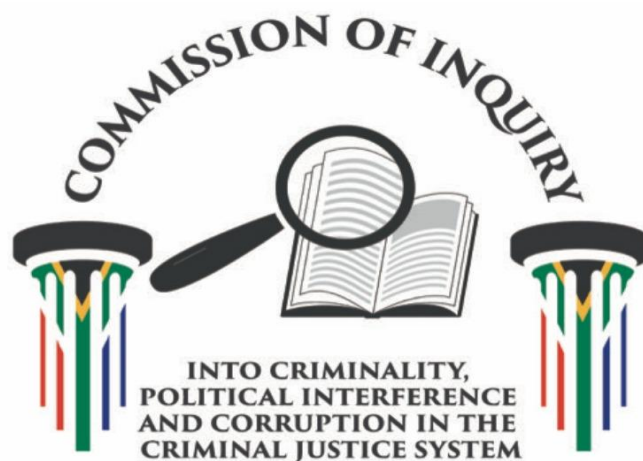


JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY,
POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM

HELD AT
BRIGITTE MABANDLA JUSTICE COLLEGE

2 SEPTEMBER 2026

DAY 172



PROCEEDINGS HELD ON 2 SEPTEMBER 2026

CHAIRPERSON: Good morning, Ms Segeels-Ncube. Good morning, Mr Ngweto, and good morning, Doctor.

ADV SEGEELS-NCUBE: Good morning, Chair.

CHAIRPERSON: Thank you.

ADV SEGEELS-NCUBE: Good morning, General. General, yesterday, if you can just switch on both microphones, we concluded with the Port Shepstone questioning. I would like to move on to one small ...[intervenes].

10 **ADV NWEDO:** Chair, if I may, maybe before my learned colleague proceeds, just to deal with one or two issues, and then they can proceed if I am ...[intervenes].

CHAIRPERSON: And they cannot wait?

ADV NWEDO: Okay, if that is later, then – but it was going to be quick, Chair.

CHAIRPERSON: Are you sure? I noticed yesterday you were not brief at all.

ADV NWEDO: It was going to be quick.

CHAIRPERSON: It is just to clarify one issue that was left
20 hanging yesterday, and a small request.

CHAIRPERSON: All right, all right.

ADV NWEDO: Yes. The first thing, basically, is that there was a question that was put across to Doctor Lebeya yesterday regarding, and he said he would come back with a name regarding the person that was chairing the National

Project Committee, and he could not recall yesterday, so I am not sure ...[intervenes].

CHAIRPERSON: Or do you want him to just place that on record? And what is the second issue?

ADV NWEDO: And the second issue is a small request that Doctor Lebeya has, that at the end of the proceedings, if the Commission can just give him four or five minutes for him to do closing remarks from his side.

CHAIRPERSON: All right.

10 **ADV NWEDO**: That is all.

CHAIRPERSON: Between you and the Doctor, if you could please, please remind us, between the two of you, right at the end.

ADV NWEDO: Indeed so, Chairperson. I will do so.

CHAIRPERSON: Yes. Doctor, do you want to deal with the factual issue that Mr Nwedo is referring to?

ADV NWEDO: Thank you, Chairperson. Good morning, Chairperson, and good morning to the Commissioners. Yes, I needed to indicate the name of the person who was
20 chairing the committee before. That is Major General Kholekile Galawe. Thank you, Commissioners.

CHAIRPERSON: Thank you, Doctor.

ADV NWEDO: That is it from my side, Chairperson.

CHAIRPERSON: That was indeed brief. Thank you.

ADV NWEDO: Thank you, Chairperson.

ADV SEGEELS-NCUBE: Thank you. General, I want to just clarify your version regarding the temporary placement of Warrant Officer Sander after you received a complaint from a whistleblower regarding allegations of corruption against Warrant Officer Sander in February 2024. Do you recall your evidence about that?

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: And you indicated that you had no involvement in Warrant Officer Sander's temporary
10 placement at Support Services while the investigation was pending.

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: Okay. If I could take you to the bundle, the Port Shepstone exhibit bundle, page 475, just to show you the letter of temporary placement? 475. Apologies, Chair, we seem to be having – okay, there it is up now. Do you have it, General?

DOCTOR LEBEYA: I have it, Commissioners.

ADV SEGEELS-NCUBE: This is the temporary placement
20 notice that Warrant Officer Sander received from General Senona after the complaint that you received from the whistleblower regarding allegations of corruption against Warrant Officer Sander and you had asked General Senona to make contact with the complainant and to provide you with a progress report. Do you recall that?

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: And General Senona then notified Warrant Officer Sander that he would be placed on temporary placement at Support Services, Provincial Support Services, and this was the letter that he was served with.

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: Now, General Senona, in his statement, said that the instruction came from your office to
10 place Warrant Officer Sander at temporary placement. And if I can take you to his statement? You can close that file now. If you go to General Senona's supplementary statement, it is on page 8.

DOCTOR LEBEYA: I have it, Commissioners.

ADV SEGEELS-NCUBE: At ...[intervenes].

CHAIRPERSON: You said which paragraph?

ADV SEGEELS-NCUBE: Page 8, paragraph 17, Chair.

CHAIRPERSON: Thank you.

ADV SEGEELS-NCUBE: So at paragraph 17, this is an
20 exchange between Warrant Officer Sander and Commissioner Khumalo when he gave evidence. Commissioner Khumalo said to Warrant Officer Sander:

“I just want to be clear, you are saying
General Senona amongst others.”

This relates to his temporary movement. To which Sander

responded:

“No, sir. I said General Senona was the one that moved me.”

In response to that allegation at paragraph 18, General Senona says:

“The distinct impression had already been created that first I transferred Sander and second that I did so for nefarious reasons. This is just not true.

10 I attach as LS5 an email from General Lebeya, then DPCI National Head and/or Major General Surajbali, DPCI Head of Executive Support Services, dated 5 February 2024, directing my office to engage with the complainant and provide the National Head with feedback by 23 February 2024.”

That is the email from the whistleblower which you forwarded to General Senona and asked him to
20 communicate with the complainant and provide feedback.
Do you recall that?

DOCTOR LEBEYA: I recall it, Commissioners.

ADV SEGEELS-NCUBE: Yes. Then General Senona says:

“The complainant's email address was addressed to the National Head and

others and not to myself. I only became aware of the complaint when I received the instruction from the DPCI National Head. I later received a further instruction from Major General Surajbali to temporarily place the member at another post pending investigation, which instruction I carried out. I do not remember the exact date of this email.”

10 Now, Major General Surajbali is within your office, the executive support within your office.

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: And she would act on an instruction that comes from you.

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: And General Senona, when he gave his evidence before the Commission, he said that Major General Surajbali would have communicated an instruction that you would have given to be communicated
20 to him, General Senona, to execute. Now, I just want you to comment on that, whether you did instruct Major General Surajbali to place Warrant Officer Sander on temporary placement.

DOCTOR LEBEYA: I did not, Commissioners.

ADV SEGEELS-NCUBE: And it is still your evidence that

you were not aware of this temporary placement at the time.

DOCTOR LEBEYA: I was not aware, Commissioners.

ADV SEGEELS-NCUBE: When did you become aware that he had been placed at Provincial Support Services?

DOCTOR LEBEYA: I believe that it is at the time when I was receiving these documents, correspondence from the Commission, either during the testimony, but it is at a late stage. I was not aware.

ADV SEGEELS-NCUBE: Okay. And General Senona has
10 not provided that email because he says he would have later received a further instruction, which I carried out, but I do not remember the exact date of this email. And he has not provided that email. The email that he has provided from Major General Surajbali is the one where she communicates to him the complaint from the whistleblower and your instruction to follow up with the complainant and report back. So just to place it on record that he has not provided an email where there is an instruction to him to place Warrant Officer Sander on temporary placement.
20 Okay.

DOCTOR LEBEYA: I have taken note of that, Commissioners.

ADV SEGEELS-NCUBE: Okay. And if just insofar as General Senona's powers to place somebody on temporary placement, you indicated he could do that without your

approval?

DOCTOR LEBEYA: It is correct, Commissioners.

ADV SEGEELS-NCUBE: And he would do that as part of the disciplinary proceedings?

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: Okay, thank you. Now can I move on to the 6 December takedown operation, 6 December 2024? And if I could start with your statement, your main statement on page 70?

10 **DOCTOR LEBEYA**: I have it, Commissioners.

ADV SEGEELS-NCUBE: At paragraph 92, we know that you indicated that the person that contacted you on 6 December 2024 regarding the operation at Mr Katiso Molefe's residence was Mr Malcolm X.

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: And you have given, you said to us that you introduced Mr Malcolm X on the 18th of April 2023, and you also testified that he was an informant, a police informant.

20 **DOCTOR LEBEYA**: I think that the words that you are using do not seem to be in the statement. May you repeat the question?

ADV SEGEELS-NCUBE: If you go to page, I think it starts on page 91. Before you deal with your relationship with Mr Malcolm X, you made the point that it is not unusual for you

to have informants that are civilians who are interested in crime busting who would give you information from time to time, and that Mr Malcolm X was one such person. That was in your oral evidence, and you also indicated that Witness A and B are familiar with informants and the use of informants. Do you recall that evidence?

DOCTOR LEBEYA: Can you assist in pointing out there?

ADV SEGEELS-NCUBE: I am saying in your oral evidence, when I asked you about Mr Malcolm X, you said that he was
10 an informant. Are you saying he was not an informant?

DOCTOR LEBEYA: I am not recalling the use of that terminology, Commissioner.

ADV KHUMALO SC: Doctor Lebeya, you even gave media interviews, I think it was 702 or some other media outlet, where I think you used the same terminology. And the following week, Mr Malcolm X went to the same media house and disputed your assertion that he was an informant. Is that not correct?

