

waiting for relevant role-players to come, two police officers from Booyens arrived and enquired about what was happening, and they explained to them about the drug bust. The police officers from Booyens SAPS were satisfied and were willing to assist them. They even gave feedback to radio control, 10111, indicating that all was in order.”

10

And then I have attached the report from 10111 as TK6.

“A police officer who was later known to them as Warrant Officer Rikhutso arrived and had an argument with Warrant Officer Phakula. Warrant Officer Rikhutso did not want them to open a case, but to open an enquiry file. Warrant Officer Phakula refused, and he was then told that General Khan was on his way. Members of the Provincial Dog Unit, Captain Modupi, Lieutenant-Colonel Maluleke from Technical Operation Management Section, Toms, Hawks also arrived at

20

the crime scene. Lieutenant-Colonel Maluleke wanted to take over the crime scene as the drug was part of his mandate. Sergeant Phakula and Sergeant and Warrant Officer Sape from Dog Unit arrived, followed by General Khan. General Khan then said he was taking over the crime scene. Without getting the information from the officers who recovered the drugs, he then instructed Warrant Officer Magane to sit in his bakkie. He instructed Chief Mashava to go to his car and took his firearm and cellphone. At about 13:30, the members of DPCI, amongst others, General Kadwa, Brigadier Sekgobela, Colonel Steyn, Captain Sebula, arrived at the crime scene, and they arrested the police officer who made the drug bust. That is Warrant Officer Magane, Warrant Officer Phakula, Chief Mashaba, and Tumelo. They were charged with dealing in drugs and possession of drugs / use of drugs. The truck driver,

the person who was receiving the goods, and the manager were released. Additional statement of Samuel Tsiani Mashaba was attached as well, indicating that on the day of the incident, he contacted General Mawela, informing him that General Khan was busy harassing them at Aeroton crime scene.”

10 A statement of General Mawela was obtained, I have attached it as TK8, and he indicated that he cannot confirm nor deny receiving a call from Mashaba. A statement of General Ntombeni, attached as TK9, he also states that he remembers, he alleges that he remembers speaking to an official attached to Gauteng Traffic Police, who introduced himself as Mashaba, who indicated that they were following the information on drugs, and he was complaining that the police were about to arrest them. He referred the complaint to Brigadier Shibiri. The statement
20 of General Shibiri, he was a Brigadier by then, was also attached as TK10. He said that he had a conversation with Mashaba, relating to the following, upon information about drug trafficking at Aeroton and they were accosted by a member of SAPS Crime Intelligence, Hawks, and want to arrest them. He referred him to General Kadwa of DPCI.

They opened a case as per Booyesen 98/7/2021, and it was investigated by DPCI, a member, Captain Sebula, I believe now he is a Lieutenant Colonel.

ADV MOSIKILI: Yes.

ASSISTANT DIRECTOR MAPHOSHO: The arrested member were taken to Booyesen's Police Station and detained at about 19:30.

CHAIRPERSON: Sorry, sorry, did you ever look at and compare the statements that were taken in respect of the
10 drug charges or drug-related charges? There is a statement taken by those investigating those charges. Did you ever do a comparison?

ASSISTANT DIRECTOR MAPHOSHO: We were ...[intervenes].

CHAIRPERSON: I am asking, I am asking for example, because on this aspect, the aspect we have just dealt with, there is a statement that says, Brigadier Shibiri, who later became a General, called at the scene and said, is there not a way in which all of this can be resolved amicably and
20 I do not know whether he was referred to someone else and then he said, he basically left it at that and did not follow up on this amicable resolution. That is why I am asking whether you ever did any comparison with what was happening on the other side? Did you just run with what you established with regard to the complaints that had been

laid by these three people, two of whom were SAPS members and one of whom was a Provincial Traffic Officer?

ASSISTANT DIRECTOR MAPHOSHO: Commissioners, we were never given a chance to check the other case because the DPCI refused with a docket.

CHAIRPERSON: Oh ja. Oh, I remember that detail.

ASSISTANT DIRECTOR MAPHOSHO: Ja.

CHAIRPERSON: All right, thank you, thank you.

ADV MOSIKILI: Yes, Director, just to go back on page 5 at
10 paragraph 18.1, maybe we need to correct that the incident occurred on Friday, not Thursday.

ASSISTANT DIRECTOR MAPHOSHO: 18.1?

ADV MOSIKILI: Yes. But the substance of my question really is that you were told, at least from a statement by Mashaba, that they were following up on information and he does not mention Mr Nku. But you had testified earlier on that you guys had an interview with Mr Nku. Can you assist us from your recollection, what did you at least ascertain from that interview? Perhaps before you do that, can we
20 accept, at least for now, that there is no statement that you took from Mr Nku?

ASSISTANT DIRECTOR MAPHOSHO: Commissioner, there is no statement that we took from Mr Nku.

ADV MOSIKILI: Yes, can you then maybe as far as you can recall from that interview, what can you relay?

ASSISTANT DIRECTOR MAPHOSHO: Ja, as a team, we were concerned about how did they know about the drugs because they were just telling us that they were following up on information about the drugs from Brazil to Scania. So the question with us was how did you know about the drugs? That is when they told us about Tumelo. And when they came to IPID, it was only three of them. Tumelo was not part of them. So we asked for the contact details of Tumelo so that we can interview Tumelo, hence, we
10 interviewed Tumelo at a later stage.

ADV MOSIKILI: And if I understand well, there was no reason stopping him from being part of the complainant, is there?

ASSISTANT DIRECTOR MAPHOSHO: No, there was, no, there was nothing.

ADV MOSIKILI: And how far did you get in terms of where he received ...[intervenes].

ASSISTANT DIRECTOR MAPHOSHO: The information.

ADV MOSIKILI: The information.

20 **ASSISTANT DIRECTOR MAPHOSHO:** Commissioner, he was not making too much of a sense because he was talking about issue of, what do you call this, hacking and something like that ...[intervenes].

ADV MOSIKILI: It is cyber hacking.

ASSISTANT DIRECTOR MAPHOSHO: Cybercrime hacking,

something like that. And he kept on telling us that he is an informer of that, the late General that he was giving the information to the late General.

ADV MOSIKILI: In your conversation ...[intervenes].

CHAIRPERSON: Was the point that he had hacked onto a system that revealed that there was such a consignment, or what exactly was this hacking about?

ASSISTANT DIRECTOR MAPHOSHO: He was talking about so many things. He was not talking about
10 ...[intervenes].

CHAIRPERSON: Let us just focus on the hacking for a minute, please.

ASSISTANT DIRECTOR MAPHOSHO: He was talking about hacking in order for him to get this kind of information about the illegal transportation of things. It can be drugs. It can be any other thing. It can be any other trafficking. So he was talking about so many things, but he was not giving us anything to work on.

CHAIRPERSON: Did you ask for anything concrete,
20 because surely there would have been records of the hacking.

ASSISTANT DIRECTOR MAPHOSHO: No, he did not have anything. It was just what he was saying.

CHAIRPERSON: Did you ask for the records?

ASSISTANT DIRECTOR MAPHOSHO: Commissioner?

CHAIRPERSON: Did you ask for the records?

ASSISTANT DIRECTOR MAPHOSHO: Ja, we asked for the record, but he did not have anything. It was only what he was saying, of which we did not have anyone to confirm what he was saying.

CHAIRPERSON: Okay, thank you.

ADV MOSIKILI: In that conversation, did he at least disclose to you that the previous day he was in Durban and that he followed the truck all the way to Gauteng?

10 **ASSISTANT DIRECTOR MAPHOSHO:** Ja, Commissioner, he did mention that, that he followed the truck from Durban to Yellow Jersey.

ADV MOSIKILI: Yes.

ASSISTANT DIRECTOR MAPHOSHO: Yes.

ADV MOSIKILI: Did he mention to you what his interest would have been in doing all of that?

ASSISTANT DIRECTOR MAPHOSHO: We were interested in knowing as to why the interest, but he kept on saying he is been giving out information to these police officers and
20 he does not know whether the information was positive or not. So this time he was trying to make sure that yes, whatever information he got, when they opened the truck, the drugs will be there. That was his response.

CHAIRPERSON: And was your sense that he is an informer/informant, registered with SABS, or was an *ad hoc*,

if I may use that term, an *ad hoc* informer? What was your sense?

ASSISTANT DIRECTOR MAPHOSHO: My sense was that he was not a registered informer, because if he was a registered informer, he was going to tell us about the handler, the General who passed away, but the general was working with other people. So from my understanding, he was not a registered informer.

ADV MOSIKILI: Okay.

10 **ADV KHUMALO SC:** Director, one thing that immediately stands out when you look at the statements of Director Mashaba and Joseph Magane is in the case of Director Mashaba, it says he is based in Sedibeng, in Vereeniging. That is the first thing that stands out. In the case of Magane, it says he is in the CIMAC, Crime Information Analysis Centre, in Sonkizizwe. Does that not immediately raise a question, what are you doing in Aeroton. If you are a traffic director in Vereeniging, or you are a crime analyst in Sonkizizwe, what are you doing in a drug bust, because
20 those two jobs have nothing to do at all with being involved in a drug bust. Before you even get to what happened, just their positions.

A Traffic Officer in Vereeniging should have nothing to do with a drug bust in Johannesburg. A CIMAC officer, we have heard that they are desk-bound because they

analyse stats, crime stats, to assist those who are operational to do their job. When they say to you, we conducted a drug bust, is the first inquiry not what were you doing there because that is not your job?

ASSISTANT DIRECTOR MAPHOSHO: Ja, Commissioner, it was our concern that why, especially with Mashaba as a Traffic Official, but he told us that you normally get this kind of information. I do not know his job description, where he is working, but he indicated that you do get this kind of
10 information and then you normally assist with this kind of operation. He was saying he used to work with General Mawela. So I do not know his job description.

ADV KHUMALO SC: I am looking at the affidavit that he gave you, paragraph 1. It gives his name, ID number, and he says:

“I am employed as Chief at Gauteng
Traffic Police, Sedibeng in
Vereeniging.”

On page 6, it is your annexure TK2, which you
20 referred to in your statement.

ASSISTANT DIRECTOR MAPHOSHO: Okay.

ADV KHUMALO SC: So, Sedibeng is a district. It is in the Vaal.

ASSISTANT DIRECTOR MAPHOSHO: Yes.

ADV KHUMALO SC: And he says, I am following a truck in

Ekurhuleni and I am following it to Johannesburg and I am conducting a drug bust. So where he works, that is problem number one. Problem number two is he is a Traffic Officer. What is a Traffic Officer doing, conducting a drug bust?

ASSISTANT DIRECTOR MAPHOSHO: Commissioner, we tried to find out from him. That is why maybe he also gave his supplementary statement to indicate that he used to work with General Mawela. That is why on that particular day he also phoned General Mawela. I do not know how
10 they work at the traffic side. I do not know whether if you are working in Sedibeng you can also attend to the issue of Tshwane, for example. I do not know. But ...[intervenes].

ADV KHUMALO SC: I think why I am raising this, IPID has testified before us.

ASSISTANT DIRECTOR MAPHOSHO: Okay.

ADV KHUMALO SC: And one of the issues they took with EMPD officers, conducting a bust in Rosebank or Killarney, is that (a), that is not the job description of Traffic Officers. And secondly, they are outside of their jurisdiction. And for
20 those two reasons, their conduct was unlawful, and we heard that from IPID when it was testifying. So me, the first thing that stands out looking at paragraph 1 is here is a Traffic Officer in Vereeniging who is leading, because he is the leader. He says, I called other people, leading the chase of a truck, because that is what they were doing, and

conducting a drug bust.

