

**THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS
REGARDING EFFORTS OR ATTEMPTS TO STOP THE INVESTIGATION OR
PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES
(TRC CASES INQUIRY)**

HELD AT:

Sci-Bono Discovery Centre, Corner of Miriam Makeba & Helen Joseph Street
Newtown, Johannesburg

BEFORE:

COMMISSIONERS:

The Honourable Ms Justice Sisi Khampepe (Judge Ret.) – Chairperson
The Honourable Mr Justice Frans Diale Kgomo (Judge President Ret.)
Adv Andrea Gabriel (SC)

EVIDENCE LEADERS:

Adv Ishmael Semanya (SC)
Adv Vas Soni (SC)
Adv Fana Nalane (SC)
Adv Nompumelelo Seme
Ms Baitseng Rangata

REPRESENTATIVES

Adv KD Moroka (SC) – DoJ representative
Adv Matseleng Lekoane (DOJ representative)
Adv Anisa Kessery-DOJ Representative
Adv Varney (SC) – The Calata Group
Mr Sipho Tlhaole – The Calata Group
Ms Lamiah Casoo-The Calata Group
Adv Motlalepule Rantho (for SAPS)
Adv B Lukhele-NPA Representative

30 JULY 2026

DAY 67.1

PAGES 1 – 52



MzanziSA Business Solutions
Arbour Square
Cnr Melle & Juta Street
Ground Floor, Office 3
Braamfontein, 2001
TEL: 011 339 1289 Cell: 0794374335
E-mail: transcription@mzanzisa.com

PROCEEDINGS ON 30 JULY 2026

CHAIRPERSON: Good morning to you all.

ADV SONI: Good morning, Chairperson.

CHAIRPERSON: Mr Soni.

ADV SONI: Thank you, Chairperson. Chairperson, Commissioner Kgomo, Commissioner Gabriel, today we have or this morning we are going to lead with the evidence of Mr Johannes Khomotso Phahlane.

CHAIRPERSON: Yes.

ADV SONI: May the witness be sworn in, Chair?

10 CHAIRPERSON: Thank you. General Phahlane, are you going to give your evidence under oath or an affirmation?

LT GEN PHAHLANE: Under oath, Chair.

CHAIRPERSON: Yes. Do you swear the evidence you will give will be the truth, the whole truth and nothing but the truth? If so, raise your right hand and say, 'so help me God'.

LT GEN PHAHLANE: So help me God.

JOHANNES KHOMOTSO PHAHLANE: duly sworn states

CHAIRPERSON: Thank you. Mr Soni.

20 EXAMINATION BY ADV SONI: Thank you, Chairperson. General, you served as Acting National Commissioner from the 14 October 2015 to the 1 June 2017. Is that correct?

LT GEN PHAHLANE: Correct, Chair.

ADV SONI: Now you have been requested to make a statement about your knowledge of TRC matters while you were the National, the Acting National Commissioner. Is that correct?

LT GEN PHAHLANE: Correct, Chair.

ADV SONI: And you have in fact made a statement?

LT GEN PHAHLANE: Correct, Chair.

ADV SONI: If you look at the file in front of you starting at page 2372 and ending at 2379, is that the statement you made, sir?

LT GEN PHAHLANE: That is the statement I made, Chair.

ADV SONI: And if you look at the top of page 2379, there is a signature on top of the word "deponent". Is that your signature?

LT GEN PHAHLANE: I confirm that is my signature, Chair.

10 ADV SONI: And in addition do you confirm that the contents of this affidavit are true and correct?

LT GEN PHAHLANE: The contents are true and correct Chair, thank you.

ADV SONI: Now I want to take you to certain parts of your affidavit and I want to thank you for helpfully assisting in dealing with matters that are more of a statutory nature than relating to the affairs of the police and in your statement you deal with those matters in some detail and we will come to that. Now the request that was made to you in respect of the evidence that you are required to provide, is that

20 set out at 2380? I is just immediately after your statement.

LT GEN PHAHLANE: That is correct ...[intervenes]

ADV SONI: Ja.

LT GEN PHAHLANE: 2380 to 2381.

ADV SONI: Yes.

LT GEN PHAHLANE: Okay.

ADV SONI: All right and there you are requested to assist the Commission in respect of 3.1, your role, responsibilities and authority as the National Commissioner during the time of your tenure and any knowledge you may have about TRC matters.

LT GEN PHAHLANE: Correct, Chair.

ADV SONI: All right, then in paragraph 5 of your statement you say you want to essentially deal with three broad matters or broad topics and the first one is why you do not lack, why you do not have knowledge of investigations of TRC matters, notwithstanding that you
10 were the Acting National Commissioner for a period of 20 years, 20 months.

LT GEN PHAHLANE: It is correct, Chair.

ADV SONI: Then the second topic is that you explain the statutory changes that were made prior to your ascendancy as National Commissioner which resulted in the National Commissioner being removed from any oversight of TRC matters?

LT GEN PHAHLANE: It is correct, Chair.

ADV SONI: And then the third is your appointment and removal as Acting National Commissioner.

20 LT GEN PHAHLANE: Correct, Chair.

ADV SONI: All right. Still with the first matter namely your knowledge of TRC matters or rather your lack of knowledge of TRC matters and you start off in paragraph 6 of your affidavit saying that notwithstanding that you occupied several senior positions including National Commissioner, you do not have knowledge of TRC matters?

LT GEN PHAHLANE: It is so, I did not have any knowledge or were required to do anything in as far as these matters are concerned.

ADV SONI: Now you have told the Commission that you were the National Commissioner from 2000, between 2015 and 2015, what other senior positions did you occupy while you were at the, in the police service? You deal with that at paragraph 7, sir.

LT GEN PHAHLANE: Paragraph, in paragraph 7 just to name a few ...[intervenes]

ADV SONI: Yes?

10 LT GEN PHAHLANE: I was appointed to the level of Divisional Commissioner in 2007.

ADV SONI: In what section?

LT GEN PHAHLANE: The Divisional Commissioner is like a Deputy Director-General and I was appointed to the post of Divisional Commissioner: Personnel Services. Personnel Services is, has more to do with the human resource function of the South African Police Service, so I was the national custodian thereof and that was from 2007 until 2010.

And I was then redeployed and appointed as the Divisional
20 Commissioner: Forensic Services since 2010 July until I was appointed Acting National Commissioner on the 14 October 2015. That does not mean that that is my service, I have much more than that, I am just ...[intervenes]

ADV SONI: Yes.

LT GEN PHAHLANE: Specifically mentioning the two where I served

towards the end of my career.

ADV SONI: But in none of the positions you occupied during your long years of service, were you involved with the investigation of TRC matters in any capacity, whether actually investigating or exercising oversight?

LT GEN PHAHLANE: None of those required such and I say so in paragraph 8 of my affidavit.

ADV SONI: Yes.

LT GEN PHAHLANE: If I am allowed, I can place it on record:

10 “That none of the positions that I occupied in the SAPS
required that I be directly involved in the investigation of
TRC cases or exercise oversight thereof. However, I
must point out that whilst I was the Divisional
Commissioner: Forensic Services, we were requested
as a division because that is where the forensic experts
are located. We were requested to assist with
exhumations of deceased persons and facilitating
laboratory investigations to determine identities of the
deceased in respect of TRC cases that were being
20 investigated, but we were not directly involved with the
investigations themselves.”

And I say we as a division, because I did not do the actual
laboratory work, there are experts located in that environment who
were designated to do so.

ADV SONI: All right. Then in paragraph 9 you deal with your duties

in principle as set out in, when you were appointed Acting National Commissioner, you deal with your duties in principle and you say these are set out in section 11 of the South African Police Act.

LT GEN PHAHLANE: It is correct, Chair.