DOCTOR LEBEYA: I was thinking that the labels of
20 individuals, that sometimes people do not accept certain labels. When I was giving the media interviews, I thought that nobody would come out to say that a reference was being made to me. So, ja, it is correct that I received information from Malcolm X, Commissioner.

ADV KHUMALO SC: You are not answering Advocate

Ncube's question that you referred to him as an informant. That is really the question.

DOCTOR LEBEYA: I can agree that that is the case, but I would not have loved to identify him with that in the Commission, Commissioner.

ADV SEGEELS-NCUBE: But I think to Commissioner Khumalo's point, you had identified him publicly when you were doing media interviews. You identified him as an informant, and Mr Malcolm X himself denied that he was an
10 informant.

DOCTOR LEBEYA: I was clarifying that, Commissioner. In my media interview, I did not identify the specific person. I have indicated that we got this from an informant. My expectation was that we would not identify the individual, that when the Commission starts, might want to hear that in camera, Commissioner.

ADV SEGEELS-NCUBE: Okay, so you accept that you got the information from somebody that you categorised as an informant?

20 **DOCTOR LEBEYA**: That is correct, Commissioner.

ADV SEGEELS-NCUBE: And that person is Mr Malcolm X?

DOCTOR LEBEYA: That is correct, Commissioner.

ADV SEGEELS-NCUBE: Okay. Now, still on page 70, so that was on page 70, that is where you say you were introduced to him. And then on page 71, you speak about

his arrest in October 2023, 23 October 2023. Now, when did you become aware of this arrest by your DPCI officers?

DOCTOR LEBEYA: Immediately upon arrest, we always share this information. There is a WhatsApp group that we share the successes of the day, Commissioners.

ADV SEGEELS-NCUBE: So you would have known this when he engaged you on the 6th of December 2024 that he is an accused person in respect of extortion and corruption, in respect of an arrest that was made by your officers?

10 **DOCTOR LEBEYA**: That is correct, Commissioners.

ADV SEGEELS-NCUBE: Okay, and the allegations against Mr Malcolm X regarding that case relates to extortion and corruption and the involvement of police officials?

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: Now, when you engage with him on the 6th of December, if we can then go there on page 81 of your statement, you set out the timeline on page 81 of what transpired on the 6th of December 2024, and what you did here was that you quoted from your WhatsApp
20 conversations on that day.

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: We then requested you to provide us with the actual WhatsApp, screenshots of the actual WhatsApps, which you have done, in a PowerPoint form, which is a document, and I think we would have to have it

included as an exhibit and we will get the exhibit number just during the tea adjournment. Now, before I go to that PowerPoint WhatsApp, I just want to get some clarity on some of the entries on page 81 because you do not elaborate on what transpired on some of those entries. So the first that I want to discuss with you on page 81 is the second entry at 15:43:

“I answered the call from Malcolm X and
communicated with him for two minutes.”

10 Can you tell us what that conversation entailed? What did he tell you?

DOCTOR LEBEYA: Without recalling the specific nitty-gritties, this was on the 6th of December 2024?

ADV SEGEELS-NCUBE: Yes. According to your timeline, he called you while you were at the Excellence Awards. The first call was a missed call, and then he called you immediately thereafter. So if you can tell us what you recall about that call.

DOCTOR LEBEYA: He was informing me that there are
20 people who are in Sandton at a specific address who says that they are members of the Hawks and that they have been sent by me to go and do operation there.

ADV SEGEELS-NCUBE: And did he ask you whether you could confirm that you had sent those members there? Because it is a two-minute conversation, so it could not just

have been ...[intervenes].

DOCTOR LEBEYA: Yes. He wanted to know as to whether it is myself who had sent the members there.

ADV SEGEELS-NCUBE: Did he identify where in Sandton and who the residents belonged to during that conversation?

DOCTOR LEBEYA: No. At the initial call, he did not identify the address or the owner of the address.

ADV SEGEELS-NCUBE: Did he tell you how he got the
10 information that there was an operation taking place at that address?

DOCTOR LEBEYA: He shall have indicated that he got the information from his friend. I think he said his friend or something related to him.

ADV SEGEELS-NCUBE: Related to him or related to the person that lives at the premises where the operation is being undertaken?

DOCTOR LEBEYA: I think the person, he just indicated the person. I cannot recall whether he said residing at the
20 place or knowing the person who is at the place.

ADV SEGEELS-NCUBE: He did not use a name? He did not give you a name?

DOCTOR LEBEYA: No. The name he gave me afterwards, not at the initial stage. At the initial stage, he did not give the name.

ADV SEGEELS-NCUBE: Okay. I am asking you about the name of the person that informed him of the operation. Did he give you that name during the call?

DOCTOR LEBEYA: No, he did not give me the name.

ADV SEGEELS-NCUBE: Okay. So in that initial call, he gives you no detail. He just tells you there is an operation at a residence in Sandton where people are saying that they have been sent by you and they are Hawks members?

DOCTOR LEBEYA: That is correct.

10 **ADV SEGEELS-NCUBE**: Okay, and he wanted you to verify that is indeed the case?

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: Okay, and at the time when he is having this conversation with you, did he tell you that he is on the scene, he is at this residence?

DOCTOR LEBEYA: No, he did not tell me where he is.

ADV SEGEELS-NCUBE: Okay, and what happens then? At the end of the call, do you give him an instruction? What do you say to him?

20 **DOCTOR LEBEYA**: At the end of the call, before I can communicate any further with him, because I knew that I did not send the members of the Hawks there, I suspected that it is possible imposters who are pretending to be members of the Hawks. So what I had to do was to check with the Provincial Head of the Hawks in Gauteng, Major General

Kadwa, or did you send the members, your members, are they operating in Sandton?

ADV SEGEELS-NCUBE: Okay, we will get to that. I just want to know about your interaction with Mr Malcolm X in that two minutes. So that was the extent of it. He does not describe the scene to you, he does not tell you how many people are at the scene, whether they have firearms, if they are in vehicles, or anything of that nature?

DOCTOR LEBEYA: He indicates that the members have
10 got big cars, which does not have registration plates, which are not marked, and some of these members are wearing balaclavas. Some of these people are wearing balaclavas.

ADV SEGEELS-NCUBE: And when he is saying this to you, is he describing something that he is seeing himself, or what he has been informed of?

DOCTOR LEBEYA: I did not ask him whether you are seeing, or this is what you are being informed.

ADV SEGEELS-NCUBE: Okay. If he is not specific that he is on the scene when he is having this conversation with
20 you, he is effectively telling you, from what you would be saying now, is that he is giving you hearsay information of something that he is receiving from someone else, and wanting you, the Head of DPCI, to confirm something that he has not witnessed himself, but is receiving from someone else.

DOCTOR LEBEYA: It is possible. I did not ask him.

ADV SEGEELS-NCUBE: But would that not be a crucial aspect to clarify with him as to whether he is telling you something that he is actually witnessing, or whether he is telling you something that he is just heard about? I mean, for you, for the DPCI Head, to act on something that someone is telling you he heard about, that seems to me to be implausible.

DOCTOR LEBEYA: But if you are an investigator and you
10 get information that somebody else is pretending to have been sent by you, the other thing you will verify later, you need to arrive as quickly as possible at the place.

ADV SEGEELS-NCUBE: Well, you arrive as quickly as possible when you have surely done some preliminary investigations to establish whether there is a basis on which to send your guys there. You cannot simply send people on a mission on limited information. So if any member of the public called you and alleged that the Hawks were at their house, or the people saying that they are the Hawks, you
20 would send a team out to go and investigate that, without verifying the information?

DOCTOR LEBEYA: You are correct. That is why I have done precisely that preliminary investigation. The contacting of the Provincial Head to check, did you send the members? The contacting of the Divisional Commissioner,

when the Provincial Head says, I did not send the members, my alternative thinking is that the TOMS team at head office can also operate. I ask the Divisional Commissioner, did you send the members? That is preliminary investigation that you do before you react.

ADV SEGEELS-NCUBE: No, I am asking before that, how do you verify that the information that the person is giving you is not just hearsay or somebody that is just trying to get you to send somebody out there? In this instance, Mr
10 Malcolm X is someone who, yes, is an informant, but also this is a person that your guys have arrested for extortion and corruption. So his credibility is questionable at that point.

So I am trying to establish what you do to establish from him, that what he is conveying to you is actually happening, so that there are actually people at the scene that are pretending to be Hawks members. You are telling me about verifying whether there is an operation underway. I am asking you to verify, how do you verify that what he is
20 communicating to you warrants your preliminary investigation?

DOCTOR LEBEYA: As a detective, you have got to be knowing that both information that a person is a direct witness and the information that he got from another person, which is hearsay, you are not prohibited from

following that information. Otherwise, we will never get information that help us.

ADV SEGEELS-NCUBE: So as somebody who is a detective, then that is the skill that you applied, is that based on what he was telling you, you felt that there was a basis on which you should engage with your Generals to establish whether there is in fact a legitimate operation underway by the DPCI officers, because you believed Malcolm X that there were people at that premises who
10 were pretending to be Hawks members.

DOCTOR LEBEYA: I agree that every senior manager with the experience of investigation will react in that fashion.

ADV SEGEELS-NCUBE: Okay. So now you have satisfied yourself that what he is saying to you must be true, so you want to verify whether there is an operation, a legitimate operation by the Hawks members. Correct? So the information that he is giving you, that there are people at the scene who have said that there are Hawks members sent by General Lebeya, you are happy that that information
20 is true?

DOCTOR LEBEYA: I am happy that the information is false. That is why we have got to react, because I did not send anybody. So that is conclusive information, suggesting that that information, that the people, the Hawks are there is false, which means that whoever is there is an

imposter.

ADV SEGEELS-NCUBE: Yes, what I am asking you is that you have satisfied yourself that what Malcolm X is telling you is true, that there are people at the premises saying that there are Hawks members sent by you. You are happy that he is being truthful to you about that scenario?