They are chasing it in Ekurhuleni, outside of Sedibeng. They are chasing it all the way to Johannesburg, outside of Sedibeng. But he is a Traffic Officer. He has no business opening containers and finding out that there are drugs in those containers and arresting owners of those containers or the recipients of the goods that are in the container.

ASSISTANT DIRECTOR MAPHOSHO: That is true,
 10 Commissioners. Like I am saying, we do not investigate the Traffic Officers. I do not even know their jurisdiction, whether a person from Traffic in Sedibeng can also come and work in Tshwane or in Johannesburg. I do not know.

ADV BALOYI SC: But do you not as an investigator, do you not follow up, check those kind of things? I mean, I am not sure that it is open to you to say, I do not know what he does, what his job is and his job description, because if it turns out, at least in my mind, if it turns out that his job has nothing to do with what he did on the day, then you, as the
 20 investigator, you probe further into why was he there in the first place. So to say you just took, because that is effectively what you are saying, you took his word at face value and made no interrogation of it. He said, I was following up on a tip-off, and then we conducted this operation, when in fact, perhaps had you asked, what do

you do where you work, let us speak to his superior and find out whether what he got involved with is part of his job. Then if his superior had said, no, it is not part of his job, he had no business to be there, it may have led you down a different line of enquiry.

ASSISTANT DIRECTOR MAPHOSHO: I understand, Commissioner, but those were our complainants, and as IPID, we do not investigate our complainants. That was the role of SAPS. SAPS, I believe SAPS investigated whether
10 they were supposed to be at that crime scene or not. However, we did manage to obtain the statement of their supervisors to try to find out whether on that day they knew about the operations or not.

ADV BALOYI SC: But you test what the complainant says. That is why in that form you say 50%.

ASSISTANT DIRECTOR MAPHOSHO: Ja.

ADV BALOYI SC: It is because you eventually must test what they say.

ASSISTANT DIRECTOR MAPHOSHO: Ja, we did test that,
20 because with Mashaba, the supervisor indicated that he did not know about the operation.

ADV BALOYI SC: Ja, but is that not, that kind of answer to you, is that not what should pique your suspicion, that he is in an operation that his superior says, I did not know anything about it, it is not his job which that would have

piqued your suspicion about him to inquire further about what, in fact, was he doing there. Because the complaint, as we understand it, their complaint is that they were arrested when they were conducting a lawful operation.

ASSISTANT DIRECTOR MAPHOSHO: Operation, yes.

ADV BALOYI SC: Yes. So if they were interrupted conducting an unlawful operation, you would not have found the police officers guilty of, and you would not have made a negative recommendation if it turned out this was an
10 unlawful operation. So that you do not investigate, you do not test, that even after his superior said, I have no idea what he was doing on the day, is disconcerting.

ASSISTANT DIRECTOR MAPHOSHO: I understand, Commissioner.

CHAIRPERSON: I find it quite disturbing that you say you do not probe your complainants. That is quite disturbing. I think that is a wrong approach to investigation. What is your comment?

ASSISTANT DIRECTOR MAPHOSHO: Commissioners, at
20 IPID, most of our complainants are suspects on the SAPS cases. I will give you an example. You will find maybe the suspects were robbing the bank and there was a shootout between the police and the suspects and the police shot and killed maybe one or two of the suspects.

IPID investigate that case, because we are

checking the conduct of the police. We are not checking what the criminals were doing in robbing the bank. But we are checking whether the conduct of the police, they acted within the scope of their mandate or not. Whether they killed somebody, maybe they killed two, and then the third suspect ran away, and then he surrendered somewhere, but the police shot and killed that particular person.

Those are the conduct that, as IPID, we are checking. So we do not investigate the initial cause of the
 10 bank robbery, but the police that they ...[indistinct] investigate the bank robbery. Then IPID, when we investigate this murder, we obtain the copies of that robbery.

CHAIRPERSON: Would this be murder committed during the robbery?

ASSISTANT DIRECTOR MAPHOSHO: Yes.

CHAIRPERSON: I am not sure that I follow the distinction then. Ja, I am not sure that I do.

ASSISTANT DIRECTOR MAPHOSHO: I am trying to give a
 20 scenario that we do not check the conduct of our complainant or our victims as to what happened prior to this incident. But the police, they investigate the robbery case, then IPID will get the copies of the robbery.

CHAIRPERSON: Let us, maybe let us just forget about that example because it may just confound the issues. Let

us look at what was at issue here. You have these people who are complainants, and what we are saying is it is just odd for you to say that you basically do not interrogate what is been brought to you insofar as it relates to, or concerns your complainants. That is what I find difficulty with.

I think it is a different, rather I think it is a wrong footing to proceed from because ultimately when you decide that there is a case to be answered which you should then refer both to the employer and to the NPA, it can only be
 10 because you are satisfied that there is indeed a case. And if there are issues that are questionable insofar as your complainants are concerned, it may well be that those issues will point in the opposite direction, which is that there is, how should I put it? Ag, you follow me. You follow me.

ASSISTANT DIRECTOR MAPHOSHO: I do. I do, Commissioner. In this case, the Commanders of Phakula said he had the knowledge of what Phakula was going to be doing on that, on the day of the incident. And also the
 20 Commander of Magane gave a statement saying Magane called him and informed him about the operation. So for me it was something that their Commanders, because we investigate the police, not the traffic officers. The police Commanders knew where their members were doing an operation on that particular day.

CHAIRPERSON: Let me take you ...[intervenes]..

ASSISTANT DIRECTOR MAPHOSHO: They were informed.

CHAIRPERSON: Okay, let me, ja, you do investigate traffic officers, ja.

ASSISTANT DIRECTOR MAPHOSHO: No, not the Gauteng traffic officers, the Metro police officers.

CHAIRPERSON: Oh, it is Metro, oh, it is Metro and SAPS only.

ASSISTANT DIRECTOR MAPHOSHO: Yes.

10 **CHAIRPERSON:** Okay. Anyway, let me go back to the question that triggered the debate that we are having now. That question was about you following up on the issue that Commissioner Khumalo raised and you said you did follow up on that. But later you then said that you know nothing about the jurisdiction of someone like Chief Mashaba and so on.

Then I started wondering, what exactly would you then have enquired about if you basically know nothing about these issues around the jurisdiction and so on? What
20 then would you have inquired about? That goes even to Warrant Officer Magane being desk-bound. So what would you have enquired about, because you said you did enquire. Do you remember saying so?

ASSISTANT DIRECTOR MAPHOSHO: Yes.

CHAIRPERSON: Now, if later in the debate you say you

knew nothing about those issues, that in my mind raises the question, what then did you enquire about in this regard?

ASSISTANT DIRECTOR MAPHOSHO: Okay.

Commissioners, I enquired about whether they were on duty on that particular day and ...[intervenes].

CHAIRPERSON: That is not the same thing. That is not the same, that is not the issue that was being raised around whether they ought to have been there in the first place. That is a totally different question to where they were and
10 were they authorised in terms of maybe their bosses saying, no, you cannot go to Aeroton and so on. This is a totally different question. Is this something that fell within their mandate? Is this something they could in law have done?

ASSISTANT DIRECTOR MAPHOSHO: Okay. The only person that we did not inquire much, it was Chief Mashabe.

CHAIRPERSON: No, the question is what did you inquire about?

ASSISTANT DIRECTOR MAPHOSHO: We enquired whether they were on duty and whether their Commanders
20 knew about the operation.

CHAIRPERSON: I will leave it. That is not the question I am asking, but I will leave it there.

ADV MOSIKILI: Thank you, Chair. Director, my concern is this. Remember you guys are policing the police. You are supposed to be their watchdog and ensuring that the police

are kept in order. And in doing so, it can never be, in my understanding, that it is just a matter of who of the naughty kids came to report first to the principal.

You need to check the facts that are brought to you to verify those allegations because I think you will accept that there is a potential or possibility of the police using or weaponizing IPID against each other. You will accept that?

ASSISTANT DIRECTOR MAPHOSHO: I do, Commissioner, but the cases differ. It is just that this one, there are police
10 officers involved as well. But on a normal course of event where it is just a normal member of public, we do not check as to whether this person, what happened prior to whatever that is happening, the case that the person is reporting happened prior to that. With this one, yes, I understand it was the police officers who reported this matter.

However, we have two cases. We have got the case, the 98 case and the 252 case. So we could not do what the case 252 was, I mean the case 98, the investigating officer of case 98 was doing because it seems
20 as if now we are interfering with their cases, so hence we only dealt with case 252.

CHAIRPERSON: Let me ask a question that is related to one of the very questions I put to you. Had you been aware that there were text exchanges between Mr Nku and someone that he referred to as boss and who was saved on

his device as Alpha, is it, saved as Alpha, the content of which, that is the content of the text, the content of which was or appears to have been, the ultimate link is still going to be made, hopefully, and we were promised by the Evidence Leaders that that link will be made.

But for argument's sake, let us assume that that link will be made. So had you been aware that there were exchanges of texts that appeared to follow up on this consignment of suspected drugs, constantly, the texts even
10 expressing concern in case that consignment were to be intercepted or, however else, not to be received by, apparently, them.

And also, if you had been aware that Mr Nku drove to Durban a day before the truck that carried this container drove up to Gauteng, which was the 7th of July 2021, and that on the 8th of July he drove up, and that was the same day that the truck also drove up to Gauteng. And then on the 9th, that is the day on which he, together with these two, that the traffic officer and Warrant Officer Magane then
20 followed the truck to Aeroton from Yellow Jersey. Had you been aware of all those facts, would you still have made the recommendation that you made, in particular, the very first ones that appear with Nku involved, with someone he calls boss, texts that are concerned about, are we going to get delivery of this? It may be a mission impossible if this gets,

was it about another one, the main delivery?

Was it about the main delivery? Was it about - no, no, no, I will leave out the concerns and mission impossible and so on, but I will retain everything else that I have suggested to you. Had you been aware of all of those things, would you still have taken this to be the mere actions of an informer, or would you not have suspected that this is actually someone who is complicit in the delivery of this consignment, delivery and receipt of this
10 consignment?

ASSISTANT DIRECTOR MAPHOSHO: Ja, Commissioner, with regard to Nku, yes, if we had that kind of information, we were going to look at these things differently.

CHAIRPERSON: That is why I am saying, had you had.

ASSISTANT DIRECTOR MAPHOSHO: Yes.

CHAIRPERSON: Okay, All right, all right.

ASSISTANT DIRECTOR MAPHOSHO: We were going to, even maybe the kind of investigation was not going to be the way the investigation was, if we had that kind of
20 information and unfortunately we did not have.

CHAIRPERSON: Okay. Just advise me, as I know you tried to get hold of the Booysen docket.

ASSISTANT DIRECTOR MAPHOSHO: Yes.

CHAIRPERSON: You did not succeed. Just remind me again, how high did that request or enquiry about the

docket, how high did it go on the IPID side? Who was the most senior on your side who tried to get hold of the docket after the meeting that you referred to had failed?

ASSISTANT DIRECTOR MAPHOSHO: It was the NHI, the National Head of Investigation.

CHAIRPERSON: Okay, All right, all right. Is that the highest you could have gone? Could you not have gone to, was it already General Lebeya then?

ASSISTANT DIRECTOR MAPHOSHO: Ja, it was General
10 Libya, but the NHI was supposed to have escalated the matter to the Executive Director, of which I do not think the matter was ever escalated. So it was beyond you at that stage.

ASSISTANT DIRECTOR MAPHOSHO: Yes.

CHAIRPERSON: Could you not have made the request to the head, your head, to escalate it to General Lebeya?

ASSISTANT DIRECTOR MAPHOSHO: The matter was escalated to General Lebeya, but ...[intervenes].