ADV SONI: Chairperson, Commissioners, may I point out that we have asked that the relevant statutory provisions are placed before you so you are able to look at it and mark it, and General Phahlane has a copy of it as well. There would be no need to look at it except for references purposes.

10 CHAIRPERSON: Yes.

ADV SONI: Because he deals with it in the affidavit itself.

CHAIRPERSON: Yes.

ADV SONI: Now section 11 Commissioner, General, says that you were in fact in your capacity as the Head of the South African Police, in command of the entire police service?

LT GEN PHAHLANE: It is correct, Chair.

ADV SONI: Yes. Now then you though in paragraph 11, that there were, there are certain other statutory provisions that must be taken into account when one looks at what the ambit of section 11 of the
20 Police Act is, certainly after 2008. Would that be correct?

LT GEN PHAHLANE: It is correct, Chair.

ADV SONI: All right and in section, sorry, paragraph 11 you then refer to certain statutory provisions. Will you outline what those provisions are just for the record and they are set out in 11(a) to 11(e).

LT GEN PHAHLANE: 11(a) to 11(e) ...[intervenes]

ADV SONI: Of your affidavit.

LT GEN PHAHLANE: Of my affidavit. Yes, I will start reading 11 on top which says:

“That is so on account of the following:

- 10
- (a) section 2015 of the Constitution provides that national legislation must establish the powers and functions of the police service;
 - (b) that national legislation is the South African Police Service Act;
 - (c) section 205(3) of the Constitution provided that among the objects of the police service are to investigate crime;
 - (d) in terms of section 207(1) thereof, the President must appoint a woman or a man as the National Commissioner to control and manage the police service; and
 - (e) section 207(2) provides that the National Commissioner must exercise control over and
- 20 manage the police service.”

ADV SONI: And that, it is section 11 of the Police Act which replicates section 207(2) of the Constitution?

LT GEN PHAHLANE: Correct.

ADV SONI: All right, then you say you then deal with under this big heading of, “The 2008 and 2012 amendments to the National

Prosecuting Authority Act and the Police Act”.

LT GEN PHAHLANE: Correct, Chair. If I may deal with in particular, I will start by paragraph 12 ...[intervenes]

ADV SONI: Yes.

LT GEN PHAHLANE:

“Until 2008, the National Commissioner exercised and managed the entire policed service.”

ADV SONI: Sorry, can I just say? That was in terms of section 11?

LT GEN PHAHLANE: It is correct.

10 ADV SONI: Which you may have read?

LT GEN PHAHLANE: That is correct.

ADV SONI: Yes.

LT GEN PHAHLANE:

“However, that state of affairs changed quite dramatically in 2008 and again in 2012 when certain far-reaching amendments were effected to the National Prosecuting Authority Act, No 32 of 1998, and to the South African Police Service Act.”

Insofar, I am on paragraph 13 of my affidavit:

20 “Insofar as is relevant to the inquiry being undertaken by this Commission, in brief the overall effects of the 2008 and 2012 amendments were as follows:

(a) the Directorate of Special Operations, colloquially known as the Scorpions, which was located within the NPA (National Prosecuting Authority), was

dissolved, by the National Prosecuting Authority Amendment Act, No 56 of 2008; and

- (b) the DPCI was established with the South African Police Service, by the South African Police Service Amendment Act, No 57 of 2008, by way of the insertion therein of a somewhat lengthy new Chapter 6A (which now contains sections 17A to 17L of the Act)."

ADV SONI: Yes. Can I just stop you there for a moment, please? If
10 you look at the legislation bundle in front of you, that is the file that contains the different Acts.

LT GEN PHAHLANE: I have it, Chair.

ADV SONI: If you look at page 101 of that Commissioner, you will see right at the top is Chapter 6A.

LT GEN PHAHLANE: Correct, Chair.

ADV SONI: Are those the amendments that were effected?

LT GEN PHAHLANE: Those are the amendments, Chair.

ADV SONI: And those amendments go all the way up to section 17K, sorry, section 17L which appears at page 116.

20 LT GEN PHAHLANE: A 116. That is correct, Chair.

ADV SONI: Yes. Now if you look at your paragraph 16 Commissioner, you will see there that you referred to an annexure JKP2.

LT GEN PHAHLANE: JKP2.

ADV SONI: Which starts after page 2383. It is not numbered but

JKP2 starts after page 2383 of the bundle. Do you see that?

LT GEN PHAHLANE: I see Chair, it is actually on page 2384.

ADV SONI: Oh you are right, it is on the top, yes, so.

LT GEN PHAHLANE: It stretches from that page to page 2414.

ADV SONI: Yes. Can I ask you, what is that document?

LT GEN PHAHLANE: This document is a presentation Chair, that I have ordered our Legal and Policy Division, Legal Services and Policy Divisions to put together. That was now during my acting capacity as the National Commissioner, to put together which was
10 then presented to the entire management of the South African Police Service, to the what we call, the National Management Forum.

So in that meeting sits the National Commissioner, the Deputy National Commissioners, the Divisional Commissioners who are at national level, the Provincial Commissioners, in other words all nine Provincial Commissioners have a sitting on that forum, and that also will include the National Head of the DPCI.

So the purpose hereof was really to communicate and make sure that there is common understanding of the amendments that came into effect and to make sure that we implement the Act as it
20 was amended without deviations. Like we said, the 2008 and 2012 amendments had far-reaching implications to the policing landscape in the country.

So it was important that we are not walking around guess working what the legislatures had in mind. So this presentation is simply put, what contains what the amendment will be communicating

and what is it that was expected of us.

ADV SONI: Can I put it this way, this was the working manual for different levels of policemen who would be implementing the Police Act as it was amended in 2008 and 2012?

LT GEN PHAHLANE: Ja, now counsel, when you talk about which manual you are talking to a policeman, so these are instructions, guidelines, directives, so these would not necessarily have been the only document.

ADV SONI: Yes.

10 LT GEN PHAHLANE: Somewhere following these amendments, there would have been national instructions, directives, circulars that will sensitise the entire organisation on their roles and expectations as envisaged by the legislation.

ADV SONI: And that document which you ordered to be compiled, was in fact dealing with the effect of the amendments in regard to police operations?

LT GEN PHAHLANE: Correct, Chair.

ADV SONI: And I take it that that is what the police used for the purposes of determining their powers, for example you as the
20 National Commissioner would know what the ambit of your powers are and what the limits of your powers are?

LT GEN PHAHLANE: Correct, Chair.

ADV SONI: Okay. Now Commissioner, for the purposes of your evidence today, we have decided that that annexure will sit as part of your, your presentation before this Commissioner, this Commission,

but in effect we will isolate certain aspects of what is contained in the document and the amendments so that we can summarise for the Commission what the position is following the amendments, in particular the powers of the Commission and the powers of the DPCI, the Commissioner and the powers of the Head of the DPCI.

LT GEN PHAHLANE: That is correct, Chair.

ADV SONI: Commissioners, may I take this opportunity because these are legal questions, you will see in the bundle Commissioners, the statutory bundle, there are two cases that have been included in
10 the bundle, starting at page 150 is the judgment in *Glenister 2*, that is the and I will come to why is it *Glenister 2*, and that is the judgment which starts at 150 and ends at 279.

CHAIRPERSON: Yes.

ADV SONI: That is the judgment that dealt with the 2008 or the alleged unconstitutionality of the 2008 amendments and it is pursuant to this judgment that the 2012 amendments were effected.

CHAIRPERSON: Yes.

ADV SONI: Then if you look Commissioners, at page 281 of that bundle, there is *Glenister 1* that is the first case brought before the
20 Constitutional Court by Mr Glenister and in this Commissioners, he challenged the validity of any amendments being made to ensure or any amendments being made to dissolve the Scorpions or the DSO.