DOCTOR LEBEYA: The sending of the members is to verify. You shall only verify once the members have arrived there and they have found that there are members. Before
10 they arrive you cannot say that you are satisfied, because he has said that what you have not seen, your members are not there, they have not arrived. So that was a process of verification.

ADV SEGEELS-NCUBE: So when you are on the phone with him for those two minutes, you do not ask him to hand his phone over to – you do not confirm firstly that he is on the scene, but if he was on the scene you could have asked him to hand the phone over to one of the members that is executing the operation so that you could speak to them.

20 **DOCTOR LEBEYA**: No, that would not be my style of investigation. That would actually trigger those people to escape if they are impersonators.

ADV SEGEELS-NCUBE: But what would – when Malcolm X speaks to you in that two minutes, does he convey to you that he feels that he is in danger?

DOCTOR LEBEYA: No, he did not say that he is in danger.

ADV SEGEELS-NCUBE: Did he say to you that it looked like they are busy with unlawful activities such as a robbery?

DOCTOR LEBEYA: No, he did not say that. He said that they say they are members of the Hawks coming to do an operation. So that is my interest.

ADV SEGEELS-NCUBE: So why would you just draw the conclusion that if he gave the phone to you to speak to
10 whoever was present that that person would escape? What did he say to you that would suggest to you that that would be a possibility if he gave, if you were to speak to the people on the scene?

DOCTOR LEBEYA: He did not tell me that. It is the experience from a detective that you tell that person and say hand over the phone to one of those. If he is an imposter, I say Lieutenant General Lebeya say, then those people will escape.

ADV SEGEELS-NCUBE: In your experience, would an
20 imposter engage with a civilian that is witnessing whatever unlawful conduct they must be perpetrating? Because the only reason why they would be impersonating the Hawks would be to execute something unlawful. Correct?

DOCTOR LEBEYA: Imposters always engage with whoever. They pretend to be real police officials. I have

given a lot of examples, some of which I did not provide, but imposters always pretend until the last minute.

ADV SEGEELS-NCUBE: Yes, so if they are pretending to be, it would have been because they are trying to do something unlawful. Correct?

DOCTOR LEBEYA: That is correct.

ADV SEGEELS-NCUBE: Which in those circumstances, Mr Malcolm X does not give you any information regarding that. He does not say to you it looks like they are trying to
10 execute a robbery or anything to that effect. Correct?

DOCTOR LEBEYA: That is correct.

ADV SEGEELS-NCUBE: Okay. So for all you know, there are people at the scene who are comfortable enough to engage with a civilian in full sight of whatever it is that they are doing.

DOCTOR LEBEYA: Just repeat the question, Commissioner.

ADV SEGEELS-NCUBE: Malcolm X, if he is on the scene, we are assuming that he was on the scene, so it is direct
20 evidence. It is not hearsay. So he is on the scene and he is witnessing these Hawks officials, these officials that have said they are Hawks members. He is witnessing them doing whatever it is that they are doing. He does not say to you that they are busy with a robbery, and he does not say to you that he feels unsafe with what is happening.

DOCTOR LEBEYA: That is correct.

ADV SEGEELS-NCUBE: Okay. So he is a civilian witnessing a crime, and yet he is comfortable enough to engage you and to be in full sight of these imposters.

DOCTOR LEBEYA: That is correct.

ADV SEGEELS-NCUBE: Okay. So on that basis, why do you then assume that if he gives the phone to them, they are going to escape? What is it about what he is communicating to you that suggests to you that any contact
10 with you would result in them escaping?

DOCTOR LEBEYA: It is the experience that we have as detectives, that the moment you tell a suspect that I am talking to a police official, a real police official, that suspect will escape.

ADV SEGEELS-NCUBE: But that is what he said to them, is it not? He did say to them that he is speaking to General Lebeya, and he said that they were being rude. In his media interviews, he said that the officers were actually rude to him.

20 **DOCTOR LEBEYA:** Ja, that is the media statement that he is telling, but I am getting information from him at that moment before he make those media statements, that here are the members who pretend to be the members of the Hawks. And I think that any National Head cannot sit and do nothing about it.

ADV SEGEELS-NCUBE: Okay. So you then speak to your Generals to confirm whether there is an operation being conducted by, whether they are aware of any lawful operation being conducted by DPCI.

DOCTOR LEBEYA: That is correct, Commissioners.

ADV SEGEELS-NCUBE: At any point did you think about calling the local police station to confirm whether there is a lawful police operation being conducted in Sandton?

DOCTOR LEBEYA: I needed the Hawks to be the one that
10 confirmed, because there is the possibility that the local police might be involved in that activity of pretending to be members of the Hawks.

ADV SEGEELS-NCUBE: No, General Lebeya, based on what? What is it that Malcolm X tells you that makes you believe that members of the local police station could be involved?

DOCTOR LEBEYA: No, I am not saying that he told me that. I say that from the experience detective, people who pretend to be members of the Hawks may come from
20 anywhere. I have indicated we arrested members from Crime Intelligence. We arrested former police officials from a Visible Policing pretending to be members of the Hawks, so anybody can pretend to be a member from other entity.

ADV SEGEELS-NCUBE: Okay, so you did not contact the local police station?

DOCTOR LEBEYA: No.

ADV SEGEELS-NCUBE: And you did not contact the Provincial Commissioner either?

DOCTOR LEBEYA: No.

ADV SEGEELS-NCUBE: And why did you not contact the Provincial Commissioner? And this is once your members, your Generals, confirmed that there is no operation by them being undertaken.

DOCTOR LEBEYA: The members of the Hawks do not
10 report to the Provincial Commissioner. If it is members of the Hawks operating there, the Provincial Commissioner may not know.

ADV SEGEELS-NCUBE: No, but now you have established that it is not members of the Hawks because you have spoken to General Kadwa, you have spoken to General Mbotho, and Brigadier Mokwena has also confirmed, everyone has confirmed that it is not a DPCI operation. So I am asking you now that you know it is not a DPCI operation, why do you not contact the PC to confirm
20 whether it is a police operation?

DOCTOR LEBEYA: When I confirm that it is not the members of the DPCI, it gives me more information that possibly those are imposters because they are not from the Hawks. And I cannot phone any other one. I need our members to go and confirm as to whether they are from the

Hawks, or who are people pretending to be from the Hawks.

ADV SEGEELS-NCUBE: Okay. So once you have confirmed with General Kadwa and the other Generals that it is not a DPCI operation, you then speak again to Mr Malcolm X. Correct? If we go to page, still on page 81, at 15:51:

“I called Malcolm X for 16 seconds.”

Do you see that?

DOCTOR LEBEYA: That is correct.

10 **ADV SEGEELS-NCUBE**: Now what would you have communicated to him at that stage?

DOCTOR LEBEYA: Without recalling the exact information, I believe that I was telling him that they are not from the Hawks.

ADV SEGEELS-NCUBE: They are not from the Hawks?

DOCTOR LEBEYA: Yes.

ADV SEGEELS-NCUBE: And you must have told him something else, because the next activity he is sending you the address.

20 **DOCTOR LEBEYA**: Ja, so it means that I shall also have asked the address.

ADV SEGEELS-NCUBE: At any point did it occur to you to ask him to take photographs of the people that were on the scene? Would that not have been important information for a detective, to have at least photographs of the people that

are pretending to be the Hawks?

DOCTOR LEBEYA: Ja, yes, it is possible.

ADV SEGEELS-NCUBE: It is possible what? I am asking did you do it at any point? Did you ask him, while I am trying to verify on my side, take some photographs so I can see who these people are? It will be very valuable for us to have these faces.

DOCTOR LEBEYA: No, I did not ask him to be taking photographs in there.

10 **ADV SEGEELS-NCUBE**: Why not?

DOCTOR LEBEYA: The likelihood is that when you instructed a person to do that, you may endanger that person.

ADV SEGEELS-NCUBE: But he has not indicated any danger to you.

DOCTOR LEBEYA: Yes, I understand, but I am not going to initiate a process that I know it will endanger that person. I cannot say take pictures of the people.

ADV SEGEELS-NCUBE: Why did you not tell him to leave,
20 if that was your concern? My members will come now, just leave the scene. If it was what you say that you considered it, that if they are impersonating the Hawks, then they must be doing it for unlawful purposes, and so a civilian is still on the scene feeding you information, which suggests to me that he did not feel in danger at all, so much so that he

could be on the phone with the Head of the DPCI in full sight of these guys. So if you were worried about his safety, if you did think that this was a dangerous situation for him, would the first thing not be give me the address and leave?

DOCTOR LEBEYA: Yes, I did not want to endanger him, so I was not going to give him tasks that are going to endanger him.

ADV SEGEELS-NCUBE: How is telling him to leave the
10 scene of a possible dangerous crime endangering him? You are telling the civilian to leave.

DOCTOR LEBEYA: Yes, I did not tell him to go there, so he is phoning me from the place. So I was not going to tell him to leave. Mine is to go and arrive at the place to ensure that whoever is there is caught.

ADV KHUMALO SC: Doctor Lebeya, did you ask him to tell you what the people who were there pretending to be the Hawks were wearing? Did you ask him to describe what the people are wearing?

20 **DOCTOR LEBEYA**: He told me how they were wearing, Commissioner.

ADV KHUMALO SC: The reason why I am asking you this is because Warrant Officer Nkosi testified in this Commission on the 3rd of November 2025 that when he arrived at the scene, he observed people who were dressed

like the police and they had bulletproof vests. Before he even spoke to them, he could identify them as police because the vests they were wearing were easy to identify. They were marked SAPS, bulletproof vests.

DOCTOR LEBEYA: Indeed, even Malcolm X indicated that some are wearing bulletproof vests.

ADV KHUMALO SC: SAPS bulletproof vests?