CHAIRPERSON: It was?

20 **ASSISTANT DIRECTOR MAPHOSHO:** It was escalated to General Lebeya. Yes, but we did not get any positive feedback.

CHAIRPERSON: Okay. Did you get to, what did General Lebeya do, do you know? General Lebeya, I think he spoke to my supervisor, the one who drafted the letter to him.

CHAIRPERSON: No, I mean with SAPS, on the SAPS side, do you, what did ...[incomplete].

ASSISTANT DIRECTOR MAPHOSHO: On the SAPS side, it was General Lebeya.

CHAIRPERSON: Okay. Oh, I see. Okay, at paragraph 24 of your statement, you say General Lebeya did not assist IPID with the request, instead he indicated that IPID must investigate without the copies of that document.

ASSISTANT DIRECTOR MAPHOSHO: Yes. Yes.

10 **CHAIRPERSON:** So he did not engage SAPS on the matter.

ASSISTANT DIRECTOR MAPHOSHO: Ja.

CHAIRPERSON: All right, thank you.

ADV BALOYI SC: May I just ask on the back of the discussion that you have just had with the Chair, you, about, had you known certain things that have now come to light about Mr Nku, how you, whether you would have still proceeded the same way. Now, when Mr Nku says to you that he is an informer, and the other police officers tell you
20 that, this is Mashaba, Chief Mashaba tells you that that is his informer, you do not verify that.

You have said that he told you that his handler is someone that has passed, but you do know SAPS systems, that they do have registered informants. I am sure you have an idea that they do not necessarily work alone, so

even if a General has passed on, a handler, there may well be somebody. You did not and you do not check that to verify who this supposed source is.

ASSISTANT DIRECTOR MAPHOSHO: No, we did not verify.

ADV BALOYI SC: You did not do that?

ASSISTANT DIRECTOR MAPHOSHO: No.

ADV BALOYI SC: Is it because that is not what you do? You just, you take things on face value. I think I am trying
10 to, like the Chair, I am trying to understand how you conduct your investigations and whether, as I must say, it seems to me to have been the case with this, that you do not get, the IPID does not get used to, as in this case I suspect, that is what happened with the complaint that came to you, to pursue meritless cases because there are agendas, people want to get to some point. You do not verify that kind of basic information. Is Nku indeed an informer, we have a way of checking with the SAPS. You do not do those kind of checks.

20 **ASSISTANT DIRECTOR MAPHOSHO:** Commissioners, with Nku, because he mentioned somebody who already passed, and he was not telling us that he was a registered informer. We did not verify that kind of information, but on the day of this, he was saying now he is giving information to Chief Mashaba. So he was now the handler of Chief

Mashaba.

ADV BALOYI SC: Chief Mashaba was his handler now.

ASSISTANT DIRECTOR MAPHOSHO: Ja, he said now, because he used to give information to the late General, now he is giving information to Mashaba.

ADV BALOYI SC: So the reference then to that late General, for purposes of your investigation, should be relevant, if it meant nothing, if it is someone that you used to share information with but it has no bearing on this, then
10 it is irrelevant. You proceeded solely on the basis that he is an informer of Mashaba, who, of Chief Mashaba, who is his handler. That must be the basis on which you proceeded.

ASSISTANT DIRECTOR MAPHOSHO: That is correct, Commissioner.

ADV BALOYI SC: Thank you.

CHAIRPERSON: This again raises the point on which Commissioner Khumalo was engaging you. He is an informer, informing about drugs, and what has he got to,
20 what is Mashaba got to do with drugs, that he even has this informer who is assisting him about drugs? It just does not make sense. Do you want to comment?

ASSISTANT DIRECTOR MAPHOSHO: Commissioner, I do not know the job description of Chief Mashaba, but from the, I can confirm, Commissioners, that we also have cases

where people from the Traffic Police working with the SAPS members, especially the Hawks, do some operation. I do not know their memorandum of understanding. I do not know whether they do have a memorandum of understanding when it comes to these kind of operations or not. I do not know.

CHAIRPERSON: Thank you.

ADV BALOYI SC: Perhaps if you had asked the question, and you can answer any way you want, that where does
10 Mashaba come in into this as in jurisdiction and his powers, you may well have come to a different conclusion about the decision to arrest him if you found he was acting out of jurisdiction and outside his powers. Do you have any view about that?

ASSISTANT DIRECTOR MAPHOSHO: No, I do not.

ADV BALOYI SC: Thank you.

CHAIRPERSON: And a thought just crossed my mind, because when I was engaging you on how you would have acted had you known otherwise, I suddenly discarded the
20 information relating to a May 2021 consignment. I should not have discarded that. That was actually crucial in terms of how you would have acted had you been aware of certain facts, because what that does is to show, especially that May consignment, it actually shows the concern that these people had about receiving that consignment. And this

Alpha is even saying, if anything goes wrong, then we are in trouble, basically saying we must receive that consignment. And it is apparently two private individuals interacting, and that had nothing to do with Mr, the so-called informer, Mr Nku giving information to his handlers. He is actually talking to people who appear to be the people to receive the drugs.

Do you see what I mean? So that tells you that one cannot, when it comes to the Aeroton bust, that suddenly
10 Nku is no longer concerned with receiving the drugs. If he was concerned with receiving the drugs with regard to the May consignment, it must be the case, or indications at least are that even with regard to the Aeroton bust, he still wanted to receive the drugs.

But as I say, I am posing my question in the context of how would you have acted had you been aware of all these facts. You have already commented, I am not expecting a response.

ASSISTANT DIRECTOR MAPHOSHO: Thank you,
20 Commissioner.

CHAIRPERSON: I am just giving you the full picture.

ASSISTANT DIRECTOR MAPHOSHO: Thank you,
Commissioner.

CHAIRPERSON: Thank you.

ADV KHUMALO SC: Director, to be fair to you, this is not

a question. I am just bringing to your attention that Mr Magane's superior deposed to an affidavit much later probably, where he makes it clear that as a Commander he was not aware of the operation, since Mr Magane's duties are office bound, and that is in accordance with his performance enhancement plan. So his job is to be in the office and analyse statistics. He should not be opening containers outside of jurisdiction.

ASSISTANT DIRECTOR MAPHOSHO: Okay.

10 **ADV MOSIKILI:** Director, just to be fair to you, I think through our own engagement you did at least indicate that even without having the information that was relayed to you about the text, from your own interaction with Mr Nku, you had some misgivings about him. Is that fair?

ASSISTANT DIRECTOR MAPHOSHO: Ja, that is fair.

ADV MOSIKILI: Yes. And I think the follow-up question would have been that in that case then, surely you should have treated whatever that he gives you, or at least the people that he feeds information to, perhaps with some
20 element of caution, I suppose, to put it lightly.

ASSISTANT DIRECTOR MAPHOSHO: Commissioner, it was difficult without having to hear the other side of the story, because if we had the copies of the docket, we were going to know as to what was the other people on the other docket are saying. So we only had one side of the story.

ADV MOSIKILI: Yes, no, I accept that. My question is that if already the source of the information itself is questionable, then the sequence of that information itself should be treated with some level of caution as to how that information is handled going forward, at least from your side to say, well, Mashaba is receiving this information from someone that I am already, I want to use the word suspicious of, reservedly so.

Surely that should trigger a bit of a red flag in
 10 going forward. The very source that I spoke to that fed the information to Mashaba and then he relates to the rest of the guys, I am saying that kind of information should, I would say, raise a red flag at the very beginning to say the very source of information is questionable.

ASSISTANT DIRECTOR MAPHOSHO: Commissioner, it did. But the thing is, if the police, they do not want with the docket, it is like they were hiding something. So we do not know whether our suspicion by just interviewing this person alone, it was going to be enough. And honestly speaking,
 20 70% of our complainants are always like dodgy at IPID, so most of the complainants, they are dodgy, so, but it does not mean we must not follow their complaint. We follow their complaint, we can either make negative or positive recommendations, general recommendations, or sometimes even police recommendations.

ADV MOSIKILI: Hence my earlier statement to you that that is the very reason why you should guard against, as IPID, being used or being weaponized against the police, regardless of the source of the complaint.

ASSISTANT DIRECTOR MAPHOSHO: Yes.

ADV MOSIKILI: Yes. I think we are just wrapping up on a section dealing with the allegations.

ASSISTANT DIRECTOR MAPHOSHO: Okay.

ADV MOSIKILI: So let us wrap that up. My understanding
10 is that at least the three complainants, they raised these allegations against General Kadwa, Brigadier Sekgobela, Colonel Steyn, Captain Sebula by then, and General Khan, and they opened a case of defeating the ends of justice.

ASSISTANT DIRECTOR MAPHOSHO: Yes.

ADV MOSIKILI: My question to you is that, in your understanding, were these allegations raised against them individually, or is it something that you approached as a matter of them having acted in concert, or as one would say, common purpose? How did you understand the
20 charges?

ASSISTANT DIRECTOR MAPHOSHO: I understood that they acted in common purpose, because if you check, the first person who arrived at the crime scene was General Khan, who took over the crime scene and started giving people direction as to what must happen. And then General

Khan, in his statement, he indicates that he handed over the scene to General Kadwa. And then from General Kadwa, now the scene was with Colonel Sebula. So, however, Brigadier Sekgobela, Colonel Steyn, were also there at the crime scene.

ADV MOSIKILI: But my understanding is that, for example, they are not from the same unit, are they?

ASSISTANT DIRECTOR MAPHOSHO: General Khan, yes, is from Crime Intelligence, and the other members, they are
10 from DPCI.

ADV MOSIKILI: Yes, so I am trying to understand, how did you then arrive, and I will tell you why I am asking this question, how did you then arrive to a conclusion to say you were going to investigate this as a common purpose?

ASSISTANT DIRECTOR MAPHOSHO: Because what happened at the crime scene, it was like a chain. After General Khan came and took over the crime scene, and did what he did at the crime scene, he said he handed over the crime scene to General Kadwa. After he handed it over to
20 General Kadwa, then Captain Sebula, Lieutenant Colonel Sebula took over and arrested those four, those four members.

ADV MOSIKILI: I will tell you what my difficulty is. For example, an easiest example would be Colonel Steyn. None of the statements implicate him in any form or

manner. I am not certain what his role is, to be then put in a situation where he is accused of having acted in concert.

ASSISTANT DIRECTOR MAPHOSHO: Commissioner, it is because he was mentioned by the complainants, and when I asked for his explanation as to his role, the question of him explaining what was his role at the crime scene was posed to him. It is just that I do not remember what was his response, but it was one of the questions that was posed to him as to what was his role at the crime scene, because the
10 complainants were mentioning them by names.

ADV MOSIKILI: I have gone through their statements, the complainants, and to some extent, what you call the independent witnesses. For example, what would be of concern to me is that you will read the statement of Sergeant Phakula and Sergeant Sape, and they say directly so that the person who stopped them from deploying their dog to investigate or to sniff around was, I think it is Warrant Officer Rikhotso.

That seems to be that one person at least, at the
20 very least, there is a direct allegation against him. And Sape and, Sergeant Sape and Sergeant Phakula, they gave you a statement to that effect. That, to me at least, is the closest you will come to defeating the ends of justice. But that is not reflected anywhere in your findings. Is there, do you want to comment?

ASSISTANT DIRECTOR MAPHOSHO: Ja. Ja, because with regard to Rikhotso, they did not know where to find Rikhotso. I was hoping that maybe if I can get a copy of the docket, Rikhotso's information will be in that other docket, because at some point, I do not remember who mentioned the issue of Rikhotso calling, who indicated that General Khan is on his way.