Glenister 1 is the judgment which allowed amendments to be made in 2008 because what the court found in *Glenister 1* is given the separation of powers, the Constitutional Court was not in a

position to interdict Parliament from effecting those amendments. So that is what *Glenister 1* is about.

CHAIRPERSON: Yes.

ADV SONI: But can I also take this opportunity because it may assist you reading of how these or your understanding of how these matters and I say it with respect, how these amendments took place. In paragraph 13 of that judgment ...[intervenes]

CHAIRPERSON: *Glenister 1*?

COMMISSIONER GABRIEL: 1?

10 ADV SONI: *Glenister 1*, so page 289, the chief justice, the then chief justice sets out the history of the matter and in particular the purpose of the amendments and I want to come to it but this passage explains it and what the chief justice does is, he quotes a passage from the affidavit in support of the amendments and this is what he quotes, the Minister of Safety and Security saying to Parliament and that is what the Minister said there:

20 “We want to place on the table therefore the proposal for the creation of a better crime fighting unit to deal with organised crime where the best experiences of the Scorpions and the Police’s Organised Crime Unit will be merged. The best investigators from the two units will be put together under the South African Police Service as a reconstructed Organised Crime Fighting Unit. The Scorpions in the circumstances will be dissolved and the Organised Crime Unit of the police will be phased

out and a new amalgamated unit will be created.”

That in a nutshell is what the proposed amendments were and which the Constitutional Court said in *Glenister 1* could not be interdicted. But when the amendments were affected in 2008, a challenge was made to certain aspects of the amendment and following *Glenister 2*, the 2012, the 2008 amendments were further amended by virtue of the 2012 amendments.

CHAIRPERSON: Mm.

ADV SONI: For present purposes Chairperson and Commissioners,
10 we do not need to deal with the differences between the 2008 and 2012 amendments, because the document on which the Commissioner relies was produced after the 2012 amendments.

CHAIRPERSON: Yes.

ADV SONI: So they incorporate everything.

CHAIRPERSON: Yes.

ADV SONI: To the extent that the differences between the 2008 version of the Police Act and the 2012 version relevant, they will be dealt with at the appropriate time.

CHAIRPERSON: Yes.

20 ADV SONI: The purpose of the Commissioners' evidence today is to tell us what the position was when he was the Acting Commissioner.

COMMISSIONER GABRIEL: And that would have been after all of these amendments?

ADV SONI: Indeed Commissioner, yes. But we just tried to put it into small pieces so that as the matters evolve, there will be a better

understanding of what happened during the different times.

CHAIRPERSON: Yes.

ADV SONI: Now Commissioner, you have heard what I have said to the Chairperson and the Commissioners of the Commission.

LT GEN PHAHLANE: Indeed, Chair.

ADV SONI: All right and in your, sorry, in JKP2, you will see that reference is made to the *Glenister* judgment. Is that correct?

LT GEN PHAHLANE: Correct, Chair.

ADV SONI: You pointed it out when we went through that document.

10 LT GEN PHAHLANE: Correct, Chair.

ADV SONI: And that *Glenister*, I am just placing on record, is the *Glenister 2* judgment that is being referred to, not the *Glenister 1* judgment.

LT GEN PHAHLANE: That is correct, Chair.

ADV SONI: All right. Now pursuant to those amendments, you set out in paragraph 17 what the legal landscape is when you were appointed Commissioner in 2015. Is that correct?

LT GEN PHAHLANE: Correct, Chair.

20 ADV SONI: All right. Now can you isolate, sorry, can I make this point that the JKP2 contains most of these amendments that you are going to refer to ...[intervenes]

LT GEN PHAHLANE: That is ...[intervenes]

ADV SONI: And it refers to more from a practical point of view of how police should look at these matters?

LT GEN PHAHLANE: That is correct, Chair.

ADV SONI: All right and what you are going to do is, you are just going to alert the Chairperson and the two Commissioners about the main amendments that were made by the time the 2008 and the 2012 amendments were effected.

LT GEN PHAHLANE: That is correct.

ADV SONI: Okay, so can you start off with paragraph 17 of the answer?

LT GEN PHAHLANE: Okay.

ADV SONI: Okay, well perhaps you should just read paragraph 17
10 because that gives the context.

LT GEN PHAHLANE: Ja, thanks Chair. Maybe before I go there, I just hope that we continue to give practical meaning to the amendments and for members in particular to have that proper understanding of what it means in practice, because if we stray away from what is contained herein, the actions of the police will be not what the legislation envisage. In essence and this is contained in paragraph 17, I will go bit by bit until you stop me or the Chair orders me to do so:

20 “In essence, for the purposes of the issues that I wish to emphasise, having regard to the matters that this Commission is required to inquire into, the principal effect of those amendments may be summarised as follows:

17.1 The DSO (Scorpions) was in effect replaced by the Directorate of Priority Crime Investigations

(DPCI), also known as the Hawks.”

ADV SONI: Commissioner can I and this is entirely my fault, may I ask you to look at page 101 of the statutory bundle? I want you to please read into the record the provisions of 17A(a). Remember that is part of Chapter 6A that you referred us to earlier.

LT GEN PHAHLANE: That is correct, Chair.

ADV SONI: Would you read into the record what 17A(a) says?

LT GEN PHAHLANE: It is on page 101 ...[intervenes]

ADV SONI: 101.

10 LT GEN PHAHLANE: 17A(a), the heading is, “Applicability of this Chapter”.

ADV SONI: Yes.

LT GEN PHAHLANE: It says:

“The provisions of Chapter 6A in respect of the mandate of the Directorate apply to the exclusion of any section within this Act.”

ADV SONI: All right.

LT GEN PHAHLANE: So the Directorate here, reference is made to the Directorate of Priority Crime Investigations.

20 ADV SONI: That is the DPCI?

LT GEN PHAHLANE: That is the DCPI, yes.

ADV SONI: And in the context of, rather you said to us that your powers as Commissioner are effectively controlling the entire police service, that now must be read subject to 17A(a)?

LT GEN PHAHLANE: It is correct, Chair.

ADV SONI: All right sorry, I interrupt you.

LT GEN PHAHLANE: All right, so I ...[intervenes]

ADV SONI: You can start with 17(1) again.

LT GEN PHAHLANE:

“17.1 The DSO (Scorpions) was in effect replaced by the Directorate of Priority Crime Investigations (DPCI), also known as the Hawks.

10 17.2 whilst the Scorpions had been located in the NPA (the National Prosecuting Authority), the Directorate of Priority Crime Investigations (DPCI) was located as an [independent] directorate in the South African Police Service [section 17C(1), read with section 17B(b)(ii)];

17.3 [whereas priority crimes were previously investigated by the Scorpions], they are now investigated by the Hawks (DPCI).”

I think that is important, that investigation of the priority crimes is located within the Hawks and the TRC cases fall within that scope.

20 ADV SONI: Yes.

LT GEN PHAHLANE:

“17.4 The National Head of the DPCI is appointed by the Minister [there I think it is wrong, it says Law and Order], Minister of Police.”

ADV SONI: Okay.

LT GEN PHAHLANE:

“...in concurrence of the Cabinet [section 17C(2)] for a fixed term of between seven and 10 years [section 17CA(1)(b)];

17.5 the National Head of the DPCI must manage and control members of the Hawks [section 17C(3)].”

ADV SONI: Sorry, sorry, while you are there, in regard to the provisions of 17.5 and the provisions of section 11 which says the
10 National Commissioner is in overall control, what now is the relationship in regard to priority, the investigation of priority crimes? In other words who has overall responsibility in respect of the investigation of priority crimes?