DOCTOR LEBEYA: That is correct, Commissioner.

ADV KHUMALO SC: Now, based on that information, why
10 could you not establish that there must be the police? Or at least I must find out from the nearest SAPS police station that it looks like there is a police operation here. There are people who are wearing SAPS vests. If they are not the Hawks, they must be the police.

DOCTOR LEBEYA: Ja, my description was that the bulletproof vests, many individuals that pretended to be police officials were found and even shot wearing SAPS bulletproof vests. So I needed the members of the Hawks to go, Commissioner.

20 **ADV KHUMALO SC**: You see, it is possible that when somebody is wearing a SAPS bulletproof vest, they could be SAPS or they could be imposters, but at least you should verify whether or not they are SAPS. Because you cannot assume that everybody who is wearing a SAPS bulletproof vest is an imposter. Surely, if somebody is wearing a SAPS

bulletproof vest, there must be a chance that they are SAPS.

DOCTOR LEBEYA: I understand, Commissioner. The information was not that they are pretending to be SAPS members.

ADV KHUMALO SC: I get that. Somebody said they said they are the Hawks, but that person could be mistaken. Now Malcolm X says to you they are wearing SAPS bulletproof vests. That should give you an indication at the
10 very least that they could be legitimate policemen, and that is what you needed to verify. Are they or are they not legitimate policemen?

DOCTOR LEBEYA: Ja. My view, because here is a discretion that is required, that those who are pretending can be genuine police officials who are pretending to be the members of the Hawks.

ADV KHUMALO SC: But you see, once you have established that they could be genuine policemen or they are genuine policemen, it gets to the point that Advocate
20 Ncube was raising with you. If they look like police, then the danger is not there. Because Malcolm X is not saying to you they are behaving in a suspicious manner, they are dangerous. In fact, if you look at page 81 of your statement, he seems to be there, or somebody who is giving him information is there for at least an hour. Because you

keep calling each other, he keeps sending you messages, there is no suggestion that this is a dangerous situation.

DOCTOR LEBEYA: I hear what the Commissioner is saying, but here my discretion is different to how the Commissioner shall have responded.

ADV KHUMALO SC: But what are you exercising discretion for? Because here is a criminal suspect, according to you, says there are people here pretending to be the Hawks, but they are dressed like the police. So the
10 first thing you need to find out is, are they police or not? If they are police, then you say, this person says you are pretending to be the Hawks. Are you or are you not pretending to be the Hawks? Then the issue gets resolved.

DOCTOR LEBEYA: Ja, my view was different, that I need to go and get those people who are there, who pretend to be members of the Hawks. Be they SAPS members, if they pretend to be members of the Hawks, we need to be finding them, Commissioner.

ADV KHUMALO SC: We will come to the 9 o'clock phone
20 call with Malcolm X, but I am going to leave it here for now.

ADV SEGEELS-NCUBE: Thank you. Then, General, after the 16-second call at 15:51, Malcolm X sends you the address where the operation is taking place, and you say you forward it to General Mbotho and General Kadwa. And then at 15:53, there is two entries. I am interested in the

second one:

“Malcolm X forwarded the name of the
owner of the address, Katiso Molefe.”

Now, immediately after that, you call him for 27 seconds.
This is after he sent Katiso Molefe's name. What was
discussed, if you can recall, in that 27-second call?

DOCTOR LEBEYA: I do not recall precisely what I was
telling him, but I believe that I was confirming receipt of the
address that he forwarded.

10 **ADV SEGEELS-NCUBE**: Why would you need to do that in
a call?

DOCTOR LEBEYA: I do not recall precisely what I said to
him, but I shall have been confirming that I received the
address.

ADV SEGEELS-NCUBE: And did you know who Mr Katiso
Molefe was when he sent the name to you? Did you know
Katiso Molefe?

DOCTOR LEBEYA: No, I did not know that person. I still
do not know him.

20 **ADV SEGEELS-NCUBE**: Do you know of him?

DOCTOR LEBEYA: In terms of now the media and the
submission of individual at the Commission, I know his
name and that there is photo that is also published on the
media, but I do not know that person.

ADV SEGEELS-NCUBE: So prior to 6 December 2024,

when Mr Malcolm X sends you this name, you do not know of Mr Katiso Molefe?

DOCTOR LEBEYA: I have not heard of him.

ADV SEGEELS-NCUBE: Even as the head of DPCI?

DOCTOR LEBEYA: No, I have not heard of him.

ADV SEGEELS-NCUBE: Okay. Now, it would seem to me that if he is sending you that name, he does not say in his message that this is the owner. He just says Katiso Molefe. He sends the address and he says Katiso Molefe. What did
10 you make of that when he just sent the address and the name? Who was Katiso Molefe?

DOCTOR LEBEYA: He was indicating the name of the person at that address.

ADV SEGEELS-NCUBE: How do you know that? Because all he does is he sends address and Katiso Molefe. He does not say this is the owner.

DOCTOR LEBEYA: During that process, there was interaction with those that I was tasking, asking what is the address? Who is the person that we will be contacting
20 when we arrive there? So this was that communication.

ADV SEGEELS-NCUBE: No, General, it is not. He sends you – let us go to the PowerPoint presentation of the WhatsApps. Go to page 3.

ADV KHUMALO SC: Are you going to display?

ADV SEGEELS-NCUBE: Are you on page 3?

DOCTOR LEBEYA: Yes, Commissioner.

ADV SEGEELS-NCUBE: Okay, so we have the 6 December 2024. The first is that missed call which we have dealt with and then the two-minute call. And then you make a 16-minute call at 15:51. And then at 15:51 again, he sends you the address and he says Katiso Molefe. So he is not saying to you this is the owner. There is no context as to who Katiso Molefe is, at least in this WhatsApp. He may have told you who Katiso Molefe was when you called him for the
10 16 seconds. I am not sure.

DOCTOR LEBEYA: It is possible because these things are not recorded. I am trying to recall precisely what could we have been saying.

CHAIRPERSON: I might have misheard, but in respect of the 16-second call at 15:51, I think you said 16 minutes.

ADV SEGEELS-NCUBE: 16 seconds, Chair.

CHAIRPERSON: Yes, yes.

ADV SEGEELS-NCUBE: So when he sends you the name Katiso Molefe, what do you make of it?

20 **DOCTOR LEBEYA:** That it is the person who is at that address.

ADV SEGEELS-NCUBE: It was just an assumption. He did not actually say to you during any of your calls that this is Mr Katiso Molefe's place or he is the person that lives there. He did not give you any context. He did not have

that discussion with you.

DOCTOR LEBEYA: I do not recall if he said he is the owner or the person there. So I take it that I assumed it was the owner of that address.

ADV SEGEELS-NCUBE: Go to the next page, page 4.

DOCTOR LEBEYA: Yes, Commissioner.

ADV SEGEELS-NCUBE: So after he sends you Katiso Molefe, then you make the 27-second call at 15:54. That is the call that I had asked you if you recall what would have
10 been discussed during that call, and you say you do not know.

DOCTOR LEBEYA: That is correct.

ADV SEGEELS-NCUBE: You cannot recall? You cannot recall?

DOCTOR LEBEYA: Yes, I cannot recall precisely in which call we are talking about.

ADV SEGEELS-NCUBE: Now, when you forward information to General Kadwa and to General Mbotho, you do not forward Katiso Molefe's name. The message that
20 comes from Malcolm X that says Katiso Molefe, you do not forward that message to them. The only message you forward to them is the address, the one above that. Correct?

DOCTOR LEBEYA: Yes, I see that I did not send.

ADV SEGEELS-NCUBE: And, in fact, General Mbotho,

when he receives the WhatsApp from you with the forwarded address, he asks you, is there any number that we can contact when we get there? And you do not respond to that message from him. You recall?

DOCTOR LEBEYA: That is correct.

ADV SEGEELS-NCUBE: Why not? Why did you not give him Malcolm X's details?

DOCTOR LEBEYA: Because of the name that we gave him of being an informant.

10 **ADV SEGEELS-NCUBE**: You are not going to give your Generals that are you tasking with sending a team out there with the name of the person that is giving you this information and his details?

DOCTOR LEBEYA: I have not been doing that. I was not going to do that.

ADV SEGEELS-NCUBE: Okay, so why do you not say to Mbotho, I am not going to give you his number? He asks you and you do not respond at all to his message.

DOCTOR LEBEYA: Yes, I did not respond to that.

20 **ADV SEGEELS-NCUBE**: Is it possibly because General Mbotho had also received a call from Mr Mthethwa to verify the same information that you had received from Malcolm X, that there was an operation ongoing at Mr Katiso Molefe's home, and that is why you did not have to give him contact details?

DOCTOR LEBEYA: That was not in my knowledge.

ADV SEGEELS-NCUBE: The evidence that we heard from Warrant Officer Nkosi was that when he arrived, he was a DPCI officer, when he arrived at the scene, a gentleman approached him who identified himself as being a relative of the person that lives at the address, and that person told Warrant Officer Nkosi that he is the person that called the General. And when Warrant Officer Nkosi, in fact, he said, I am the one that called Patrick. And when Warrant Officer
10 Nkosi asked him, who is Patrick? He said, General Mbotho. He is the one that called General Mbotho. And that person that Warrant Officer Nkosi identified is a Mr Mthethwa. Were you aware of that?

DOCTOR LEBEYA: I saw when he gave the testimony, Commissioners.

ADV SEGEELS-NCUBE: Yes, and Mr Mthethwa is the person that was on the scene, which is also referred to in Malcolm X's message to you later on as King Nyambose, because you said that you know that that is the clan name
20 for Mthethwa. Correct?

DOCTOR LEBEYA: I assumed. That is my understanding of the clan name of Mthethwa is Nyambose.