So that is why one of the questions that was posed to General Khan was for him to indicate as to how did he
10 know about the crime scene. I was hoping that he was going to indicate that Rikhotso is the one who informed him. However, instead of mentioning Rikhotso, he mentioned somebody else. He mentioned ...[intervenes].

ADV MOSIKILI: I think it is Riekert.

ASSISTANT DIRECTOR MAPHOSHO: No, not Riekert. He mentioned a certain Sergeant who worked at the ...[indistinct] and I followed on the issue of that person to obtain his statement. I thought maybe he was going to mention Rikhotso, because we do not know. We do not
20 have the details of Rikhotso. We do not know where to find Rikhotso.

CHAIRPERSON: Regarding what constituted the defeating of the ends of justice, all I heard you say, I hope I understood you correctly, was this one handing over the scene to this one, and that one handing it over to yet

another one. I did not hear you explain where exactly the defeating was and what exactly it consisted in.

ASSISTANT DIRECTOR MAPHOSHO: Commissioner, in them arresting these people who made the bust ...[intervenes].

CHAIRPERSON: Because it could not just have been about the arrest, because it must also relate to what was sought to be achieved that was then defeated by the acts or conduct of the people complained about. What exactly was,
10 where exactly did the defeating lie?

ASSISTANT DIRECTOR MAPHOSHO: Okay. Commissioners ...[intervenes].

CHAIRPERSON: I am not saying the arrest was irrelevant, no, but surely it could not be the beginning and end.

ASSISTANT DIRECTOR MAPHOSHO: Yes, and the issue of ...[intervenes].

CHAIRPERSON: Nor the handing over of the scene.

ASSISTANT DIRECTOR MAPHOSHO: Yes. There was an issue of the Dog Unit as well, that the Dog Unit was called,
20 but they did not do the job at the crime scene.

CHAIRPERSON: Must you always have a dog at the crime scene?

ASSISTANT DIRECTOR MAPHOSHO: Commissioner ...[intervenes].

CHAIRPERSON: If you, must you always have dogs at the

crime scene for this purpose?

ASSISTANT DIRECTOR MAPHOSHO: Because it was drugs, and the dog that was called was for the narcotics, it was ...[intervenes].

CHAIRPERSON: I am saying is it obligatory that you should always have dogs, and if you do not have them, then where someone felt like they should be called, then the ends of justice have been defeated if somebody else had a different view, for example.

10 **ASSISTANT DIRECTOR MAPHOSHO:** But, Commissioner, a narcotic dog was relevant for that particular crime scene.

CHAIRPERSON: And once you do not have it, defeating.

ASSISTANT DIRECTOR MAPHOSHO: No, no, no. But if you call the Dog Unit and then the Dog Unit does not do the job because of somebody does not want them to do the job, then yes, it is defeating.

CHAIRPERSON: Were the dogs going to what, sniff the container maybe for more bags?

ASSISTANT DIRECTOR MAPHOSHO: Yes, the dog was
20 supposed to have checked the whole area to check if there are any other drugs that were maybe stored in that particular warehouse.

CHAIRPERSON: Anything else?

ASSISTANT DIRECTOR MAPHOSHO: And check the container maybe for more drugs.

CHAIRPERSON: Anything else?

ASSISTANT DIRECTOR MAPHOSHO: That is what I can think of now, ja.

CHAIRPERSON: Because I am asking, for example, because we know that once other people were involved, the LCRC was called. LCRC, which ought to have been called right at the beginning, before the bags were loaded onto Warrant Officer Magane's van.

ASSISTANT DIRECTOR MAPHOSHO: Yes.

10 **CHAIRPERSON:** And these people that are now supposed to have defeated the ends of justice call the LCRC for the LCRC to do its job. Would people who wanted to defeat the ends of justice have done anything like that? Commissioner, the first people who arrived at the scene, I think it is the statement of Warrant Officer Magane that ...[intervenes].

CHAIRPERSON: It seem, it seem Chief Mashaba and Mr Nku, whose motor vehicle was parked some distance away ...[intervenes].

20 **ASSISTANT DIRECTOR MAPHOSHO:** Yes.

CHAIRPERSON: They were the three who arrived, first to arrive at the scene.

ASSISTANT DIRECTOR MAPHOSHO: Yes. I am talking about the LCRC person.

CHAIRPERSON: Okay. All right, all right.

ASSISTANT DIRECTOR MAPHOSHO: I wanted to talk about the issue of the LCRC person.

CHAIRPERSON: All right, yes.

ASSISTANT DIRECTOR MAPHOSHO: That they did call the relevant stakeholders to come at the crime scene, whereas the LCRC was one of those stakeholders.

CHAIRPERSON: Who of these two called the LCRC?

ASSISTANT DIRECTOR MAPHOSHO: It is Magane with the assistance of the Booyens police.

10 **CHAIRPERSON:** Definitely not Warrant Officer Magane.

ASSISTANT DIRECTOR MAPHOSHO: No, it was ...[intervenes].

ADV BALOYI SC: Assistant Director, you did not think anything was wrong with this report or complaint by these three people, that the story included that they got there, the three of them, which is Mr Nku, Mr Magane, Warrant Officer Magane, and Chief Mashaba. They got there, opened the container, and then unpacked, took the drugs onto Warrant Officer Magane's van. When there is no LCRC, there is no
20 dog, there is nothing at that point, it is just the three of them with Mr Nkuu that you say you did think something was dodgy about him. You did not think something about this story is problematic?

ASSISTANT DIRECTOR MAPHOSHO: Not the story *per se*, but what happened in terms of handling the crime scene

was wrong for them to take those bags and load them in the bakkie.

ADV BALOYI SC: And you did not think that could reasonably find a basis for the other officers to think they are up to mischief? If you want to reduce it to handling of the crime scene, I think in the end we do find out that it was actually much more than just mishandling a crime scene. But we are talking about you, you received a complaint, they tell you that they followed this truck, it parked, Magane
10 backs up his van, they instruct the employees of that place to put the drugs onto Mr Magane's, onto Warrant Officer Magane's bakkie.

There is no LCRC. They are not calling any, there is no one else, just the three of them. You are saying you did not think something does not seem right here, maybe I need to interrogate this complaint further, because to me, I am not an IPID officer, I am not a police officer, but it seems obviously deeply suspicious that police officers would come in an unmarked van and then transfer the drugs
20 from a container, when you know there are protocols about crime scene management. You are saying you did not think this warranted ...[intervenes].

ASSISTANT DIRECTOR MAPHOSHO: No.

ADV BALOYI SC: You to keep an enquiring mind about this.

ASSISTANT DIRECTOR MAPHOSHO: Commissioner, we did ask about that, but he indicated, it is just that I do not remember whether it was Magane who called the LCRC person.

ADV BALOYI SC: No, he did not. No, he did not. We know from his evidence that he did not. He did not call the LCRC. He had nothing to do, Magane had nothing to do with calling the LCRC. In fact, his evidence, he knows nothing about drugs and crimes, the management of a drug
10 bust scene.

ASSISTANT DIRECTOR MAPHOSHO: Yes, that one indeed, from what happened at the crime scene, you can tell that he had no knowledge of managing the crime scene, but from what we have, the LCRC person was called. The only challenge was that they have already contaminated the scene by taking the drugs from the container into the bakkie. But when we asked them about it, they indicated that they were waiting for the LCRC person to come and take pictures and package the drugs.

20 **ADV BALOYI SC:** I must say that I am surprised that you did not think that that kind of conduct is sufficiently suspicious to have you enquire further. I know nothing about this stuff, but I must say that the first time I heard that is what happened, it made me ask the question, why would he do that? He knows the protocols, and that is why

we engaged him on, do you know anything about crime scene management that involves drug busts, and he told us, I have never done this before.

My job does not involve this. So I ask you in that context that I would have thought you would know more than I had the first time here to have an enquiring mind about what in fact was going on here. Let me find out before I make conclusions that there was a defeating the ends of justice case here. But I have heard what you said.

10 **ASSISTANT DIRECTOR MAPHOSHO:** Okay, Commissioner.

CHAIRPERSON: And what, if anything, did you make of the fact that they had already loaded these bags onto Warrant Officer Magane's van?

ASSISTANT DIRECTOR MAPHOSHO: We asked about that.

CHAIRPERSON: They take them, they handle them, there are hands all over them, there are fingerprints all over them, and then they load them onto Warrant Officer
20 Magane's van. What did you make of that? Because it is something that you were aware of. It is at page 37 of your statement at page 10. What did you make of that? So any chance of fingerprints being uplifted, DNA being uplifted, almost gone, if not gone altogether. What did you make of that?

ASSISTANT DIRECTOR MAPHOSHO: We did ask Commissioners about this conduct, but it was the issue of ...[intervenes].

CHAIRPERSON: No, what did you make of it? What did you think about it? I am not asking about whether you asked them about it.

ASSISTANT DIRECTOR MAPHOSHO: It was the issue of saying that they do not know how to handle the scene. Surely they have never even maybe attended the crime
10 scene management.

CHAIRPERSON: Would that not tell you then that perhaps people who have better knowledge, who come in and say, get out of the way, were not necessarily defeating the ends of justice?

ASSISTANT DIRECTOR MAPHOSHO: Yes. If the police maybe took over the crime scene ...[intervenes].

CHAIRPERSON: They just say, you bumbling lot, just get out of the way, let us do a proper job of this. Would that not have told you that those who came later were actually
20 the people who were doing what ought to have been done?

ASSISTANT DIRECTOR MAPHOSHO: Yes, Commissioner. However, the conduct of not knowing how to handle a crime scene does not necessarily make it a criminal offence.

CHAIRPERSON: I am not suggesting that it is. That is not what my question is suggesting to you.

ASSISTANT DIRECTOR MAPHOSHO: The thing is, the police who came, the Hawks who came later to come and handle the scene, did not only handle the scene, they also arrested these people.

CHAIRPERSON: So, the only problem that leads to the charge of defeating the ends is because they were arrested, not so much that something wrong was done with regards to what ought to have been done. Not so much the ...[intervenes].

10 **ASSISTANT DIRECTOR MAPHOSHO:** Yes.

CHAIRPERSON: It is just because they were arrested, that is the issue. I am not suggesting, by the way, that it is right or correct to arrest someone who should not be arrested. That is not what I am suggesting.

ASSISTANT DIRECTOR MAPHOSHO: Okay. Commissioner, it is not only that. The police did not even try and establish as to who is the owner of these drugs. To date ...[intervenes].

CHAIRPERSON: How would you have been able to establish
20 that there and then?

ASSISTANT DIRECTOR MAPHOSHO: No, no, I mean now, even now.

CHAIRPERSON: Yes.

ASSISTANT DIRECTOR MAPHOSHO: Because of the drugs were in the Scania container.

CHAIRPERSON: Yes.

ASSISTANT DIRECTOR MAPHOSHO: I do not know whether they did follow up on the Scania issue, but from the information that we received on the street was that the CEO of Scania at that particular time was from Brazil, who later resigned or something like that and left the country. So, I do not know if maybe at that particular time they have made follow ups on this matter, maybe we were going to have the real owner of those drugs.

10 **CHAIRPERSON:** That is, none of that is answering my question, but I will leave it.

ADV MOSIKILI: Thank you. I think to be fair to you, Director, I think on the issue of the dogs, I think there was a mention that there is a suspicion that there could have been more containers. I think from the information that you received that there could have been about three containers containing, I think other ones containing guns, the other one containing drugs as well.

ASSISTANT DIRECTOR MAPHOSHO: The drugs as well.

20 **ADV MOSIKILI:** And I suppose the stopping of the dogs at least shut that window of opportunity.

ASSISTANT DIRECTOR MAPHOSHO: That is true, Commissioner.