LT GEN PHAHLANE: That overall responsibility is located with the National Head of the DPCI and not within the detectives.

ADV SONI: Yes, it would fall under the National Commissioner, detectives?

LT GEN PHAHLANE: Detectives will fall under the National Commissioner with the structure, organisational structure. If you
20 have it before you, there is that organisational structure, will depict a matrix and in that matrix you will note there is a dotted line from the National Head DCPI to the National Commissioner. A dotted line in any organisational structure resembles it is more support, it is more a secondary, while you have got a solid line from the National Head to the Minister of Police.

ADV SONI: Yes.

LT GEN PHAHLANE: So that solid line will represent direct reporting to the appointing authority and in this case the National Head of the DPCI is appointed by the Minister of the Police. Of course you would go through the parliamentary process.

ADV SONI: Yes.

LT GEN PHAHLANE: Which will result in the appointment and even the performance agreement and plan of the National Head is between the Minister of Police and the National Head, not with the National
10 Commissioner. The National Commissioner is the appointing authority of the Head or the Divisional Commissioner Detectives who will investigate all other crimes that may not fall within the threshold or the scope of national priority crimes to be investigated by the DPCI.

ADV SONI: At the time you were National Commissioner, TRC matters were declared to be national priority crimes?

LT GEN PHAHLANE: They were declared and I believe there is no change, they are still national priority crimes, that is why the competent authority to investigate those crimes is the National Head
20 Directorate of Priority Crime Investigations.

ADV SONI: Yes.

LT GEN PHAHLANE: I was on 17 ...[intervenes]

ADV SONI: On 17.5.

LT GEN PHAHLANE: I just dealt with 17.5.

ADV SONI: Yes.

LT GEN PHAHLANE: I am now going to 17.5. No, I dealt with 17.5.

ADV SONI: Yes.

LT GEN PHAHLANE: I am now going to 17.6:

“17.6 Among the functions of the DPCI...”

And this is what we just spoke to.

ADV SONI: Yes.

LT GEN PHAHLANE:

10 “...is to investigate national priority offences or
any other category of offences referred to it by
the National Commissioner [section 17D].”

Now maybe I recall because I have been part of the
management for long, at least even with the first Glen Easter, not
Glen...

ADV SONI: *Glenister*.

LT GEN PHAHLANE: *Glenister* judgment, in other words when the
first amendment came into effect, that between the detectives and the
Hawks or DPCI, they had to collaborate and go into an arrangement
of setting up the threshold, in other words which cases will go to the
DCPI in line with the amendment and the legislation and which cases
20 will continue within the investigation, the detective services.

And I know even at that point, the first instance when the
Hawks was established, most of the members who were located
within the detective services, particularly in two or three
environments; one, organised crime, serious and violent crimes as
well as within commercial crimes, those who were screened and

found to be suitable were then relocated from the detective services and went over to as part of the initial establishment of the DCPI or of the Hawks and there they were joined also by some members who came from the DSO.

If you recall, the DSO had a wide range of expertise. I mean you had prosecutors, you had auditors, too many specialists but within that environment you still had people who were doing investigation.

10 So those that met the criteria to be employed within the Hawks, inter-departmental transfers were effected that resulted in them being appointed within the Hawks environment, in other words those people may not necessarily have been policemen or policewomen before as they were part of the Hawks, sorry, of the Scorpions ...[intervenes]

ADV SONI: Yes, yes.

LT GEN PHAHLANE: Which was located within the NPA.

ADV SONI: Yes.

LT GEN PHAHLANE: So then with that process appointments were then made through the process that was facilitated, inter-
20 departmental transfers and they were appointed as members of the South African Police Service. I say so Chair with authority, because at the time I was the Divisional Commissioner: Personnel Services, whose mandate amongst others, I can simply say from entry to exit.

In other words, Personnel Services facilitate coming in and until retirement and maintenance of the members. I thought I just

elaborate a little bit on that one.

ADV SONI: While you are on that, when you were dealing with 17.6 and thank you for that because that in a sense is a historical matter that you have firsthand knowledge of, the integration or the establishment of the Hawks in the police and some of the teething problems that would have been experienced at that time, but while you are on that, can I say to you in respect of 17.6 you gave the reference as section 17D, I just want to point out Chairperson, it should actually read 17D(1)(b). That is the more relevant part of
10 section 17D. So it is 17D(1)(b). Yes ...[intervenes]

LT GEN PHAHLANE: Thank you. May I proceed, Chair?

“17.7 The National Head of the DPCI determines the fixed establishment of the DPCI and appoints its staff.”

When we talk about the fixed establishment, you talk about the organisational structure as well as the personnel structure, in other words what resources do you need to execute that function. So the National Head of the DPCI does that.

20 “17.8 No person may be appointed to the DPCI unless he or she has been issued with a security clearance [section 17E(2)];

17.9 [in order to facilitate a multi-disciplinary approach], the NDPP (National Director of Public Prosecutions) ...[intervenes]

ADV SONI: Yes.

LT GEN PHAHLANE:

“...must ensure that a dedicated component of prosecutors is available to assist and co-operate with Hawks members in the conduct of DPCI investigations.”

Remember earlier I said the Scorpions as it was, had prosecutors and so on. DPCI is not responsible, thus you do not find prosecutors located in that environment, they rely on the capacity which is located within the National Prosecuting Authority. I think this
10 is what it is talking to.

ADV SONI: May I just interrupt you there? Chairperson, Commissioners, may I just make this point? That is a – some of these amendments are 2012 amendments and one will understand why those amendments came about and the purpose of those amendments by looking at the majority judgment in *Glenister 2*.

The *Glenister*, the minority judgment thought that the 2008 amendments pass constitutional muster, the majority judgment said it, they did and recommended how one could bring them up to the constitutional threshold and it is on account of that, the majority
20 judgment that the 2012 amendments came about.

And this in fact is a replication of what the DSO was doing with the prosecutors in fact leading the investigations and you will recall what the Minister said as was quoted in *Glenister 1*, that they wanted this located in the police service, so it is now police led but assisted by prosecutors. That is ...[intervenes]

CHAIRPERSON: Yes.

ADV SONI: As I understand it, the purpose of ...[intervenes]

CHAIRPERSON: Yes.

ADV SONI: That amendment, Chairperson.

CHAIRPERSON: Thank you for that clarification.

LT GEN PHAHLANE: May I proceed, Chair?

“17.10 Parliament must effectively oversee the
functioning of the DPCI;

10 17.11 the National Commissioner must include in the
SAPS' annual report to Parliament, in terms of
section 40(d) of the Public Finance
Management Act, a report in respect of the
DPCI compiled by the Head of the DPCI as a
separate programme.”

ADV SONI: Do you want to say something about this?

LT GEN PHAHLANE: Yes, I may. Chair, I think it is important to
mention the following, that this is in effect happening in that you do
not have a separate annual report of the Hawks and a separate
annual report of the police.

20 The Hawks as matters stand, remain within one, in other
words their fund and mandate remains located within one of the five
programmes of the police and they are a subprogramme in
Programme 3 which is investigation. So within that programme is the
Hawks on their own and then with the detectives because that is the
broader investigation function of the police.

So the budget of the Hawks is ring-fenced by Parliament, in other words when the budget is allocated there will be a specific amount dedicated for the core business of the Hawks which the National Commissioner cannot tamper with, it is what the National Head of the Directorate Priority Crime Investigation is using in staffing and managing the operations of the DPCI.

So important in line with this is that when the annual report is presented by the National Commissioner to Parliament, it will include a submission by the National Head of DPCI and the National Head of DPCI does that presentation when it comes to presentation of the programmes of the police. The National Head of the Hawks presents that specific within the broader presentation or annual report of the South African Police Service.

ADV SONI: And he makes that presentation to Parliament?