ADV SEGEELS-NCUBE: Yes, and Captain Wanda, who was one of the members that was executing the operation, said that at some point during the operation, a gentleman

approached him with his cell phone and said to him that there is somebody that wants to speak to him, and he identifies that person as being Mr Mthethwa as well. And the person on the other end of Mr Mthethwa's phone, or the cell phone that was handed to him by Mr Mthethwa, was Brigadier Mokwena. Were you aware of that evidence?

DOCTOR LEBEYA: I have seen the transcript of that evidence.

ADV SEGEELS-NCUBE: Yes. So it seems that I am
 10 asking, you do not know why you did not say, you say you did not send Katiso Molefe's, that is accepted, you did not send his name to General Mbotho or to General Kadwa, who you were tasked with verifying this information about whether there were Hawks members there, and also you did not give them the details of Mr Malcolm X, even though General Mbotho had specifically asked you for the contact details of somebody to contact there.

DOCTOR LEBEYA: Yes, I did not give him the details.

ADV SEGEELS-NCUBE: Okay. Now, if we are still on
 20 page 4, you will see that there is – what then happens after your call, at 16:08, so there is about 15 minutes between the communication between you and Mr Malcolm X, where he sends you a registration number and he says:

“Their car registration, General.”

So this would be the people that are executing the

operation, he has given you their registration number.

DOCTOR LEBEYA: That is correct, Commissioner.

ADV SEGEELS-NCUBE: And what did you do with that information?

DOCTOR LEBEYA: I believe that I shall have shared it with one of the Generals.

ADV SEGEELS-NCUBE: Yes, you did share it with General Mbotho.

CHAIRPERSON: And the BB, does that not indicate that
10 that is a SAPS car or not?

DOCTOR LEBEYA: I did not get a feedback.

CHAIRPERSON: No, no, no, looking at that MB44BB, does that not indicate that it is a SAPS car or not really?

DOCTOR LEBEYA: No, with this registration, the SAPS car will end with B at the end.

CHAIRPERSON: Oh, B at the end.

DOCTOR LEBEYA: Not GP.

CHAIRPERSON: I knew there was a B somewhere. Thank you, thank you, General.

20 **ADV KHUMALO SC**: I want to – Warrant Officer Nkosi's evidence again on the 3rd of November. This is what he said. He said on his state phone, he has got an app where he can enquire the ownership of anything on the phone. And then when he arrived at the scene, he did that, and it came out that these are police vehicles. So just by looking

at the registration number and checking on his app, he could identify the vehicles there as police vehicles.

DOCTOR LEBEYA: I agree, Commissioner, when you have got that system, you are able to get the details of the owner.

ADV KHUMALO SC: So if you were given the registration numbers of the vehicles that were on the scene, that is all that was needed to verify who was there. You get a registration number, you go on your SAPS phone or your
10 DPCI phone, you put the numbers there, and they tell you these are police vehicles, and that is how you verify that it is the police who are there. It is as simple as that.

DOCTOR LEBEYA: I agree with that, Commissioner, and it has still required us to verify those police officials. Are they saying that they are from the Hawks?

ADV KHUMALO SC: No, but here is my point. Once you verify that they are police, then you can even say to Malcolm I know that they are police. Please give them the phone so that I can understand if they say they are the
20 Hawks or not. Because once you have identified them as police officers, you know that they are not imposters, they are the police, and then you can say let me speak to one of them so that I can understand why they say they are the Hawks. And it becomes that simple. There is no need to send 14 Hawks officers to the address for that purpose.

DOCTOR LEBEYA: My view is different, Commissioner, with that approach. The suspect will escape. He will never arrest anybody for pretending to be a member of the Hawks.

ADV KHUMALO SC: If it is a police vehicle there, General, and you have identified it as a police vehicle, so you are now eliminating the possibility that these are criminals. You know it is the police. You have identified their vehicle. It is now a matter of what are the police doing there? Did they really say they are the Hawks? Because Malcolm X could
10 have been misleading you, or he could have misunderstood how the people identified themselves when they arrived at their address. Once you have established that they are the police, the question you ask them is, did you say you are from the Hawks, there seems to be a misunderstanding.

DOCTOR LEBEYA: Yes, so when it comes to that, policy requires discretion. It means that if the Commissioner was in my shoes, he shall have done it that way. And if I was asking the Commissioner, I was going to say, how can you do it in that way when you should have arrived there so that
20 you catch whoever is there? Even if it is the police who pretend to be a member of the Hawks, should have been arrested ...[intervenes].

ADV KHUMALO SC: But you cannot catch the police who are conducting a legitimate police operation. DPCI does not have a mandate to arrest the police who are conducting

a legitimate police operation. Once you are told that it is the police and they are there conducting a legitimate police operation, DPCI has no business being there interfering with their operation. You can call their Commanders and their Generals and say they misrepresented who they are, they did this, they did that. But you cannot go there and say I am going to interrupt their operation because I want to enquire from them why they said A, B, C and D.

DOCTOR LEBEYA: We have never said that we are going
10 to interrupt their operation, Commissioner. The members of the SAPS have been caught pretending to be members of the Hawks. So that is why we have to send members to go. And if they say that they are from the Hawks, even if they are from the SAPS and they are not from the Hawks, what they are doing is wrong because many a time people pretend to be from the Hawks when they are not.

ADV BALOYI SC: General, when you say you have caught members of the SAPS pretending to be Hawks, were those SAPS members involved in a legitimate operation or they
20 were not?

DOCTOR LEBEYA: No, illegitimate operation, Commissioner.

ADV BALOYI SC: Thank you.

ADV SEGEELS-NCUBE: Then, General, so we are still on page 4. You have now explained why the registration

number – he sends you the registration number. I am assuming you would have asked him to send you something like that or did he just do it of his own accord?

DOCTOR LEBEYA: I think he has just done it on his own accord.

ADV SEGEELS-NCUBE: Okay, but then you speak to him, you make a call and you speak to him for two minutes at 16:26. Now at 16:26, is he still on the scene? When you speak to him on page 4, at 16:26 you will see the green
10 block, two-minute call that you initiate, he is still on the scene, Malcolm X is on the scene?

DOCTOR LEBEYA: That is correct.

ADV SEGEELS-NCUBE: His first call to you was at 15:43, so 45 minutes later he is still on the scene?

DOCTOR LEBEYA: That is correct Commissioner.

ADV SEGEELS-NCUBE: And what is the discussion about, that two-minute discussion?

DOCTOR LEBEYA: I cannot recall what he was discussing with me, but obviously it relates to that activity at the
20 address.

ADV SEGEELS-NCUBE: Would you have told him that your members are on their way to the scene?

DOCTOR LEBEYA: It is possible, I cannot recall.

ADV SEGEELS-NCUBE: Well, is that not something important to communicate to the person that has informed

you that there are people pretending to be the Hawks on the scene? Would it not be important to tell him that you are in fact sending a team?

DOCTOR LEBEYA: You have got to be strategic when you speak to an informant, so that the informant is not the one who debriefs you. So you cannot be opening everything with the informant. You might be used.

DOCTOR LEBEYA: Yes, you might be used. You could have been used in this instance as well, but you did not
10 think that you were being used. So I am assuming you would have been open with him that you are sending members. Because I asked you earlier on, you believed what he was telling you, so you were not being used.

DOCTOR LEBEYA: Yes, that is why I reacted the way I did, so that I am not used.

ADV SEGEELS-NCUBE: Yes, so if you believe in the credibility of the person giving you this information, I am assuming you would have notified him that this two-minute call, that my members are on their way.

20 **DOCTOR LEBEYA**: Yes, I cannot recall precisely, because at the time when this thing was happening, we were not planning that in future. We might have to come and recall precisely what we were, what words we were using.

ADV SEGEELS-NCUBE: Okay. Before I get to the next message, I just want to then pick up on what I had asked

you about Mr Katiso Molefe. So if I understood you, you did not know of Mr Katiso Molefe?

DOCTOR LEBEYA: That is correct, Commissioner.

ADV SEGEELS-NCUBE: And the evidence that we have heard, if that evidence is to be believed, Mr Katiso Molefe was allegedly part of an organised criminal grouping, which included Mr Jothan Msibi. Are you aware of Mr Msibi?

DOCTOR LEBEYA: I only started hearing Mr Msibi when the evidence has been provided to the Commission.

10 **ADV SEGEELS-NCUBE**: So you did not know of Mr Msibi before this Commission?

DOCTOR LEBEYA: No, I did not know that person.

ADV SEGEELS-NCUBE: Okay, there is a difference. I am not asking if you knew him. If you knew of him, the name Msibi and what business he was operating, bearing in mind that he was known to be in the taxi business and in the Mpumalanga area as well, and were you not at some point also stationed in Mpumalanga?

DOCTOR LEBEYA: No, I did not know him.

20 **ADV SEGEELS-NCUBE**: No, General, my question is not whether you knew him. Whether you knew of him. So, not that you had a relationship with him. Whether you knew of the name, the person, Mr Msibi. Whether as Mr Msibi or Mswazi, whether you knew of him.

DOCTOR LEBEYA: As I indicated in my first day, when we

were coming from the Interpol meeting, there was a talk by the Divisional Commissioner of some taxi-related person that he felt was in danger. So I cannot recall whether it is that name, but I do not recall having heard about Mr Msibi. So, these names, for me, I did not know any of those involved in the taxi industry.

ADV SEGEELS-NCUBE: Okay. So you did not know of him. Now, this incident where you speak about General Khumalo indicating to you that you say that you do not know
10 if he was talking about Mr Msibi, but when you gave your evidence you said that General Khumalo had gone to the farm. Was it the farm of Mr Msibi, is that what you were trying to relay?

DOCTOR LEBEYA: I do not know who could that be, but a place where he was supposed to be going, where he felt that he is in danger. So, we did not go deeper into what kind of a place would that be.

ADV SEGEELS-NCUBE: Okay, and he did not give you the name of the person either?