ADV MOSIKILI: If that was the case.

ADV BALOYI SC: But that would be only in relation of the

one container, because from the evidence there is only one container that came up, or that is at issue in Aeroton.

ADV MOSIKILI: It is an issue in Aeroton, Chair.

ADV BALOYI SC: One container.

ADV MOSIKILI: That there could have been three containers on the premises. At least the information that was relayed. It comes across later on when we get affidavits from people from Scania that were expecting three containers. Whether they would have arrived the
10 same day or the day before, that is something else.

ADV BALOYI SC: Ja, that is what I am clarifying. You are not saying that the evidence is that at the time of this incident that is happening on the premises of Scania, there was another two containers that the dogs would have helped to sniff out.

ADV MOSIKILI: No.

ADV BALOYI SC: You are not saying that?

ADV MOSIKILI: No, no, we are not saying that. We are saying to an extent that there could have been, the dog
20 could have, but that is as high as it goes. But there is no evidence to suggest that there were more than that.

ADV BALOYI SC: Ja, please correct me, I may be misunderstanding the rest of the evidence. My understanding was that vessels coming, the vessel coming in with a container, with containers, or this particular

container even, there were other three containers that were going with this particular one, but only one came up to Gauteng to become an issue in this case.

ADV MOSIKILI: We do not know. That is the difficulty, Commissioner.

ADV BALOYI SC: Okay.

ADV MOSIKILI: That what became of those two, either they stayed there or they moved prior to the 9th or the 8th. It remains a question.

10 **CHAIRPERSON:** So is the point that the dogs would have been used on more than just the one container that contained the suspected drugs or the suspected cocaine?

ASSISTANT DIRECTOR MAPHOSHO: Yes.

CHAIRPERSON: So they would have sniffed at a minimum of what, three containers on the day, on the day.

ADV MOSIKILI: For what it is worth, Chair.

CHAIRPERSON: On the day.

ADV MOSIKILI: For what it is worth. But remember, I still have the reservation to say that even the person who
20 stopped the dogs as Rikhotso, it has nothing to do with the five accused in any event.

ADV KHUMALO SC: Now to lead to that conclusion you would have to assume that on the day at Scania there were in addition to this container two other containers, because if you were saying they might still be coming two or three

days later, calling the dogs on that day actually makes no sense.

ADV MOSIKILI: No, that is perfectly true, Commissioner.

ADV KHUMALO SC: And from what we saw, there was not another container that came from Durban on that day that was in the premises, because if it was there, the policemen who were there would have searched those containers even without the dogs.

ADV MOSIKILI: Ja, that is all. I can take it as far as that,
10 Chair.

CHAIRPERSON: We may not have seen others, at least in the pictures that we were shown. But even if there were, the focus was just on this one, on the evidence before us, ja ...[indistinct]. So I do not think that assists you.

ADV MOSIKILI: [Indistinct]... Chair.

CHAIRPERSON: Assistant Director.

ASSISTANT DIRECTOR MAPHOSHO: Commissioners, in fact, that whole thing, they were expecting 11 containers. But they are saying from these 11 containers, three of those
20 containers, two had drugs and one had firearms. So the thing is, I did not even see the photo album of the crime scene on the day of the incident, so I cannot say much.

CHAIRPERSON: Thank you. Thank you.

ADV BALOYI SC: But what we do know is Mr Nku's information related to this one container, the one that he

followed all the way from Durban, and he parked inside Scania to watch its unloading. At least we know that much. That their interest in this operation that plays out in Aeroton was on this one container.

CHAIRPERSON: And so was the interest of Chief Mashaba and Warrant Officer Magane.

ADV BALOYI SC: Yes.

CHAIRPERSON: Just this one container.

ASSISTANT DIRECTOR MAPHOSHO: Yes, I am not sure
10 about the two containers, whether it was on the same day or the previous day or I do not know.

ADV BALOYI SC: Okay.

CHAIRPERSON: Yes, Mr Mosikili.

ADV MOSIKILI: Thank you, Chair. Assistant Director, I want us to move then to the next subtopic on page 7, where we deal with a request for copies of docket, Booysens, CAS 98/7/2021. Can you then pick it up from paragraph 19 and read that into the record, please?

ASSISTANT DIRECTOR MAPHOSHO: -:

20 “On 2021-10-21, I have made contact with Investigating Office of DPCI Captain Sebula requesting the copy of the docket. He said we must come to his office at Germiston on 2021-10-22 to collect it.”

That is like the following day.

“My colleague and I went to Germiston as agreed, but to our surprise on our arrival, Captain Sebula was not in the office. He was contacted on his cellphone, and he indicated that he was not going to give IPID copy of the docket.”

ADV BALOYI SC: Can I just find out, surely there is a
 10 protocol of how you go about getting dockets. We had Colonel Sebula earlier before you testifying, and part of his justification why there is a formality or there has to be a formality was that anyone could call and want a document out of a docket, and if there are no formal ways of doing it, then people could just end up sharing documents in a docket. Without more, it sort of seems to make sense, that kind of explanation, and so I would expect that you have protocols of how do you get a docket out of the SAPS for your investigations.

20 **ASSISTANT DIRECTOR MAPHOSHO:** Okay. Commissioners, with regard to getting the copies of the docket, an investigator can just go to the police station, or maybe you call to find out as to who is the investigating officer first to make that kind of arrangement. So what we normally do when we arrive at the police station or whatever

unit of SAPS, they normally take the picture of our appointment cards to say this person, I gave the copies of the docket to this particular person.

But there is no issue of saying you must request the copies of the docket from the Commander, because as IPID, we are relying on section 29(2) of the IPID Act, that talks of cooperation, that SAPS must cooperate with IPID. So there is nothing like that, that we must maybe request the dockets from the Commander. You can only do that if
10 maybe I know the Commander of that particular police station, and I do not know who is the investigating officer of the case, then I can liaise with the Commander.

ADV BALOYI SC: And there is no requirement for a certain form that it must take, there is nothing like you have to do it in writing, even if it is an email, there is nothing like that?

ASSISTANT DIRECTOR MAPHOSHO: Nothing, Commissioner.

ADV BALOYI SC: Perhaps you should have, so that you
20 do not have Colonel Sebula appearing and saying, I never got such a request.

ASSISTANT DIRECTOR MAPHOSHO: Ja. Ja.

ADV BALOYI SC: So maybe you should have some kind of protocol.

ASSISTANT DIRECTOR MAPHOSHO: And maybe that one

can be addressed in terms of maybe fixing our standard operating procedures.

ADV BALOYI SC: Yes.

ASSISTANT DIRECTOR MAPHOSHO: Ja.

ADV BALOYI SC: All right, thank you.

ASSISTANT DIRECTOR MAPHOSHO: [Indistinct]...
standard way of doing things.

ADV BALOYI SC: Thank you.

ADV KHUMALO SC: And to be fair to you, this letter on
10 page 34, assuming you had not asked for it formally, by the
time you got to this November letter on page 34, it is in
writing from your director to General Lebeya, and you are
making it clear there that you are asking for this docket.
So, even if one accepts that in October you did not follow a
formal process, within a month you write to General Lebeya
and it is a formal letter from your Director saying, please
intervene, we are looking for this docket for the purposes of
this inquiry we are conducting.

ASSISTANT DIRECTOR MAPHOSHO: That is correct,
20 Commissioner.

ADV MOSIKILI: Yes, you may proceed.

ASSISTANT DIRECTOR MAPHOSHO: -:

“The matter was escalated to Brigadier
Sekgobela, that is Captain Sebula's
Commander, and she said she will talk

to Captain Sebula and she will give us feedback. A follow-up was made with Brigadier Sekgobela on his cellphone, but the phone was always on voicemail and she never returned the call. On 2021-10-28, an email was sent to General Kadwa seeking his intervention, and the meeting was arranged for IPID and DPCI at Germiston on 2021-11-05. On 2021-11-04, at about 1700 hours, the staff office of General Kadwa called me and said the meeting was cancelled due to unavailability of General Kadwa and the Legal Services. However, there was no other date provided to IPID.

On 2021-11-17, my supervisor drafted a letter to General Lebeya who is the national DPCI head, and was signed by the IPID executive director. The letter was to request his intervention and get a copy of a docket Booyens CAS 98/07/2021.

On 2021-11-24, the letter was delivered to General Lebeya's office at

Silverton and it was received by his Staff Officer. General Lebeya did not assist IPID with the request. Instead, he indicated that IPID must investigate without the copies of that docket. It must be noted that most of the cases that IPID investigates emanate from cases investigated by the police. It is a standard practice that IPID always requests the copies of the docket in terms of Section 29(2) of the IPID Act, 1 of 2011.

10

The members of the South African Police or Municipal Police Service must provide their full cooperation to the directorate, including but not limited to (a) the arrangement of identification parade within 48 hours of the request made by the directorate; (b) the availability of members for the taking of an affidavit or an affirmed declaration to give evidence or produce any document in that member's possession or under his or her control, which has a bearing on the matter

20

being investigated; (c) any other information or documentation required for investigation purposes. Whereas Section 33(3) of IPID Act, 1 of 2011, stipulates that any police officer who fails to comply with section 29 is guilty of an offence and liable on conviction for a fine or imprisonment for a period not exceeding 2 years.”

10 **ADV BALOYI SC:** IPID has this power in Section 33(3), it gives you quite serious power to compel compliance with 29(2). Does IPID use this power? Has it ever used this power?

ASSISTANT DIRECTOR MAPHOSHO: Yes, Commissioner. This Section 33, we also have the regulations. In terms of the regulations, because Section 21 we have got subsection (1) and (2). With subsection (1) it deals with the reporting of the cases to IPID. So the regulation in terms of section 29(1) it is clear as to what must happen if the police fails to
20 report the case. However, in terms of subsection (2), it does not give us a clear directives as to what must happen. It talks about talking to the person, requesting their reasons for not giving the documents, and then the NHI or the provincial management in terms of the province will give advice as to what must happen.

ADV BALOYI SC: Well, I mean, implicit in 33(3) is that a criminal charge can be laid, a criminal complaint against a non-cooperative or uncooperative police officer.

ASSISTANT DIRECTOR MAPHOSHO: Ja.

ADV BALOYI SC: And so whatever the regulations say, maybe the regulations say you must first follow these steps, try and persuade intergovernmental relations kind of provisions. Maybe it says that, but my question is, let me assume on the back of what you have said that the
10 regulations require you to follow, they provide for a certain process before you get to the drastic step of laying a criminal complaint.

ASSISTANT DIRECTOR MAPHOSHO: Yes.

ADV BALOYI SC: My question is, I am now at the criminal complaint stage, where General Lebeya has ignored you. I think it is also General Sekgobela or Colonel ...[intervenes].

ASSISTANT DIRECTOR MAPHOSHO: General Kadwa.

ADV BALOYI SC: Kadwa has ignored you where there has been formal correspondence.

20 **ASSISTANT DIRECTOR MAPHOSHO:** Yes.

ADV BALOYI SC: And I am assuming you have already exhausted whatever processes there may be ...[intervenes].

ASSISTANT DIRECTOR MAPHOSHO: Yes.

ADV BALOYI SC: That try to find a resolution, a friendly resolution to this. My question is now at the tail end. Has

IPID ever invoked that provision that permits you to lay a criminal complaint and have people prosecuted?

ASSISTANT DIRECTOR MAPHOSHO: Ja, in terms of Section 29(1), we do have most of those cases of non-compliance.

ADV BALOYI SC: So you have laid criminal complaints?

ASSISTANT DIRECTOR MAPHOSHO: Criminal complaints, ja. But the thing is with subsection (2), this one was, I would say it was a peculiar case. It has never happened
10 before where we request a docket and somebody refused with a docket. It was one of its kind.