LT GEN PHAHLANE: He made that actual presentation.

ADV SONI: Yes.

LT GEN PHAHLANE: And in terms of 17.12:

“17.12 The Minister must determine (with the concurrence of Parliament) policy guidelines for the selection of national priority offence by the DPCI's National Head in terms of section 17D(1)(a) [section 17K(4)].”

All right, that is in a nutshell. Do I proceed with 18?

ADV SONI: Yes, what I want to ask is, are those for the purposes of your evidence before this Commission, the amendments that you

found to be relevant and/or to be taken into account?

LT GEN PHAHLANE: In a nutshell they are, Chair.

ADV SONI: Now in paragraph 18 you make an observation about the independence of the Head of, of the DPCI and its Head. What do you say there?

LT GEN PHAHLANE:

“18. The provisions I have referred to above make it clear that the Commissioner, the National Commissioner does not exercise any control over
10 the DPCI or its National Head.”

I think I earlier alluded to the dotted line and the solid line, that in respect of the DPCI, the National Commissioner supports the National Head of the, of the DPCI.

ADV SONI: Of the DPCI, ja.

LT GEN PHAHLANE: Yes.

ADV SONI: Now the amendments say that the DPCI is established as a Directorate in the police service and then it goes on to say, but it has that measure of independence that is set out in some of the provisions of Chapter 6A. Now this would, this could create the
20 impression that these are two separate organisations working totally independently of each other. Did you want to correct that broad impression that might be created? And you do so in paragraphs 20 and 21.

LT GEN PHAHLANE: It is so. If I am permitted Chair, let me just go through paragraph 20:

“First, section 17C(1) of the South African Police Service Act establishes the DPCI as a Directorate in the South African Police Service. That means that the DPCI is a part of SAPS and its members are police officers.”

The members of the Directorate Priority Crime Investigation, carry the same appointment certificate that a member of the South African Police Service will carry. They carry the same rank as a member of the South African Police Service will carry. They will go
10 for the same basic police training and investigation courses. Of course there are other specialised courses that are resident within the DPCI. Second ...[intervenes]

COMMISSIONER KGOMO: This is unlike IPID, the IPID officers are not police?

LT GEN PHAHLANE: That is correct Commissioner, IPID officers are not police officers. I do think they are appointed in terms of the Public Service Act and police including those in DPCI, are appointed in terms of the Police Act.

COMMISSIONER KGOMO: Thank you.

20 LT GEN PHAHLANE: Thanks, Commissioner.

“Secondly, the DPCI have not been allocated separate police stations.”

I do not think you will walk around in this country and find a police station and say this is a DPCI police station. And even crimes when they are reported, they are reported at a police station.

Traditionally you called it the charge office, today it is referred to as a community service centre.

So all complaints get registered at a police station and they get a case number, a crime administration system number. It is only if that docket falls within the scope and mandate of the DPCI, that it is then taken to the DPCI for investigation, but that case will not be removed from the police system.

So even investigation, take it through the court process, once finalised that docket is to find itself back at the police station for
10 record and archiving purposes. Those dockets do not get lost to the station, so that is the point I am making here and I think this makes practical sense but also economical sense.

Imagine we were establishing a DPCI Joburg Central next to Johannesburg Central Police Station, we will be confusing the communities. When people are in distress, they do not want to be stuck in all these other administrative red tape and so on, they just want to get to a police station, lodge the thing and the police must not say, "No, no, no, go to DPCI or go to wherever".

That is the point we are making here to say there is no police
20 station that belongs to the DPCI. You do find province or DPCI offices in provinces but some for example, cascaded further within that particular province, maybe located within the district or the cluster for proximity purposes and to be able to cover cases in that particular designated precinct where that requirement is.

"Accordingly, cases investigated by the DPCI are first

reported to a police station, assigned a case number linked to that police station and thereafter allocated to the DPCI if the offence meets the requirements of a national priority offence.”

ADV SONI: What you have read Commissioner, is a continuation of paragraph 21?

LT GEN PHAHLANE: Yes.

ADV SONI: Yes.

LT GEN PHAHLANE:

10 “22. As those amendments were in force when I was appointed as the Acting National Commissioner, as I was required to do, I respected the independence of the Head of the DPCI and the DPCI during my tenure as Acting National Commissioner. Accordingly, in respect of the investigation of TRC cases, it is the Head of the DPCI who will be able to provide one necessary information specifically related to these crimes.”

ADV SONI: Yes.

20 LT GEN PHAHLANE: Ja.

ADV SONI: May I ask you on that score, whilst you were the National Commissioner, did you make a presentation to Parliament on behalf of the SAPS?

LT GEN PHAHLANE: I have made multiple presentations to Parliament, it is correct, Chair.

ADV SONI: And in respect of the report that is compiled by the Head of the DPCI, your report would have contained his report?

LT GEN PHAHLANE: That report would have contained the DPCI report and there is no instance where I was in Parliament dealing with matters relating to DPCI without the National Head of the DPCI being present. It does happen from time to time or it did happen from time to time that he on his own went to Parliament and addressed certain matters in the absence of the National Commissioner and there is nothing wrong with that because that is his core business and
10 mandate.

ADV SONI: And that is because one of the provisions says that Parliament exercises overall oversight of the Head of the DPCI?

LT GEN PHAHLANE: Correct. That is so, Chair.

ADV SONI: Chairperson, I note it is 11:05, I just have this last bit to finish.

CHAIRPERSON: Yes.

ADV SONI: May I go ahead, go, carry on?

CHAIRPERSON: Yes, you may proceed, Mr Soni.

ADV SONI: So you were talking about Parliament Commissioner,
20 and Parliament seems to play a role or the venue seems to play a role in respect of the two matters you now address, namely your appointment as an Acting National Commissioner and then your removal thereof, and you deal with these at paragraphs 23, 24 and 25. Will you tell the Commission how it is that you came to be appointed as the Acting National Commissioner?

Or before we do that, can I ask you to address the issue you deal with in paragraph 23, namely the period for which a National Commissioner is appointed as set out in the Police Act? You deal with that in paragraph 23.

LT GEN PHAHLANE: Thanks, Chair.

“As I have pointed out, the National Commissioner is appointed by the President in his capacity as head of the executive [section 201(1) of the Constitution dictates such]. In terms of section 7 of the South African Police Service Act, the National Commissioner occupies the position for a period of five years.”

I ...[intervenes]

ADV SONI: Sorry.

LT GEN PHAHLANE: I see there it says:

“Or a shorter period determined at the time of appointment.”

Here the term is five years.

ADV SONI: Okay.

LT GEN PHAHLANE: Maybe the shorter period is what, situational or circumstances, but he is appointed for a term of five years.

ADV SONI: Yes.

LT GEN PHAHLANE: Okay.

ADV SONI: Now let us look at your appointment and you deal with that. The appointment itself, you deal with it in paragraph 24 and/or when you learned about it.

LT GEN PHAHLANE: Ja, acting appointments must never be mistaken to be Hollywood, on a lighter note.

“24. At the time I was appointed as Acting National Commissioner, on 14 October 2015, I was the Divisional Commissioner of Forensic Services. On that day, we were making presentations [in actual fact as management of the South African Police Service]. We were in Parliament led by General Phiyega who was the National
10 Commissioner then.”

And it was in the middle of that presentation on that day, the 14 October, that we were informed that the National Commissioner is suspended. And that notification came through the Chairperson, I think at the time it was Honourable Francois Beukman who announced that the National Commissioner is suspended and then moments later, I was told by the Chairperson that I am appointed Acting National Commissioner.