20 **DOCTOR LEBEYA:** I do not recall him giving the name of the person.

ADV SEGEELS-NCUBE: Okay. It seems bizarre that he would tell you about going to a farm and not tell you the name of the person where he had felt endangered by that person. Is it just maybe that you do not recall the name?

DOCTOR LEBEYA: It is possible that he may not have even mentioned the name.

ADV SEGEELS-NCUBE: Okay. Now, this would have been before 6 December 2024, this discussion between you and General Khumalo.

DOCTOR LEBEYA: I have got to check. Possibility is that is afterwards. I think that it is in January or February when we come from Interpol, not before 6 December. No, it was not before 6 December.

10 **ADV SEGEELS-NCUBE**: Okay. It was not before Mr Molefe's arrest?

DOCTOR LEBEYA: No, it was not.

ADV SEGEELS-NCUBE: Okay. And if the evidence that we heard about alleged organised criminal grouping, which included Mr Msibi and Mr Molefe is correct, what you are saying is that as the head of DPCI you had no knowledge of this organised criminal grouping at all.

DOCTOR LEBEYA: I have no knowledge of that organised criminal grouping at all and I even doubt if it is registered
20 as an Organised Crime project. If so registered, maybe it might be with the Detective Service. So from my side, I do not know about that organised criminal grouping.

ADV SEGEELS-NCUBE: Okay. I want to ...[intervenes].

ADV BALOYI SC: Can I just ask? If it were registered, how would you know? Where would the registration and

that information sit for you to be aware of it?

DOCTOR LEBEYA: If it is registered with the DPCI, it will be kept by the component head of DPCI and the component head of Priority Crime Management Centre and the chairperson of that committee will know the names. If it is registered with the Detective Service Organised Crime Component, the component head will know. And some of the information at the National Project Committee, they may be sharing. So that is where one can find the names.

10 **ADV BALOYI SC**: And who sits in this national, I think you say, project committee? What institutions are in there or positions are in there that would have made it possible for you as head of DPCI or even the DPCI in general to be aware, if it had been registered by the SAPS?

DOCTOR LEBEYA: Crime Intelligence participate. The National Prosecuting Authority, the Organised Crime Component, the DPCI, various other government institutions participate, those that are relevant to the project. So there are those who sit on a permanent basis and there are those
20 who come on invitation, Commissioner.

ADV BALOYI SC: In that committee, that body, how its operations, how does it work? Does it have a scheduled meeting, project? These are the, as in, you have a calendar, you meet every month, you meet every three months. And what kind of information gets shared in that

body?

DOCTOR LEBEYA: Every time they sit, when they adjourn, they will set a date for the next meeting. So the administrators will prepare the information that needs to be shared openly, depending on the nature of the project. There are those projects that they may say that this one is undercover, we shall deal with it slightly different than others, that we deal with them in the open. So there are different categories of those projects, Commissioner.

10 **ADV BALOYI SC**: So it is really about that body, as I understand, it is a body where you report on specific investigations, if you like, that are being dealt with by the different entities?

DOCTOR LEBEYA: That is correct, Commissioner. To also monitor progress and give instructions where needed. And then where there is a need, for example, to ask the NPA and say that we have got a problem with decision-making in this specific one. So those will be raised, will be part of the deliberations, Commissioner.

20 **ADV BALOYI SC**: Thank you. Sorry, Ms Segeels.

ADV SEGEELS-NCUBE: General, so insofar as you being the head of DPC, you had no engagements with taxi associations like SANTACO, where you would have come across Mr Msibi at all?

DOCTOR LEBEYA: As the head of the DPCI, I do not

remember meeting a taxi association. The time that we met the Taxi Association SANTACO, I think that I might have been the Deputy National Commissioner, so I am not recalling, but it was in a meeting held by senior officials. I think that it was an issue where we needed a taxi organisation to be cooperating. There was that type of meeting that took place, but it was an association that is the leaders, but I think that is something like a Thai boss, something of that nature. I do not think that Msibi was part
10 of that delegation.

ADV SEGEELS-NCUBE: Okay. Can I then, I want to show you a photograph that, actually two photographs that was extracted from Mr Katiso, one of Mr Katiso Molefe's devices, which we are going to display and then I want to identify individuals for you from this photograph. If we go from the right, you will see that is Mr Msibi. The metadata of this photograph is 21 June 2022.

And the photograph, the person on the right in the white sweater, that is Mr Msibi. And the person next to him
20 is Mr Mthethwa, who was present at the arrest of Mr Katiso Molefe on the 6th of December 2024, and I have told you what the evidence regarding his participation was regarding that. The person next to him is Mr Mthakathi and the person next to him is Mr Motsumi, and the person next to Mr Motsumi is Mr Katiso Molefe.

And what we know is that when we go to the next message, is that Malcolm X says to you that Mr Mthethwa, King Nyambose, thanks you for your assistance. We will get to that. So the person that he is referring to is the person next to Mr Msibi, the late Mr Msibi.

Now, if we can go to the message, and then I want to put a proposition to you about your lack of knowledge of the person, Mr Katiso Molefe and Mr Msibi, in light of the position that you held as the head of DPCI. If we can go
10 back to your WhatsApps on page 4?

DOCTOR LEBEYA: Yes, Commissioner.

ADV SEGEELS-NCUBE: You will see the last message from Mr Malcolm X comes on page 4 at 17:48, and it is a very important message. He says:

“Thank you for sending people who verify
that these gentlemen are policemen...”

So not Hawks, members, policemen:

“...and King Nyambose really appreciates
all your efforts, General. It is a pity that
20 the policemen you sent were not allowed
inside the yard and house.”

Now, that statement says a lot from him. It is a pity that the people you sent were not allowed inside the yard and the house. When you received this message from him, I am assuming that if your intentions were to establish that it was

a police operation, a legitimate police operation, that these were Hawks members, whatever it is that your intention was for sending them there. Your intention was not for them to go into the yard and the house. Correct? It was merely to verify.

DOCTOR LEBEYA: That is correct, Commissioner.

ADV SEGEELS-NCUBE: So when you receive a message like this from him, what is your response to him?

DOCTOR LEBEYA: Ja, so I was, as that day we were busy
10 with other activities. I just showed that he is thanking, and then I was not really interested in the message itself.

ADV SEGEELS-NCUBE: Just go to page 5. There is a voice call, three minutes at 21:52. This is at nearly 10 o'clock in the evening where you are accepting a call from Mr Malcolm X.

DOCTOR LEBEYA: That is correct.

ADV SEGEELS-NCUBE: And it is a three-minute conversation. What are you talking to him about there?

DOCTOR LEBEYA: Well, I cannot recall the precise
20 discussion. It must have been about that operation of the day.

ADV SEGEELS-NCUBE: You do not say to him, who is King Nyambose?

DOCTOR LEBEYA: No, I did not ask him who is this King Nyambose.

ADV SEGEELS-NCUBE: You do not say to him, why are you saying it is a pity these guys could not get into the yard and the house? That was never why I sent them. I did not send them for that purpose.

DOCTOR LEBEYA: I did not ask him because even myself, I did not have the intention that they must go and enter into the house. There was a specific task that the senior managers were given.

ADV SEGEELS-NCUBE: What this message from Malcolm
10 X suggests is that it was King Nyambose, Mr Mthethwa, who contacted him on the day and asked for his assistance, and he then activated you to get your assistance in order to interfere in the operation. Otherwise, it would not have been a pity that they were not allowed inside the yard and house if all that needed to be done was to verify whether it was the Hawks or not. Do you agree with me that that is a reasonable interpretation of this message from his point of view, not your point of view?

DOCTOR LEBEYA: I understand that, and then it is
20 possible. It is something that from my side, I did not know who tasked him.

ADV SEGEELS-NCUBE: And it just seems odd to me that he uses the name King Nyambose and you do not ask him who is this, even in the call, in the three-minute call, who are you talking about? Who is this person? You did not tell

me somebody told you about this. He did not give you any of this detail previously I asked you. So now he is using King Nyambose in his message, which suggests that you knew who King Nyambose was prior to this message, because otherwise you would be asking who is it, who you are referring to?

DOCTOR LEBEYA: Ja. I was already satisfied that those were not the Hawks imposters, which we were interested in.

ADV KHUMALO SC: You are being asked about the
10 individual, not the operation and what the operation was about. There is a message of gratitude coming from a specific individual. You are being asked about that individual. Please respond to the question. Maybe, Ms Ncube, repeat it again, and please respond directly to the question.

ADV BALOYI SC: It is on the same point, General. Why would Mr Malcolm X assume you would know who King Nyambose is if you and him have never discussed with him this Mr Mthethwa? In name, Mthethwa, or even, and maybe
20 more specifically, if between the two of you there has never been a conversation that mentions a King Nyambose, why would he assume you would know? Because from that text it is very clear, the tone of the text is you would know who he is speaking about.

DOCTOR LEBEYA: I do not know why he thought of just

not explaining. So that, I think, is the question that he might explain, but I do not understand why he seems to communicate in such a way that I know Nyambose.

ADV BALOYI SC: You see, in the absence of an explanation, on the face of it, it looks like you knew who he is talking about. There had been, in some context or on the day itself, a conversation that raised this person's name, King Nyambose's name, and you would know who he is referring to because King Nyambose could be anybody, any
10 Mthethwa person.

But that text on the face of it suggests that he expected you to know, and you would have known who he is referring to. And that is, maybe I am stating my position, that that is the impression that it creates to me. Do you want to say anything about that impression that I am putting to you?

DOCTOR LEBEYA: I hear the Commissioner's impression, but from my side I did not know this Nyambose. I have never met him. He did not talk to this Nyambose about it
20 other than sending on this message, Commissioner.

ADV BALOYI SC: And if you did not know who he is referring to, but clearly it is important that he says King Nyambose, it is important to him that he says it that way, did you not get concerned to even ask what did he involve you in? Now you know there was a legitimate operation.