ADV BALOYI SC: And nothing happened yet?

ASSISTANT DIRECTOR MAPHOSHO: And nothing happened.

ADV BALOYI SC: No criminal complaint was laid?

ASSISTANT DIRECTOR MAPHOSHO: Yes, because the NHI was supposed to give me instruction of saying go and open a case.

ADV BALOYI SC: Okay. Thank you.

20 **ADV MOSIKILI:** Thank you, Commissioner. Perhaps to that, we can add, there should be a copy of a Government Gazette next to you there. I just need to refer you to that section. Commissioners, you should have a copy of the Government Gazette dealing with the IPID Act. Just to piggyback on Section 33(3), can you also look into 33.1 and

perhaps read back into the record?

ASSISTANT DIRECTOR MAPHOSHO: Do you want me to ...[intervenes].

ADV MOSIKILI: You just read 33.1 only. 33.1, it says:

“Any person or private entity who interferes, hinders or obstructs the Executive Director or member of the directorate in the exercise or performance of his or her powers or functions is guilty of an offence and liable on conviction to a fine or imprisonment for a period not
10 exceeding 2 years.

ADV MOSIKILI: Yes. So my concern is that, I think just to follow up on the point raised by Commissioner Baloyi, is that there seems to be somehow some teeth being given to IPID. But the question is really are they using same to bite? And I will tell you why. If we go, for example, to the letter that you were referred to by Commissioner Khumalo on page, I need to, it is page 35.

ASSISTANT DIRECTOR MAPHOSHO: Page?

ADV MOSIKILI: 35.

20 **ASSISTANT DIRECTOR MAPHOSHO:** Of my statement?

ADV MOSIKILI: Of your statement, yes. So the annexures.

ASSISTANT DIRECTOR MAPHOSHO: Photo annexures.

ADV MOSIKILI: Yes.

ADV BALOYI SC: [Indistinct]...

ADV MOSIKILI: BTK11. Let me just double check. Yes, it is TK11.

ADV BALOYI SC: 11.

ADV MOSIKILI: So it is a letter that you sent to, it was sent by your office ...[intervenes].

ASSISTANT DIRECTOR MAPHOSHO: Okay.

ADV MOSIKILI: To General Lebeya's. And my concern is that, I mean, from paragraph 1 to 7, it is just the background and the essence of your letter really is
10 paragraph 8 on page 35, which says this.

“It is against this background that we request General's intervention on this matter as the continued delay in the obtaining copies of the docket hampers service delivery.”

My concern is that this letter, it does not come out as instructive as it could, given the powers that you have read. Yes, I understand that there are regulations, but I would have expected at the very least to say what kind of
20 intervention exactly you are requesting. Secondly, perhaps state out that failure to comply, what would that potentially attract in terms of the Act. And also explain what is meant by hampering service delivery, you know, and perhaps lastly, mention the consequences. And I suppose as lawyers as well, I would have found this letter to be having

more bite if at least it gave deadlines as to when at least General Lebeya ought to have responded to this so that you can say failure to respond by this date will take you that you are also hindering or obstructing our service delivery as it is put there. What is your comment to that?

ASSISTANT DIRECTOR MAPHOSHO: I agree with that, Commissioner, because the letter does not have the timeframe as to when do we need the copies of this docket.

ADV MOSIKILI: And I have noticed it is not only the
10 timeline, other issues as well, that you do not set out what you require, but also the consequences of failure to comply. Now, going back to your statement at paragraph 24, that is on page 8.

ASSISTANT DIRECTOR MAPHOSHO: -:

“On 2021-11-17, my supervisor drafted
a letter to General Lebeya, National
Head of DPCI, and was signed by an
IPID Executive Director.”

ADV KHUMALO SC: Wait, sorry. Did we not stop at 27?
20 Why are we going back to 24?

ADV MOSIKILI: Yes, no, no, I just wanted to ask you a question on 24. You will see the last sentence there, you say that General Lebeya did not assist IPID with the request. Instead, he indicated that IPID must investigate without the copies of that docket. I have searched through

the documents that you have provided to us. Can you assist us, where did he indicate that, or can you recall where he indicated that?

ASSISTANT DIRECTOR MAPHOSHO: I do not have anything in writing with regard to that, but I remember we had the meeting with the NHI as a team, as the NC team, and the message was conveyed to me that General Lebeya said we must investigate without the copies of the docket.

ADV MOSIKILI: Yes, I see that at paragraph 27, you say
10 that the issue was discussed with the National Head of Investigation, and I was advised to continue with the investigation without the requested copies of the docket.

ASSISTANT DIRECTOR MAPHOSHO: Yes.

ADV MOSIKILI: I suppose my question then, ultimately, this was an internal decision to say, look ...[intervenes].

ASSISTANT DIRECTOR MAPHOSHO: Ja, it was.

ADV MOSIKILI: We have tried.

ASSISTANT DIRECTOR MAPHOSHO: Yes.

ADV MOSIKILI: Okay.

20 **ASSISTANT DIRECTOR MAPHOSHO:** But not try enough, because we are supposed to have opened the case.

ADV MOSIKILI: Yes. I want us then to move to the next topic, which relates to your investigation. It says investigations conducted by IPID, and there you start with the statements that you took from the independent

witnesses at paragraph 28. Can you take it from there, please?

ASSISTANT DIRECTOR MAPHOSHO: Okay.

“IPID obtained the statement of other independent witnesses, the truck driver, the lady who was about to receive the goods, and the manager at Scania. The first person is Brightman Vusi Mtembu, who was the truck driver.

10 His statement, I attached the statement as TK12, indicated that on 2021-07-08 in the morning he was in Durban when he received a message from his company with the container details to be collected at Durban Harbour.

He arrived at the Durban Harbour at about 18:20. He inspected the container and the seal was intact. He then took the container and drove to

20 Roodekop, where he arrived at about 20:20.

On 2021-07-09 at about 6:30, he arrived at work and went to inspect the truck and found that the seal was still intact. He was about to take the

container to Aeroton when he was informed that there are police officers who will escort him as they wanted to search the container. He was escorted by the police to Aeroton and on arrival the container was received by Jolene, who asked him to put the container at the bay. He did not see who opened the container. When he alerted from the truck, he noticed the black bags being loaded from the container into the Nissan MP300. A tall guy who identified himself as a police officer informed him that he was under arrest for transporting drugs. He tried to explain to the police officer that he did not know what was inside the container.”

ADV BALOYI SC: Just find out, what did you, because as I understand your report, part of your complaints or what causes you to refer, to find that there is a case for defeating the ends of justice in this complaint, is that the police officers that arrived on the scene, the General Khan's and them, they caused the driver to be released. You accepted that he was under arrest and then they then

ordered that he be released. Can I just understand, what is it about the conduct of the driver that you say that indicates to his arrest being proper and therefore the instruction to release him being a case of defeating the ends of justice?

ASSISTANT DIRECTOR MAPHOSHO: Other than the issue that he was the driver of the truck, when we interviewed the driver, it was clear that the driver did not know what was in the container. So even the first members who arrived first, they were supposed to have made like a proper
10 investigation before they can arrest people.

ADV BALOYI SC: So was your conclusion then about the driver that his arrest by Magane, Phakula team, Mashaba team, should not have happened?

ASSISTANT DIRECTOR MAPHOSHO: It was premature.

ADV BALOYI SC: Ja, it should not have happened.

ASSISTANT DIRECTOR MAPHOSHO: Yes.

ADV BALOYI SC: You used the word premature, but my question is, given his explanation ...[intervenes].

ASSISTANT DIRECTOR MAPHOSHO: Ja, because I think
20 at that particular time, no one had interviewed him. They did not even know the processes as to how does this person get these notifications with regard to collecting these containers and stuff.

ADV BALOYI SC: Okay. Thank you.

ADV MOSIKILI: Perhaps just on a, it is a different subject,

but still affecting the driver. I have read from your, you have provided us with a copy of your diary entry where you interviewed Mr Nku and he seems to suggest there, if my memory serves me well, that the driver is involved or somehow is implicated. Did I capture that, is my recollection correct?

ASSISTANT DIRECTOR MAPHOSHO: Yes, Commissioner. He did mention something like that.

ADV MOSIKILI: Ja.

10 **ASSISTANT DIRECTOR MAPHOSHO:** Because he was indicating that the driver did not pass through these weigh bridges, so he drove from Durban to Roodekop without stopping at any weigh bridges. And according to him, because of him doing that, he knew what was inside the container.

ADV MOSIKILI: And these weigh bridges is where there is a potential, I suppose, search of the trucks.

ASSISTANT DIRECTOR MAPHOSHO: Yes, of the trucks, yes.

20 **ADV MOSIKILI:** Ja. Was that the only inference from him to say because he did not stop?

ASSISTANT DIRECTOR MAPHOSHO: Ja, that was the only inference.

ADV MOSIKILI: That renders him suspicious as well.

ASSISTANT DIRECTOR MAPHOSHO: Ja. He was saying

maybe he was instructed by somebody that he must not stop anywhere. He must just drive from Durban to Roodekop.

ADV MOSIKILI: Now, when you spoke to Jolene and them, the Koekemoers, did you explore this with them in terms of the travelling of the truck and the stops and the compulsory? Did you take this issue further with them when you interviewed them?

ASSISTANT DIRECTOR MAPHOSHO: Commissioners, Jolene and the other lady who works for Scania, Jolene
10 works for Scania, I think, in South Africa. There is that other one, Scania Brazil. They do not know as to the travelling arrangements because the company, the truck company, belongs to another company. It belongs to Yellow Jersey.

ADV MOSIKILI: Yes.

ASSISTANT DIRECTOR MAPHOSHO: Not the Scania, the Freitan, because Jolene's company is Freitan, but it deals with Scania. Jolene is Scania South Africa and ...[indistinct] Scania Brazil. So they only request the
20 transportation from the other company. Why the other company tells their driver, I do not know.

ADV BALOYI SC: Did you ask the driver about that allegation?

ASSISTANT DIRECTOR MAPHOSHO: Yes.

ADV BALOYI SC: And?

ASSISTANT DIRECTOR MAPHOSHO: And he said no, he did not get any instruction from anyone.

ADV BALOYI SC: No, no, no ...[intervenes].

ASSISTANT DIRECTOR MAPHOSHO: He was ...[intervenes].

ADV BALOYI SC: Did you, no, sorry, let me clarify my question. Did you ask him about not stopping at weigh bridges?

ASSISTANT DIRECTOR MAPHOSHO: Yes, we did.

10 **ADV BALOYI SC:** And?

ASSISTANT DIRECTOR MAPHOSHO: And he said he was in a hurry to go back home. He was tired. He did not want to stop anywhere.

ADV BALOYI SC: Okay. But then later on, and I am sure Mr Mosikili will get there, but this is a topic that is related to this. You seem in your conclusions to have accepted that something was wrong with him not stopping at weigh bridges along the way.

ASSISTANT DIRECTOR MAPHOSHO: Yes, Commissioner,
20 because normally I do not know what is the purpose of these trucks going to these weigh bridges, whether there is a reason for them to go. Normally when I drive, I just saw the trucks going through weigh bridges. I do not know what is the purpose of those trucks going there, but if this one is saying this person did not even go to the weigh bridges, I

went and asked the driver, why you did not go to the way bridges and his answer was that, no, I was tired. I just wanted to reach my destination on time.

ADV BALOYI SC: Okay, you may misunderstand what I am saying. You say in the conclusion the driver took the container at the harbour at about 13:30 and arrived at his company in Johannesburg at 20:00, which is very quick, I agree.