So I had to take on that responsibility from that day. It was not strange because when I was sworn as a young boy in the South
20 African Police Service, there is in taking an oath you undertake to serve anywhere in any capacity instructed to do so by the powers that be. So on that day in the middle of the... I went there as a Divisional Commissioner: Forensic Services, I came back, I was told, “You are an Acting National Commissioner” and I was able to perform that function.

ADV SONI: Yes.

LT GEN PHAHLANE: Until... I note you want to say something?

ADV SONI: Before you go on, can I ask you this? The announcement that General Phiyega had been suspended was made by the Chairperson of the Portfolio Committee?

LT GEN PHAHLANE: Of course what happened is, presentations were going on. As management of the police we were there. The National Commissioner was leading the presentation. I think we were presenting annual reports because it was around October, and so at
10 some point the office of the National Commissioner called her out and I suspect because not much was communicated to us then. She then asked to be excused.

That was the last time we saw her as the National Commissioner. She was called out and whether she went to the President or whoever and the decision on her suspension was then communicated to her there. Like I said Chair, she never returned to the session, but then for clarity purposes, then that communication filtered through to the Chairperson before ...[intervenes]

COMMISSIONER GABRIEL: Chairperson of the?

20 LT GEN PHAHLANE: Of the Portfolio Committee.

COMMISSIONER GABRIEL: Of the Portfolio?

LT GEN PHAHLANE: Yes and because immediately after that happened, it became breaking news. So the Chairperson and I suspect the powers that be, would have relayed the message to the Chairperson to communicate that the National Commissioner is

suspended. So when it was breaking news, we at least in that room got to know that the National Commissioner is suspended.

So the next person who then could lead the delegation as management, would have been the Deputy National Commissioners. So the Chairperson asked at the time General Sithole who was the Deputy National Commissioner responsible for policing, to lead the delegation so that we can carry on with what we were presenting.

It was a few moments later, I guess the same way that the suspension of the National Commissioner came through to us
10 through the Chairperson, that he was also informed that I am appointed as an Acting National Commissioner. At the time there was no paperwork in front of me, I had to take his word of mouth to say, "Now you are appointed Acting National Commissioner".

ADV SONI: May I ask you this? Where, was this appointment discussed with you before it was effectively made?

LT GEN PHAHLANE: There are certain things I am not prepared to answer and that is one of them, because that was done by the executive. The Constitution and the Act say we serve at the behest of the National Commissioner, oh of the President, it is the
20 President's prerogative to appoint a man or a woman, so at the time there was no National Commissioner and for whatever reasons, I was considered and that was communicated to me and as a disciplined member I do not say no to higher authority unless it is something unlawful, I will say no. So in this case I took the baton and carried on.

COMMISSIONER GABRIEL: So do you assume that the instruction came from the President to appoint you?

LT GEN PHAHLANE: Well at the time Commissioner, we were in session. So there was no time to say, "Hey, let me go and hear from the President whether it is correct or not". But following the brief break that we had, there was communication with me by the Minister who then said the President would want to meet up with me. That is the only time in my life I met President Zuma, I went there and I accepted my appointment letter to take the fort as an Acting National
10 Commissioner of the police.

COMMISSIONER KGOMO: What happened to the presentation of the annual report?

LT GEN PHAHLANE: Chair, Commissioner, it continued. Remember the presentation, we were already there and it is programmes that were presented, so we carried on and finalised the... In actual fact, that day was our last day of presentations, so we carried on, finished the business of the day and I recall that evening we had to come back, all of us, from Cape Town.

We were in Cape Town and we convened, the Minister
20 convened a meeting in Pretoria at the Police College. 23:00 we went into that meeting where he as the Minister, was officially communicating the decision of the President in terms of the National Commissioner was suspended by the President and then I am appointed as the Acting National Commissioner and that we should work together as a leader organisation which we proudly did.

COMMISSIONER KGOMO: Ja. Mr Soni?

ADV SONI: Thank you, Commissioner. So that was your appointment. Now in paragraph 25 you deal with your removal from the decision of Acting Commissioner. Can you tell the Chairperson and Commissioners how this came about?

COMMISSIONER KGOMO: You do not want him to read that, 25?

ADV SONI: Perhaps you should.

LT GEN PHAHLANE: Ja, Chair:

10 “25. After serving in that capacity for some 20 months,
I was called by the then Minister of Police [in this
case it is former Minister Fikile Mbalula] to a
meeting at his office in Cape Town. I was in
Pretoria on that morning, the 1st, that was on the
1 June 2017. I flew to Cape Town [not literally, I
did not fly, I took a flight, I went to Cape Town].”

 And I was, I think I waited for about two hours because this
was an unscheduled meeting. I did not know that I was to go to Cape
Town that day. And after that two hours I think the Minister came in.
He was with his Deputy and we had a less than five minutes’
20 meeting, and in that meeting I was asked because of the negative
publicity and so on, that I should step aside.

 That is the first time I was hearing step aside in
administration and I realised oh, here comes the step aside policy of
the ANC, I am a guinea pig there or even if I am not a member there,
but step aside was applied on me for the first, for my first time. I say I

am not a members because as members of the South African Police Service we are supposed to be A-political, not to associate with any political party because we are to serve all people.

ADV SONI: Now you were asked to step aside and that is what you did?

LT GEN PHAHLANE: Ja, I was asked to step aside and my attitude in life is that I am not glued to any chair. Chair, I have volunteered to join the South African Police Service during difficult times. I may be one of those that are referred to as apartheid police, because I joined
10 the service in 1985, but those who referred to me as an apartheid cop, if they are politicians, they are apartheid politicians. If they are teachers who are appointed, then they are apartheid teachers.

COMMISSIONER KGOMO: Yes.

LT GEN PHAHLANE: So I was appointed during ...[intervenes]

COMMISSIONER KGOMO: I do not think you need to worry. I do not agree with that characterisation that...

LT GEN PHAHLANE: Yes.

COMMISSIONER KGOMO: Someone, because one of the witnesses asked whether Chief Justice Pius Langa was an apartheid
20 judge because he served long before you know, democracy ushered in, so do not worry about that.

LT GEN PHAHLANE: Thanks Commissioner, thanks Chair. So ...[intervenes]

COMMISSIONER GABRIEL: May I ask a question, please? If your appointment came through President Zuma, how did you understand

the situation? The Minister of Police, did he have authority to remove you?

LT GEN PHAHLANE: There is no such provision in law for the Minister to appoint or disappoint or terminate or fire the National, the National Commissioner, be it acting or the National Commissioner. The ...[intervenes]

COMMISSIONER GABRIEL: So where did the authority come from?

LT GEN PHAHLANE: Out of nowhere, Chair.

COMMISSIONER GABRIEL: Okay.

10 LT GEN PHAHLANE: There is no, there is no legislation or policy prescript.

COMMISSIONER GABRIEL: Did you receive a letter from anybody?

LT GEN PHAHLANE: To date I have not seen a letter.

COMMISSIONER GABRIEL: Okay.

LT GEN PHAHLANE: Ja, to date and I am saying to date Chair, because that was 2017 and no one has spoken to me on that. But I accepted to step aside because I maintain that I was not glued to any chair. I did not apply to be an Acting National Commissioner, I applied to be a Lieutenant General, the position of Divisional
20 Commissioner just like I did not apply to become the Divisional Commissioner: Forensic Services.

I was redeployed, a telephone call, "Buthi, can you go this place?" I thought that they are sending me to go and do something there, only in the middle of the conversation I understood this is redeployment and I accepted it and I think I have done well.

COMMISSIONER GABRIEL: And I think that takes you to paragraph 26 of your affidavit.

LT GEN PHAHLANE:

“I should perhaps mention the following, when I was appointed Acting National Commissioner, there was no handover from my predecessor. In addition, given the circumstances of my removal, I was not in a position to make a formal handover to my successor.”