You know that now.

You have heard that point, I think, that Captain Wanda said we never said we are Hawks. At least Captain Wanda who was spoken to did not say we were Hawks. All your people tell you it was a legitimate operation. Did you not think, and if so, why not, to ask yourself or even Mr Malcolm X, what did he involve me in? On the day itself and even much later when things were now playing out, now you know about Mr Katiso Molefe because he is all over the
10 news. Now you know who that person was. Did you not go back to Malcolm X, because he is your contact, he is on your phone, to ask him what was it all about that he involved me in? Because it really looks ugly.

DOCTOR LEBEYA: Ja, I did not think in that way, Commissioner. Mine was to say that the information that he provided was that these people were wearing balaclavas, carrying firearms, and the only ones that appear to be, the only signs that appear to be police are these bulletproof vests. Thinking of the history where we come from, the
20 Vlakplaas era, I felt that it is important to go. And when we have gone to find out indeed there were people who were there, I felt maybe I did not know that they are genuine police officers.

ADV BALOYI SC: General, I am not a detective. I do not have your experience as a detective. I do not have your

experience that Malcolm X was arrested for, I think you said, corruption and something which involved police officers. So you know that he is wanted to be involved in suspected criminal conduct. I do not have all of that, but you have all of that.

He calls you, causes you to deploy quite a lot of resources on the day to go to the house of Mr Molefe.

You find out on the same day that there was a legitimate police operation. In fact, every officer of IDAC who has
10 reported back and who have testified have actually said, we actually do not even know why we were called there because when we got there it was obvious it was a police operation.

So now you know this by the end of that day. So you know your source in fact misled you because that is what it was. He misled you. Your source says, King Nyambose, thanks. You later come to find out that Mr Katiso Molefe is alleged to be involved in very serious criminal conduct.

20 It is incomprehensible to me that on the day, both on the day itself and when you subsequently find out all these facts that I am putting to you by media because Mr Molefe is now arrested and there are all these wild allegations that are being made, it is incomprehensible that the head of the Hawks would not call Malcolm X into his

office even, sit him down and say, what did you involve me in? What was that all about? Tell me the truth. It is simply incomprehensible.

And I cannot find a reasonable explanation why you would not have done that, why you would not have interrogated him, especially because you know that he himself is accused of involvement in criminal conduct involving, you say, the SAPS.

There is no explanation why head of Hawks, I
10 mean, I despair that the head of Hawks with all of those facts did not think to call in Malcolm X and interrogate him about why he was there, what is his association with these people, King Nyambose, Mr Molefe, whoever he claimed called him to give him this information. That the head of the Hawks did not think there is something wrong here, there is something to look at, is deeply problematic. You can comment.

DOCTOR LEBEYA: Ja, I take it that the Commissioner is also aware of the evidence of Warrant Officer Radebe. I
20 take it that ...[intervenes].

ADV BALOYI SC: What do you say I am aware of?

DOCTOR LEBEYA: I take it that the Commissioners are also aware of the evidence of Warrant Officer Radebe, in addition to the evidence of Warrant Officer Nkosi.

ADV BALOYI SC: You can remind us what ...[intervenes].

DOCTOR LEBEYA: Warrant Officer Radebe says that when he was there, when the Hawks members were arriving there, he saw one of the officers, the officials, the operators, Sergeant Mthethwa, whom he knows to have been working with at one of the units in Gauteng. He was part of the team that was with Witness A.

That particular Sergeant Mthethwa told him that that idiot is the one that I have seen and heard calling somebody else, saying that these people say that they are
10 from the Hawks. So I take it that position that the Commissioner has taken note of.

ADV KHUMALO SC: Yes, we are aware of that evidence, General.

DOCTOR LEBEYA: That is right. So that being the case, I was confronted with a situation that here are the people that have pretended to be members of the Hawks, and I have sent the members to go and verify. So I was satisfied with that. Informants will not always have precise information. So at least the general information that you
20 have provided was correct, that here are the members, here are the people wearing balaclavas, with cars that are not marked, and then some of them have got a bulletproof vest, which is not a conclusive identification. So I felt that what I have done is sufficient, and I did not interrogate him further, Commissioner.

ADV BALOYI SC: General, maybe just lastly from me on this, that I am past Malcolm X calling you and giving you the story that he gives you, and then you deploy your people. I am past that. I am at a point, I start from, your people come back, they give you a report, which you accept that that was a legitimate operation. So now you know that. At the end of the day, you know it was a legitimate police operation.

Malcolm X sends you a message, King Nyambose
10 thanks you. You later publicly, from public information, let me say, you come to know of the allegations against, and the charges against Mr Molefe. You also know, as you tell us in your statement, that Mr Malcolm X himself is said to be involved in criminal conduct.

And I am saying with all of that, now knowing this, we are post, when you deployed. Now you know all of these facts, that you, head of the Hawks, do not say, hang on, what was that all about? Now that King Nyambose is thanking me through Malcolm X, who we have previously
20 arrested for involvement in criminal conduct that involved police. Mr Katiso Molefe has been arrested, he has been charged.

When you now know all of those facts, not only an experienced detective, but actually head of the Hawks does not say let me find out from Malcolm X, what in fact was

that which happened on that day? What did he cause my people, me to deploy my people, to go and do? Because actually it is suspicious.

My gripe with you, if it is a gripe or quarrel with you, is you do not become sceptical or suspicious at all. And we had this conversation yesterday about General Senona, and I am not going there. I am just saying here is yet another instance where your suspicion is not roused, even after the fact.

10 Now that you know other facts, you do not say, actually let us investigate this Malcolm X, what is his association with these people, this Mthethwa, that is creating the impression I know, what is his association with Mr Molefe? You do not. Now that we know Mr Molefe is accused of very serious crimes, it is my gripe, but I have heard your answer. I do not think you can say anything better.

20 I am just clarifying that my quarrel with you is you do not seem, as head of Hawks and an experienced detective, you do not seem to have an enquiring and suspicious mind, even on facts like this where I, a member of the public, become deeply suspicious on these facts of Malcolm X and his motives and what he was doing that day, and therefore suspicious of you and how you reacted to this. I said I do not know if you can give a better answer,

but you may comment if you want to.

DOCTOR LEBEYA: I understand the Commissioner's view. I can indicate that the facts that we now know after the Commission of Inquiry have said and a lot of evidence have now been presented, the picture is different than at the time when we were to operate. That information was not there.

And the moment the arrests are effected, when you start interrogating now, it would sound from others that you are trying to cover up. So you just leave it in that fashion.

10 What I have observed is that at least the information that he has provided, that here are people who are wearing balaclavas, carrying guns, that have not shown real form of identification other than the bulletproof vest, that information has been proven to be correct.

ADV BALOYI SC: Thank you.

CHAIRPERSON: Let me, General, subject to what you may or will say, let me say what impression this text 17:48 – no, no, no, it is – yes, 17:48, yes, page 5. The same one, text from Mr Malcolm X, what impression it creates. You are
20 basically being thanked by this Nyambose and that said to you directly, open quote:

“And King Nyambose really appreciates
all your efforts, General.”

You are being thanked. The impression that this creates is that you and Mr Malcolm X were in on this together and you

were doing it for Nyambose, which is why Nyambose would now be thanking you or expressing his appreciation of, open quote, open quote, all your efforts, close quote. That is the impression this creates. Do you agree that that is the, just at the level of, do you agree that that is the impression? I am not asking you whether you were indeed in with Malcolm X, but do you agree looking at this at face value that it creates that impression?

DOCTOR LEBEYA: I agree, Chairperson.

10 **CHAIRPERSON**: Now, and did you at the time appreciate that?

DOCTOR LEBEYA: I did not appreciate ...[intervenes].

CHAIRPERSON: That you read this. Did you read it?

DOCTOR LEBEYA: I read it.

CHAIRPERSON: Did you read it with understanding?

DOCTOR LEBEYA: With, but ...[intervenes].

CHAIRPERSON: You understand the English language, General ...[intervenes].

DOCTOR LEBEYA: I understand sir.

20 **CHAIRPERSON**: Do not speak over me, please. You understand the English language.

DOCTOR LEBEYA: I understand, Commissioner.

CHAIRPERSON: Did you read this with understanding then?

DOCTOR LEBEYA: That is correct, Commissioner.

CHAIRPERSON: So if you read it with understanding, the impression with which you agree must have come to your mind. It just must have, otherwise you would not have read it with understanding, and you cannot go back on that now because you have accepted that you read it with understanding.

DOCTOR LEBEYA: And not agreeing with his impression, Commissioner.

CHAIRPERSON: You did not agree?

10 **DOCTOR LEBEYA**: No.

CHAIRPERSON: But you never expressed that. You never expressed that disagreement.

DOCTOR LEBEYA: No, Commissioner.

CHAIRPERSON: Not even in the telephone call of 21:52, three minutes. You never did.

DOCTOR LEBEYA: No, Commissioner.

CHAIRPERSON: And why did you not? If you understood the impression that it created, you read with understanding and therefore you understood the impression it created, why
20 did you not say please do not lump me with this Nyambose? I do not know one who you are talking about and, two, I have no idea what he would be thanking me for. Why would you not do that?

DOCTOR LEBEYA: Ja, with the hindsight that we are now seeing what he shall have been involved in, I should have

asked ...[intervenes].

CHAIRPERSON: I will ...[intervenes].

DOCTOR LEBEYA: By that time I did not have ...[intervenes].

CHAIRPERSON: I will not let you off that easily, General. You are and you were a General at the time and you were interacting with, as Commissioner Baloyi has said, someone known to be a criminal, and that was your knowledge at the time as well. Now he is telling you that you are being
10 thanked by someone that you say you did not know and being thanked for something that you also did not know. Why can you now tell us about hindsight and so on? You should have asked him, and the question is why did you not do so at the time?