ASSISTANT DIRECTOR MAPHOSHO: Ja, it was very
10 quick.

ADV BALOYI SC: And then this is the part which I am asking about. You say, which is highly unlikely for the truck, so you seem to give significance or even credence to Nku saying you know, he did not stop along the way, which suggests he had instructions. So I was asking that kind of question, that did you accept that the driver must be implicated, that is why he was not stopping at weigh bridges, or in the way that you now, as you are sitting there, seem to speak about it, you now say, well, that is
20 what Nku said. And yet your conclusion in paragraph 90 suggests you accepted what Nku said, that, ja, indeed it is suspicious, and I was trying to clarify that with you.

ASSISTANT DIRECTOR MAPHOSHO: Commissioners, it is really suspicious that a truck can travel from Durban from 1 o'clock and then 8 o'clock is now here in Johannesburg. It

was really suspicious. However, if I were to investigate this like this was supposed to have been investigated by the hawks to check as to whether is it true that this person did not go via those weigh bridges or not.

ADV BALOYI SC: I would say to the extent that it has been put to you by Nku and you seem to make something of it, that you had to investigate it, otherwise you have just accepted the so-called informant's information to you, which may be nothing. If you had investigated, for example, you
10 could have asked Yellow Jersey, and maybe Yellow Jersey might have said, no, do not worry, this driver does this all the time, or there is nothing wrong with him not stopping. And between you and me, Assistant Director, we drive on the road and see very fast trucks, scarily fast trucks.

So the fact that it was fast, alone in itself without more, it is difficult to accept that. Therefore, it indicates the driver was in on whatever scheme was going on here. You would be expected to do further investigation of it before you say, yes, the conduct of the driver was
20 suspicious, Nku is onto something here.

ASSISTANT DIRECTOR MAPHOSHO: Commissioner, it is difficult to investigate those kind of issues because it was going to look like we are now overstepping on the investigations that is being conducted by the SAPS. However, like I was saying, if we had the copies of the

other docket, we were going to see as to what is in the docket, whether the police followed the issue of these weigh bridges or not. If not, IPID was going to do that. But we did not want to investigate this issue, and this truck driver is not even a police officer where IPID have mandate to investigate such. So it was supposed to have been done by the police officers.

ADV BALOYI SC: Ja, I guess my problem with you is you draw something out of it. If you had just recorded it as Nku
 10 said and left it at that and it did not look like you made anything of it, then you and I would not be having this conversation.

We are having this conversation because Nku says this and then you make something of it in paragraph 30, that yes, of course, it was suspicious, the driver was suspicious, but you cannot then sit there and say, well, it was not anything that I could investigate when you are drawing certain conclusions about the travel time. That is my concern about it.

20 **ASSISTANT DIRECTOR MAPHOSHO:** Ja.

ADV BALOYI SC: But I have heard you.

ASSISTANT DIRECTOR MAPHOSHO: Okay.

ADV MOSIKILI: Thank you, Director. Can you then pick it up at paragraph 34, dealing with Jolene Koekemoer.

ASSISTANT DIRECTOR MAPHOSHO: Okay.

“Jolene Koekemoer Wentzel, the lady who received the container, see attached Annexure “TK18” state that she is employed by Freitan Logistics, Aeroton, which is, include amongst others receiving the goods, warehousing and distribution of Scania South Africa.

10 On 2021-07-09 at about 9:00, the container arrived at the warehouse from Yellow Jersey. The truck was accompanied by the police officer. On arrival one police officer approached her and said they have a tip-off and requested her to open the container. She immediately took a file and went to the container to check the seal, comparing it with the arrival notification to check if they correspond.

20 The seal was intact and corresponded. She then requested her colleague to open the container. As they opened the container, the black bags fell out of the container and the police officer said it was drugs. They were

instructed to load the bags inside the Nissan bakkie. After loading, the tall officer came with cable ties and he said he was arresting them. He was arresting her for receiving the goods, the driver for transporting the goods, and Cornelius because the goods belonged to him. He said he was taking them to the nearest police station.”

ADV MOSIKILI: Before you continue, just for the benefit of the Commissioners, because I have consulted with the gentlemen involved here. You also met them. Will you agree with me that when reference is made to the tall officer, it would refer to Mashaba? Will you accept that?

ASSISTANT DIRECTOR MAPHOSHO: I do not remember. I think, ja, I think he is tall. I do not remember him.

ADV MOSIKILI: Of the three, he is the tallest, between Phakula – well, everybody is taller than me, but ...[intervenes].

ASSISTANT DIRECTOR MAPHOSHO: I do not remember if he is the tallest, but I think it was him because the first people who arrived, it was him and Magane.

ADV MOSIKILI: And Magane is quite short.

ASSISTANT DIRECTOR MAPHOSHO: Ja.

ADV MOSIKILI: Yes.

ASSISTANT DIRECTOR MAPHOSHO: I think, yes, they are referring to Mashaba.

ADV MOSIKILI: Yes, so, Commissioners, I think for now you can accept that at least when reference is made to the tall officer, it is Mashaba. And in any event, I think it ties down with what he says, in that he effected the arrest.

ADV BALOYI SC: Suggesting we take judicial notice of that.

10 **ADV MOSIKILI:** Indeed.

CHAIRPERSON: All I can say is I did see that Warrant Officer Magane is not really tall, but as for the rest and who is the tallest, I have no idea.

ADV MOSIKILI: Deputy Director, can you then continue. I interrupted you when you were about to move to paragraph 38.

ASSISTANT DIRECTOR MAPHOSHO: Okay.

20 “She informed her director about the arrest and that they must meet at the police station. She told them that she cannot drive with them and she went to her office to collect her belongings and went back and found Booyens’ police. After some few minutes, police officer in red vehicle arrived and obtained her

statement. While the police were busy obtaining her statement, police from Flying Squad and Hawks also arrived and they dealt with the situation. At about 17:00, the police officer who arrived first at the warehouse were arrested by the police officer who alleged they were from the Hawks.

10 Francois Riekert, he states that on 2021-07-09 at about 9:00, he spoke to General Khan on the phone explaining to him that the situation at the receiving warehouse of Scania in Omnia Park was getting volatile. He told him that the police were threatening him and his colleagues with arrest. He confirms that the container from Brazil was transporting parts and they opened it on the instruction of the
20 police. Black bags that were not supposed to be there were found in the container.”

ADV MOSIKILI: I just have two questions for you. At paragraph 39, Jolene says that the police from Flying Squad and the Hawks also arrived and then she says they dealt

with the situation. What is your understanding of what she means by that?

ASSISTANT DIRECTOR MAPHOSHO: Because on paragraph, from paragraph 37, because the police were telling her that she was being arrested, when she said the police, the Hawks arrived and dealt with the situation, my understanding was that they are the one who said, no, you cannot arrest this one, then they arrested the other police who came first.

10 **ADV MOSIKILI:** I am not sure if I understand that, but let us move on to my last question on this aspect. Maybe you will assist me. From at least, for now, I know you interviewed a lot of people, but at least from the three independent witnesses that you interviewed, and we just went through their summary, is there anywhere you can draw the elements that will sustain a claim of, if it is the ends of justice against any of the five accused? And if so, can you then draw us to that, to those allegations from these witnesses that will support what Magane and them are
20 saying?

ASSISTANT DIRECTOR MAPHOSHO: Okay. These other police officers, they came later at the crime scene. There were two police officers from Booyens who arrived first, who arrived after these Magane and Mashaba arrived at the crime scene. I think they received a complaint from 10111

talking about issue, I think it was hijacking or something like that. They attended to the crime scene, they interviewed Magane and Mashaba, and I think after the interaction with those police officers, they were satisfied with what was happening there, because they also gave their 08, like their report back to 10111, indicating that it is a legit operation, the police are working, and they were assisting Mashaba and Magane before even Phakula arrived at the crime scene.

10 So for the Hawks members to come later and arrest these members without even following up on the information as to where the drugs were going, it was something else, because I believe if maybe they asked Jolene, because Jolene was the one who was going to receive the goods, if they asked maybe as to the processes after receiving the goods, maybe we were going to find out as to where these drugs were going.

CHAIRPERSON: How so? How would that have been established?

20 **ASSISTANT DIRECTOR MAPHOSHO:** I do not know if it is then a practice at the Scania, when Jolene received the goods, maybe she checked everything that is inside the container to confirm as to what is inside or is it an issue of her checking the seal to confirm that the seal is intact, and then she leaves the container like that, or she normally

opens the container. If they asked the right question as to is it the first time when something like this happened to this, when she received this kind of, was it her first time to receive something like this or not. Maybe ...[intervenes].

CHAIRPERSON: What answer do you think that would have elicited?

ASSISTANT DIRECTOR MAPHOSHO: Maybe ...[intervenes].

CHAIRPERSON: If Jolene was aware that there were
10 drugs in there, she would have feigned surprise, would she not have?

ASSISTANT DIRECTOR MAPHOSHO: Commissioner, because where the container was, it is a place for freight, but ...[intervenes].

CHAIRPERSON: Do you think she would have owned up and said these are my drugs or these are Scania's drugs?

ASSISTANT DIRECTOR MAPHOSHO: Not drugs *per se*. I am not sure if she would know as to what will be the content on those bags, but maybe she was going to say, no, we
20 normally receive these bags, and then when we receive these bags, this is how we handle the bags. I am just giving an example.

Or she will say, no, this is the first time seeing something like this. Or she will say, we do not open the container because this is Freitan ...[intervenes].

CHAIRPERSON: Now, in the face of being arrested, do you not think, that is by the officers who are now complainers, do not you think that would have caused her to give the sort of answers you are talking about now?

ASSISTANT DIRECTOR MAPHOSHO: I do not know what was Jolene's statement at that particular time because my, I got the information that Phakula was obtaining Jolene's statement when he was arrested. I do not know what kind of questions was he asking Jolene.

10 **CHAIRPERSON:** I think the thrust of the position of all the people that Warrant Officer Phakula, Warrant Officer Magane, and Chief Mashaba arrested, I think the thrust of their responses was basically that they knew nothing about these.

ASSISTANT DIRECTOR MAPHOSHO: About the drugs.

CHAIRPERSON: Yes. So I am not sure where what you are suggesting would have taken anybody.

ASSISTANT DIRECTOR MAPHOSHO: Ja, but now, Commissioner, the drugs, we have got the drugs here.

20 **CHAIRPERSON:** Let me give you some background. People who have expertise in this field have said that it is very difficult, if not impossible, to ever get to know who the person supposed to receive the consignment is. And in fact, I think, ja, the officers who testified or gave evidence on this, they basically said they have never found, in all of

their investigations, they have never found the consignee. So I think what you are saying probably has everything to do with the fact that you have no expertise in this field. Your comment on that.

ASSISTANT DIRECTOR MAPHOSHO: Commissioner, I do not have expertise with drugs, but when you talk about this consignment coming from Brazil ...[intervenes].

CHAIRPERSON: Yes, to give you names, I think it was Flynn and then also Sander, ja, both of them said they have
10 never, ja, and even Colonel Jacob, they have never been able to apprehend ...[intervenes].

ASSISTANT DIRECTOR MAPHOSHO: To apprehend the owner.

CHAIRPERSON: The consignee or the owner, as you put it.

ASSISTANT DIRECTOR MAPHOSHO: Ja, I accept that, Commissioner, but if the Hawks maybe dealt with the scene not the way they dealt with, to maybe the statement of those people, I do not know whether they know more than
20 they are saying at the moment because they were arrested. If maybe the police were working with them at that particular time, maybe, I am just saying maybe because I do not know, maybe they were going to say more.

CHAIRPERSON: Indications, and you are saying which people probably know more?