In actual fact on the day, that 1 July, of June 2017, when I
10 was asked to step aside I asked the Minister, “Who do I hand over to?” And he said, “Do not worry”. On my way out, the Minister’s office in Cape Town is on the 9th floor of that ministerial building, on my way out I met a colleague of mine, the former who acted after me, General Mothiba.

I was getting out of the lift, he was getting in with the Advisor of the Minister and I went to the airport. I was sitting at the airport waiting for my flight back and I saw a press briefing which he held and he was introducing him as the new Acting National Commissioner of the Police.

20 ADV SONI: May I ask you in relation to and now when I mention to you the unexpected nature of the appointment and removing, you are a bit concerned with the word unexpected but however one describes it, what effect would it have on the morale? I mean one knows that you, you have been there, you have been in the Personnel Section of the police, what effect would this uncertainty about leadership in the

police have on morale and efficacy of police services?

LT GEN PHAHLANE: Chair, I will go a little bit back in answering that question. I happen to be the last one to have been appointed as a Divisional Commissioner by the late Commissioner Jackie Selebi and I am mentioning that specifically because at some point he was to be removed. And it is there that I think I, I think I had gained a different view of politicians, in this case former President Mbeki.

He called us as management at the police and he communicated that there are these issues and he is taking this
10 decision or he has taken this decision to place Commissioner Selebi on suspension. And in that meeting that is when he communicated his decision to appoint former Deputy National Commissioner Tim Williams as the Acting National Commissioner.

That was, it was, let me use it, it was beautiful because you understood where the executive is coming from and he was able as the Commander in Chief to communicate what the expectations are of the country on us as the leadership of the South African Police Service. So while it rattled us a little bit, there was comfort, we were able to move on.

20 I think that was the last time that the President did that. Long, not long after that, a new administration came into office and the ...[intervenes]

ADV SONI: This is the Zuma administration?

LT GEN PHAHLANE: Eish Chair, I do not want to call it the Zuma administration. There was an administration that came into place,

that is after the departure of President Mbeki from office. No, I think at the time if I am not wrong, it was President ...[intervenes]

COMMISSIONER KGOMO: Motlanthe.

LT GEN PHAHLANE: Motlanthe ...[intervenes]

CHAIRPERSON: Yes.

LT GEN PHAHLANE: Who came into office and you will recall in that period changes were made to the executive, in other words new ministers being appointed. It was during that time that the late Minister Nathi Mthethwa was appointed the Minister of Police. At the
10 time Commissioner Tim Williams was the Acting National Commissioner.

I think I have said it when I was at the [indistinct] to say the instability in the South African Police Service came post the Polokwane Conference, everything went haywire because it was not long thereafter that Commissioner Williams was, services were as an Acting National Commissioner, were terminated and it is now history to know that it is after him that General Bheki Cele was then appointed as a Minister, I mean as a National Commissioner.

Now all that communication was happening on paper. I am
20 trying to get to the, to answer your question of what does it do? So ...[intervenes]

COMMISSIONER KGOMO: To the morale?

LT GEN PHAHLANE: Ja, what does it do.

ADV SONI: Yes.

LT GEN PHAHLANE: So he was then appointed. Fast forward,

there were issues, General Cele was suspended, General Mkhwanazi was then appointed acting. We all read and know what happened there. At some point he was removed and then that is when General Phiyega was appointed. So all this I am saying, are appointments on paper, some coming from outside, some coming from within the junior ranks and so on.

What does it do to the morale? The first thing that it does, it creates instability, it creates confusion. It takes a little bit of time, I here we have now General Masemola, out of nowhere he is
10 suspended because of the ...[intervenes]

COMMISSIONER KGOMO: Let us not go there.

LT GEN PHAHLANE: PFMA.

COMMISSIONER KGOMO: Let us not go there.

COMMISSIONER GABRIEL: Ja, what do you think happened with respect to the TRC cases in this time? I know you cannot speak to it directly in your capacity as Acting National Commissioner, but this reduced morale that you speak of, do you have any comments on what this would have done to the TRC cases?

LT GEN PHAHLANE: I will not specifically be able to talk to that,
20 because it is cases that never came to my attention. It was maybe my understanding that the investigation in respect of those matters will be continuing as it is part of the national priority crimes and no cases are simply to be closed for the sake of being closed. You investigate, you if they are undetected, they are undetected and you follow due processes in that regard, so ...[intervenes]

COMMISSIONER GABRIEL: But you have no personal knowledge?

LT GEN PHAHLANE: No personal knowledge at all.

COMMISSIONER GABRIEL: Okay.

ADV SONI: Chairperson, it is the evidence from our side.

CHAIRPERSON: Thank you, Mr Soni. I think this will be an appropriate time to take a tea adjournment until... I think this will be an appropriate time to adjourn until 11:50.

ADV SONI: As you pleases, Chairperson.

INQUIRY ADJOURNS

10 INQUIRY RESUMES

CHAIRPERSON: Ms Moroka, any clarificatory questions for General Phahlane?

ADV MOROKA: Chair, I think you should address that question to my learned [indistinct] SC Lekoane.

CHAIRPERSON: Mokwane?

ADV MOROKA: Lekoane.

CHAIRPERSON: Lekoane?

ADV MOROKA: Matseleng.

CHAIRPERSON: Okay, yes madam.

20 ADV LEKOANE: We do not have any questions for the witness.

CHAIRPERSON: Thank you.

ADV LEKOANE: Thank you.

CHAIRPERSON: Ms Rantho?

CROSS-EXAMINATION BY ADV RANTHO: Good afternoon Commissioners, just one clarification question. Good afternoon,

General. My question relates to your paragraph 26 and it is just for certainty, where you informed the Commissioner about the handover that was not done by your predecessor and I take that ought to be General Phiyega, right?

LT GEN PHAHLANE: Correct.

ADV RANTHO: Ja, so just for certainty, the one that you never handed over to would have been General Mothiba. Is that correct?

LT GEN PHAHLANE: Correct, Chair.

ADV RANTHO: Okay, that is all from my side, thank you Chair.

10 CHAIRPERSON: Thank you, Ms Rantho. Mr Lukhele?

ADV LUKHELE: Thank you Chair, no questions for the witness.

CHAIRPERSON: Thank you. Anyone online?

FEMALE SPEAKER: [Indistinct].

CHAIRPERSON: Thank you.

FEMALE SPEAKER: No questions.

CHAIRPERSON: Mr Varney?

CROSS-EXAMINATION BY ADV VARNEY: Thank you Chairperson, just a few questions by way of clarification. General, thanks for coming to the Commission to assist us in important work. Mr Soni,
20 can I, can I be heard?

CHAIRPERSON: Yes, you are audible.

ADV VARNEY: Great. Mr Soni for the evidence leaders, has taken you through the amendments to the SAPS Act and you have pointed out in your statement as well as in your evidence, that the amendments to SAPS Act, particularly to Chapter 6A and in particular

section 17A(a), that in respect of the DPCI mandate, the rest of the SAPS Act was excluded.

So I just wanted to check with you, would I be right in saying that that meant that the DPCI enjoyed full operational independence, particularly in relation to its investigations and the National Commissioner had no authority to interfere or direct or give instructions in relation to those investigations?

LT GEN PHAHLANE: So Chair, I answer one question at a time?

CHAIRPERSON: Yes, you may.

- 10 LT GEN PHAHLANE: Okay, thank you, Chair. Thank you, sir. It is indeed so that the prevailing situation at least since my time, but I can safely say, even say before my time as an Acting National Commissioner was that the Head of the Hawks enjoyed independence. It is for that reason that structurally they have a direct reporting and accounting to the Minister and Parliament and that as the National Commissioner primarily plays a supporting role and fulfils his or her obligations as provided for in the amendment.

- ADV VARNEY: Thank you, General. General, if I can just ask you to direct your answers to the Commissioners? Thank you. But would
20 I be correct in saying that those amendments to the SAPS Act did not exclude or amend section 207 of the Constitution which reads, "The National Commissioner must exercise control over and manage the police service?" So would I be correct in saying that the amendments to the SAPS Act did not distinguish that constitutional responsibility?

LT GEN PHAHLANE: Chair no, the amendments did not extinguish

or delete that provision of the Constitution, because it is so that we only have got one South African Police Service and that the National Commissioner as provided for in the Constitution is the overall, manages policing overall in the country.

The amendment in the Act only makes it very clear and specific that when it comes to priority crime investigations, those will be the responsibility of the National Head, Director, Directorate Priority Investigation, the Hawks, but I went further to say while the Hawks are there and charged with the mandate, crimes are reported
10 all over the country by members of the community and so on, and that reporting happens at a police station level.

So the National Commissioner has got overall command and control of the South African Police Service.

ADV VARNEY: Yes, so would, would I be correct in saying that if there was, I am just putting this up as hypothetical examples, if there was perhaps, might widespread misconduct in the DPCI or perhaps systemic failure, would the National Commissioner be in a position to say, "Look, the Hawks are independent so I have no responsibility in respect of those issues?"

20 LT GEN PHAHLANE: If there is misconduct Chair or there is something that is happening not in the spirit of legislation, policy and otherwise, the National Commissioner cannot fold his arms, the National Commissioner will of course just as the Act provides more for the operations, and the National Commissioner still has got some authority and that is why that dotted line, that is why the matrix, some

authority when it comes to support.

Supported related issues will include the issue of discipline, but the National Commissioner ordinarily delegates functions, for example the function of discipline will still be delegated to the National Head of the Directorate Priority Crime Investigation. So the National Commissioner cannot throw his hands in the air and say they are the Hawks. They remain members of the South African Police Service located in the Directorate Priority Crime Investigation.

Chair, the people who find themselves in the Hawks are
10 some of them coming from within the ranks of the police. If posts are advertised for example for promotion and so on, it does not prohibit someone in the Hawks to apply, for example in the detective environment. Similarly if posts are advertised in the Hawks, it does not mean that members of the South African Police Service cannot apply.

But my answer simply to the question is, the National Commissioner is not a spectator, you are not going to sit there and see wrong things happening and throw your hands in the air and say but they are the Hawks. The Hawks are not IPID, the National
20 Commissioner has got nothing to do for example with what is happening in IPID or what is it, IDAC because those are structures, that IDAC is part of the NPA, report to a separate Minister, IPID is independent, report to the Minister and there is no dotted line to any of those institutions.

ADV VARNEY: Thank you.

COMMISSIONER KGOMO: Ja, just whilst you are there, just a correction for the record, the IPID officials are appointed in terms of the Independent Police Investigative Directorate, Act No 1 of 2011. I think I must just bring that to your attention, I caught you off-guard when you said they are appointed in terms of the Public Service Act. They are in fact appointed in terms of that Act.

LT GEN PHAHLANE: Correct, Chair.

COMMISSIONER KGOMO: Yes. Thank you, Mr Varney.

ADV VARNEY: Thanks for that correction, Commissioner. So
10 General, as you say a National Commissioner you know, facing systemic failure in the DPCI, he cannot throw his hands in the air. He could perhaps do things like call for reports and take steps to remedy the situation, so long as he did not or she did not interfere with any operational matters and investigations.

LT GEN PHAHLANE: Chair, that is correct.

ADV VARNEY: Thank you. I just want to endorse what Commissioner Kgomo said about officials who served in the police and justice and other departments under apartheid, and that you are correct, that there are many individuals who served with distinction,
20 police officers and prosecutors who protected their communities.

So General, just a few months before you assumed duties as Acting National Commissioner in October 2015, the sister of Nokuthula Simelane, Thembi Simelane went to court in order to compel both the NPA and the SAPS to finish their work and to bring that case to a finality. The National Commissioner was the second

respondent and the relief against the National Commissioner was to finalise investigations within 14 days of the granting of the relief.

Did that litigation ever come to your attention while you were National Commissioner?

LT GEN PHAHLANE: Chair, it never came to my attention.

ADV VARNEY: Thank you. And also while you were National Commissioner, the historic reopening of the Timol inquest took place. In fact, it started just as you were leaving in June 2017. Did that matter come to your attention while you were National
10 Commissioner?

LT GEN PHAHLANE: Sorry Chair, you said in June 2017?

ADV VARNEY: Correct.

LT GEN PHAHLANE: I left the office on the 1 June 2017.

ADV VARNEY: On the 1 June? Okay, so that would not have come to your attention.

LT GEN PHAHLANE: Ja.

ADV VARNEY: But just as a matter of interest General, since you were Head of... Well one of your responsibilities was to head up the forensic services, that particular inquest that, that death and
20 detention was ultimately solved in that inquest exclusively on forensic evidence with the use of forensic pathologists and an aeronautical engineer. No further questions, Chairperson.

CHAIRPERSON: Thank you, Mr Varney. Mr Soni?

RE-EXAMINATION BY ADV SONI: Chair, so that this issue raised with Commissioner Phahlane about when the Commissioner can

intervene in matters, I wish to refer Commissioner Phahlane to section 17C(3) which says:

“The National Head of the Directorate shall manage and control all members of the Directorate in accordance with the provisions of the Constitution of the Republic, Chapter 6 of this Act and any other applicable legislation.”

Do you see that, Commissioner?

LT GEN PHAHLANE: Correct.

- 10 ADV SONI: Yes and you understand that whether or not the National Commissioner would be able to intervene in the circumstances described by my learned friend Mr Varney, would have to be determined by a consideration of the entire provisions of the Police Act, in particular the provisions of Chapter 6A?

LT GEN PHAHLANE: Correct, Chair.

ADV SONI: Those are my questions.

- CHAIRPERSON: Thank you, Mr Soni. General Phahlane, we thank you very much for having agreed to come and give evidence before this Commission. Your assistance is greatly appreciated, you are
20 now excused as a witness.

LT GEN PHAHLANE: Thank you, Chair.

CHAIRPERSON: Mr Soni?

ADV SONI: Chair, for the further progress of today, may I ask for a five minutes' standdown? The next witness will need to be, will need to step into the witness box ...[intervenes]

CHAIRPERSON: Yes.

ADV SONI: And somebody else is going to lead her, Chair.

CHAIRPERSON: Yes, who is your next witness?

ADV SONI: It is Ms Pillay, Kalayvani Pillay.

CHAIRPERSON: Ms Pillay?

ADV SONI: Yes.

CHAIRPERSON: We will take a five-minute adjournment.

ADV SONI: I am indebted to you, Chairperson.

INQUIRY ADJOURNS

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that **as far as it is audible**, the foregoing is a true and correct transcript of the digitally recorded proceedings in the matter of:

JUDICIAL COMMISSION OF INQUIRY INTO TRC

FORUM OF ORIGIN	:	Inquiry
CASE NUMBER	:	N/A
TRANSCRIBER	:	M Botha
DATE COMPLETED	:	2026-07-30
NUMBER OF PAGES	:	53 (Including front page)

SIGNATURE

:



TRANSCRIBER'S NOTE:

➤Names of which the spelling was not known were transcribed phonetically.

➤Grammar errors were transcribed verbatim.



MzanziSA Business Solutions

Arbour Square

Cnr Melle & Juta Street

Ground Floor, Office 3

Braamfontein, 2001

TEL: 011 339 1289

E-mail: transcription@mzanzisa.com

E-mail: mzanzisa1@gmail.com