ASSISTANT DIRECTOR MAPHOSHO: Commissioner?

CHAIRPERSON: Which people do you say maybe know more?

ASSISTANT DIRECTOR MAPHOSHO: Mashaba and Tumelo.

CHAIRPERSON: Oh, okay. Okay, all right.

ASSISTANT DIRECTOR MAPHOSHO: Yes, because I cannot talk of Magane and Phakula, because they only came later.

10 **CHAIRPERSON:** Magane was there right from the beginning. I thought your basis for saying maybe he knows nothing is founded on some other reason, but not the timing of his arrival. [Indistinct]... he even went to Yellow Jersey. So he was there.

ASSISTANT DIRECTOR MAPHOSHO: Yes. I am talking about ...[intervenes].

CHAIRPERSON: No, let us not speak at the same time.

ASSISTANT DIRECTOR MAPHOSHO: Okay.

CHAIRPERSON: He was there right from the beginning.

20 **ASSISTANT DIRECTOR MAPHOSHO:** Yes.

CHAIRPERSON: I am not shutting you down. There are problems with transcription when people speak at the same time.

ASSISTANT DIRECTOR MAPHOSHO: Okay. No, I am saying he came later, Commissioner, because I am talking

about he was only notified in the morning. Even Mashaba called Pokungwana first, and then he was referred to Mashaba. Yes, he was there, but I am saying maybe he did not had information more than what Mashaba and Nku had. So I am saying if maybe the police were working, they tried to work with Mashaba and Nku, we are going to get more information.

CHAIRPERSON: There I think you are correct, because based on the chats that we have been shown, these others
10 interacted even before Magane's involvement. At that level, I would agree with you, ja.

ASSISTANT DIRECTOR MAPHOSHO: Thank you, Commissioner.

ADV BALOYI SC: Just to ask the question, how is the failure to ask the question, who do these drugs belong to, how does it constitute defeating the ends of justice, your conclusion, because ultimately that is what this is about. It is about certain conduct, and you say that conduct constitutes defeating the ends of justice. And now in your
20 testimony, as you were speaking to the Chair, you say they did not, for example, they prevented them from asking the question maybe they should have asked Jolene. You are surely not saying the failure to get that question asked is to defeat the ends of justice.

ASSISTANT DIRECTOR MAPHOSHO: Okay. For them to

fail to do proper investigation, I would say from where I am sitting, it is like they were protecting the owner. They knew who the owner of the drugs was, but they did not want, they wanted somebody to be blamed because now these four disturbed this smooth movement of these drugs.

ADV BALOYI SC: You are also not saying that an investigation would and should have happened on that day in Aeroton on the scene, done and completed and gotten all the answers. You are not suggesting that, because you are
10 not saying that the investigation should have happened on that day, on the scene, all these answers obtained, who the drugs belonged to, and all of those answers closing, basically getting the answers that you say they should have gotten and because that did not happen, because the General Khan's and others arrived, you are not saying that was the end of it? I mean, an investigation is ongoing, right? It is not just on the day at the scene.

ASSISTANT DIRECTOR MAPHOSHO: Ja. Ja.

ADV BALOYI SC: So when you say their conduct on the
20 day at the scene constitutes defeating the ends of justice because they prevented these questions, they prevented getting answers to this and that, you are limiting it to the day, as if an investigation is just that one day and that would have been the end of it. Can you maybe just explain?

ASSISTANT DIRECTOR MAPHOSHO: Commissioner, I am saying that because with them arresting these four, they are shifting the whole focus of getting the real owner of the drugs into these four people.

ADV BALOYI SC: Do you know that by now, by the time you write your report, you know Magane is not an investigator of narcotics, you know that. You know that Mashaba is not an investigator of this kind of stuff. You know that.

10 **ASSISTANT DIRECTOR MAPHOSHO:** Yes.

ADV BALOYI SC: You know Nku has nothing to do with all of this.

ASSISTANT DIRECTOR MAPHOSHO: Yes.

ADV BALOYI SC: So unless you are saying the defeating of the ends of justice happened on that day, if that is what you are saying, I can see. I may have problems with you saying that, but I can see that you limit it to the facts on the day itself and then you say an investigation would have been done on the day, all the answers obtained, and you
20 frustrated that happening on the day and therefore he defeated the ends of justice.

I can see that. But if you accept that an investigation would have been an ongoing process, how do you get, and I have given you the fact of Magane is not an investigator. He had no business to be there beyond that

one day. Mashaba is not SAPS. He is not SANEB. He has no business to be there beyond that day if he ever had a business at all. Nku is a supposed informer, so he is completely irrelevant to conducting an investigation as in he cannot be one of the personnel. How do you get to there was a defeating of the ends of justice as if it started and ended on the day itself? It was not going to happen to be a continuing process.

ASSISTANT DIRECTOR MAPHOSHO: Okay.

- 10 Commissioners, the police were supposed to have opened an enquiry because at that particular time, at the crime scene, nobody knew as to the owner of the said drugs or the said packages. So, but for them to arrest people without having information, I took it as if they knew who the owner was of the drugs, but because of this first four disturbed their own mission, the police mission or whoever drugs belongs to, now they must punish this first four with arrest.

- ADV BALOYI SC:** Were you told that one of the SAPS
20 people that arrived asked about an enquiry number and Phakula said, we do not need that. I do not need that. I do not have time for that, when he was asked, where is an enquiry number?

ASSISTANT DIRECTOR MAPHOSHO: I do not remember.

ADV BALOYI SC: Well, there is evidence like that, that

Phakula, I think it is Phakula, but it is one of the Magane party of people who said, I did not have time and there is no time for that, this is an urgent operation. So you should be actually charging Phakula for not getting an enquiry number because they are the first people on the scene and that is what we have learned from the evidence, that the people that do the drug bust, they are the ones that arrange for the registering of an enquiry number.

So you seem also now to be blaming the wrong
10 people for not having an enquiry number, when in fact Phakula and Magane as the first responders on the scene should have both gotten that enquiry number. But you may not be aware of that evidence, but that is the evidence that we have had.

ASSISTANT DIRECTOR MAPHOSHO: No, I am not aware.

ADV BALOYI SC: Okay, thank you.

ADV KHUMALO SC: Director, before we conclude, the difficulty with all of this is if you look at page 10, paragraph 37 of the statement, which is where you were, they opened
20 the container, black bags fell out, the police officer says it is drugs, instruct that they be loaded in the Nissan bakkie, the tall one starts taking out cable ties and arresting people.

There is something seriously wrong with that because first of all you cordon off the scene, you call the

right people, they put whatever it is that is found there in exhibit bags, it gets booked in, within seven days it must go to FSL, which must determine that this is drugs. Then the investigation continues and you can arrest people for being in possession of drugs. Here you are just seeing black bags, for all you know it could be powder milk, it could be soap. You have got somebody who has only ever arrested people for Dagga, deciding that these are drugs and arresting the driver and arresting the manager. You do not
10 do that.

ASSISTANT DIRECTOR MAPHOSHO: Ja.

ADV KHUMALO SC: So the mere fact that they had done that was improper to begin with, so it is not shifting blame. As Commissioner Baloyi correctly points out, the investigation does not start and end on the 9th of July. Maybe after 10 days, once it was determined that these were drugs, then the investigation would go back to the driver and the warehouse manager and all those people, and then they become suspects because you have
20 determined that these are drugs and then you take their statements and possibly they can be arrested.

But the way it was done where containers fall out, bags fall out of a container, they are put in a Nissan bakkie and somebody already decides, based on how the bags smell, that these are drugs, was improper. So the simple

point is that none of that could happen in a day. The most important thing that should have happened in that day was that the exhibits are properly secured ...[intervenes].

ASSISTANT DIRECTOR MAPHOSHO: Secured, ja.

ADV KHUMALO SC: They are booked properly, and the prescripts are followed to determine what is in those bags so that if there is a need to arrest anybody, people can be arrested.

ASSISTANT DIRECTOR MAPHOSHO: That is true,
10 Commissioner.

ADV KHUMALO SC: But they cannot be defeating the ends of justice based on within 30 minutes bags fall out, somebody determines that they are drugs, somebody already determines who the drugs belong to, and somebody already determines who must be arrested. So the reason why the driver and the other people were released or there was an instruction that they should be released, for the time being, it was because it was premature to arrest them to begin with.

20 Now, Commissioner Baloyi's point, why is that defeating the ends of justice if the investigation is not closed on the day? It is a continuing investigation, and the very people can still be arrested on some other day, or their statements can still be taken on some other day.

ASSISTANT DIRECTOR MAPHOSHO: Ja, I hear you,

Commissioner. On that day, no one was supposed to have been arrested.

ADV KHUMALO SC: Yes. So stopping there, releasing those people, then cannot constitute defeating the ends of justice, if nobody should have been arrested.

ASSISTANT DIRECTOR MAPHOSHO: Ja.

ADV KHUMALO SC: I would understand if the driver was a Brazilian who was leaving the country the following day, and his release would have resulted in the police never
10 getting hold of him ever again.

ASSISTANT DIRECTOR MAPHOSHO: Yes.

ADV KHUMALO SC: But you do not have those facts in this case.

ASSISTANT DIRECTOR MAPHOSHO: No, I hear you, Commissioner, and ...[intervenes].

ADV KHUMALO SC: So you accept Commissioner Baloyi's point?

ASSISTANT DIRECTOR MAPHOSHO: I accept. That is why, even previously, I indicated that when Commissioner
20 was saying, I indicated that the arrest was premature for the driver, that they were not supposed to have arrested the driver, because when I interviewed the driver, it was clear that the driver did not know about what was in the container. So I am saying, on that day, no one was supposed to have been arrested. But with them arresting

the others, it seems as if they knew where these drugs were going, but they wanted to shift ...[intervenes].

ADV KHUMALO SC: [Indistinct]... [cross-talking].

CHAIRPERSON: I do not follow that logic.

ASSISTANT DIRECTOR MAPHOSHO: Oh, okay. I will stop where I am saying nobody was supposed to have been arrested on that day.

ADV KHUMALO SC: Yes. Leave it there.

ASSISTANT DIRECTOR MAPHOSHO: Okay.

10 **ADV MOSIKILI:** Assistant Director, just to round off the point by Commissioner Baloyi, on page 5 of your statement, at paragraph 18.5, I will just read that into the record.

ASSISTANT DIRECTOR MAPHOSHO: Okay.

ADV MOSIKILI: So 18.5, it says:

20 “A police officer who was later known to them as Warrant Officer Rikhotso arrived and had an argument with Warrant Officer Phakula. Warrant Officer Rikhotso did not want them to open a case, but to open an enquiry file. Warrant Officer Phakula refused, and he was then told that General Khan was on his way.”

So this is just to bring to your attention that the issue of the enquiry file was raised between Rikhotso and

Phakula, and Phakula saw no need to pursue that. And I suppose to round off the last conversation you had with Commissioner Khumalo is that we then accept that if you say that no one was supposed to be arrested, we can accept that you were not investigating a case of unlawful arrest in this case.

ASSISTANT DIRECTOR MAPHOSHO: No. No, IPID does not have mandate to investigate unlawful arrest.

ADV MOSIKILI: Yes. Can we then move to paragraph 42.

10 The topic is statements of ...[intervenes].

CHAIRPERSON: Sorry, sorry, are you starting a new heading now?

ADV MOSIKILI: Yes, Chair.

CHAIRPERSON: Statements of SAPS Dog Unit members.

ADV MOSIKILI: Yes.

CHAIRPERSON: Let us do that tomorrow. Let us adjourn and resume at 9:30 tomorrow.

INQUIRY POSTPONED TO 9 JUNE 2026

INQUIRY ADJOURNS

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