DOCTOR LEBEYA: I think that maybe the area where I might differ with the Chairperson is when the Chairperson says that I knew that I was dealing with somebody who was a criminal.

CHAIRPERSON: Okay.

20 **DOCTOR LEBEYA**: I thought that was not declared by the Court as a criminal, Commissioner.

CHAIRPERSON: Okay. Suspect, suspect. I am very sorry and I apologise to Mr Malcolm X. I am very, very sorry about that. I must have misunderstood the flow of the evidence. But you knew about the suspicion of criminality.

DOCTOR LEBEYA: I knew about the suspicion of criminal activity, Commissioner.

CHAIRPERSON: You knew?

DOCTOR LEBEYA: Yes.

CHAIRPERSON: So at that level my question still stands. Can you please respond to it then?

DOCTOR LEBEYA: The information that he has provided, it does not matter whether it comes from this ...[intervenes].

CHAIRPERSON: And what information are you referring to
10 now? You will not go back to him telling you about people
who might have been imposters but who were later
established not to be. Please do not go back there. I am
engaging you on the content of this WhatsApp text. So
please do not go back to it. If the information you are
referring to, unless you are referring to something else, if
the information you are referring to is the information about
him calling you to say there are imposters here or likely
imposters, so please do not go back there. Can you start
with your response again? Not referring to that original or
20 initial information.

DOCTOR LEBEYA: If the question of the Commissioner is about the impression ...[intervenes].

CHAIRPERSON: My question is with that impression which you agree with and which you understood at the time. So you cannot go back on any of those you have already

agreed with me in that regard. So with all of that in mind, why did you not ask him who is this Nyambose and what on earth is he thanking me for?

DOCTOR LEBEYA: Ja, at that stage it did not come to me that I should question him about who this Nyambose is.

CHAIRPERSON: You were an experienced police general. You were an experienced police general. You could not let something like that ride. You ought to have said look, what you asked me to assist with related to people who you
10 believe might be imposters, might be impersonating the Hawks.

That is what you asked me, but now suddenly you are saying I am being thanked by a Nyambose that I do not know and I have no idea what this Nyambose would be thanking me for. You cannot talk about hindsight. Please, General, you were an experienced police officer. Why did you not ask him? I will not let you off on the basis of hindsight and all these other things, these excuses. Why did you not ask him at that time?

20 **DOCTOR LEBEYA**: As an experienced officer, Commissioner, there is no set rules that this is the only way.

CHAIRPERSON: I am talking common sense, I am talking common sense and the common sense of someone with your experience. I am not talking prescripts or rules here,

please.

DOCTOR LEBEYA: Yes, in that common sense which I exercise discretion, that I am not putting him on any trial. So that is where I left it.

CHAIRPERSON: This was about you. This was about you and how this painted you. This is associating you with a Nyambose that you say you did not know and this was saying you are being thanked by this person that you did not know. So it was not about you letting Mr Malcolm X off
10 the hook. It was about you. What were you being thanked for and who on earth is this Nyambose? It is about you.

DOCTOR LEBEYA: Ja, I did not pursue that with him. I was just comfortable that the information he provided seems to be something that he was a genuine.

CHAIRPERSON: The explanation you give is not cogent at all. So what I introduced this debate with stands, which is that at face value, the impression that this creates, subject to an explanation that you may give, the impression this creates is that you and Mr Malcolm X were working together
20 with this Nyambose, which is why Nyambose thanked you once all of this had been put to bed. That is the impression it creates and you are not giving any cogent explanation for that. I will leave it at that. You have not answered the question why.

DOCTOR LEBEYA: Yes, I take what the Chairperson is

saying and then from my side all what I can say is that I do not know this Nyambose. I have never met Nyambose. I do not know him. So if Malcolm X is related to him, it is Malcolm X. I was just getting information from Malcolm X like I will do from any other person including those who are in custody, Commissioner. That is my position.

CHAIRPERSON: Thank you.

ADV KHUMALO SC: And in this 10 o'clock phone call the same day, so Malcolm X calls you, is that correct? We are
10 on the same page immediately after the message. There is a three-minute phone call at eight minutes before 10 o'clock at night.

DOCTOR LEBEYA: That is correct.

ADV KHUMALO SC: It is Malcolm X calling you.

DOCTOR LEBEYA: That is correct.

ADV KHUMALO SC: And at this point I assume he tells you that Mr Katiso Molefe has been arrested.

DOCTOR LEBEYA: No, he did not ...[intervenes].

ADV KHUMALO SC: So what do you discuss in this phone
20 call? Because looking at your witness statement on page 79, 80, 81, this looks like the longest of the calls you had with him. So what did you discuss with Malcolm X for three minutes at 10 o'clock at night?

DOCTOR LEBEYA: I do not recall the message that he was conveying, but it was around the operation

...[intervenes].

ADV KHUMALO SC: No, but the operation we have resolved the issue of the operation. He thought it was the people impersonating the Hawks. Your officers went there. It is established that they are not the Hawks. He has thanked you. So that is the end of that. What is he calling you for at 10 o'clock at night, and what do you spend three minutes on the phone discussing with him, if not to thank you further?

10 **DOCTOR LEBEYA:** I take it that he was giving me a feedback of that the police arrived and ...[intervenes].

ADV KHUMALO SC: No, you already have the feedback and the thank you message. That happened much earlier. He told you thank you for the efforts. King Nyambose appreciates. He has already thanked you for that. 10 o'clock at night he calls you, and you spend the longest time of the day on the phone with him.

DOCTOR LEBEYA: The sending of the message does not stop the follow-up phone call. I do not recollect what
20 ...[intervenes].

ADV KHUMALO SC: But it must have been important enough. People do not just call you at 10 o'clock at night. You are at home, you are sleeping, or you are with your family. People do not usually bother you at 10 o'clock at night, unless it is something important.

ADV BALOYI SC: Unless they are your friend. Unless Mr Malcolm X had a particular relationship with you.

DOCTOR LEBEYA: Ja, I think I have indicated that he is not my friend nor my enemy. And people phone every time of the day ...[intervenes].

ADV KHUMALO SC: Let us focus on Malcolm X, Doctor Lebeya. Let us focus on Malcolm X. Considering what has happened during the day, and the last message to you, to thank you and to convey King Nyambose's appreciation of
10 your efforts. Five hours goes by. Late at night, he calls you. You spend three minutes on the phone with him. He has already thanked you. So what are you doing for three minutes with Malcolm X that night?

And by this point, you know that it was a legitimate Counterintelligence operation, in which a criminal suspect was arrested. You would have got that feedback from your officers, General Kadwa and others, because you do say in the incident report that Kadwa forwarded a message to you, and it reads as follows, and he tells you that it was DPCI,
20 they were there and they did whatever they did. So you have that information already. What is Malcolm X calling you about at 10 o'clock at night? That is really what we are asking you.

DOCTOR LEBEYA: I do not think that the issue of arrest was already conveyed, because these messages do not talk

about the arrest.

ADV KHUMALO SC: General, you say at 18:40, at 18:40 General Kadwa sent the information setting out that there was a J50 operation. They informed us that they executed a J50 and a J50 warrant. Now, if you have executed those warrants, it means you have arrested somebody because those are arrest warrants, and you got that message according to your own statement on page 83 at 18:40. So you have that information. It is forwarded to you. You say
10 so in your statement.

So at 18:40 you know that the two warrants have been executed and you know who executed them. And they even said to you, if you want more information, contact General Khumalo for clarification. So you know all that and you know that it is a Counterintelligence operation, and warrants have been executed. Now it is 10 o'clock at night. Malcolm X calls you. Why will you not tell us what you spent three minutes on the phone with Malcolm X talking about?

20 **DOCTOR LEBEYA:** As I indicated, I cannot recall, but it was about the operation. The information that he provided ...[intervenes].

ADV KHUMALO SC: No, your operation belongs to DPCI. Malcolm X said people are impersonating the Hawks. That is all. You verified that they are not impersonating the

Hawks. Why are you discussing a DPCI operation with Malcolm X?

DOCTOR LEBEYA: I cannot recall what we were discussing, but I say that he shall have been phoning to say that indicating that the members who were doing the operation there, the DPCI came and verified that they are police officials. So I did not record this, which happened in 2024.

ADV KHUMALO SC: I am going to leave it there and
10 accept that you will not give us a satisfactory answer. My last issue on the issue of the conduct of the Hawks' members. Again, Warrant Officer Nkosi testified in this Commission that on their way there, a certain Chief George, who was using a traffic police helicopter, sent a message to them to say this is a legitimate SAPS operation conducted by a Counterintelligence task team, appointed by General Khumalo with Lieutenant Khumalo in charge.

On their way to Katiso Molefe's house, Hawks' members already had this information. And some of them,
20 in fact, asked a question, should we stand down now, because we are told that this is a Counterintelligence operation by the SAPS, and who is their General? What they then do is they still proceed to Katiso Molefe's house. Some of them get there around 10 past five in the afternoon.

And all of them, including Captain Kruger, have testified that within 10 minutes of them arriving there, say, up to 20 past five, they have verified that this is a legitimate SAPS operation. But for reasons that are not clear to this Commission, they spend another 40, 50 minutes in the vicinity, demanding to see the J50 warrants. And as you see from Malcolm X's own WhatsApp to you, clearly wanting to enter the premises and go inside the house.

10 In my book, Doctor Lebeya, that is interference with a lawful police operation. Because at 10 past, 10 past five, once you are aware that this is a legitimate police operation and these are the police, you have no business as the Hawks demanding to see their J50s, demanding to enter the premises. Because all of that, to me, amounts to interference.

I just want to hear your comment. Accepting that on their way there, it was already confirmed to them that this is a legitimate Counterintelligence operation, and who is the General in charge, and who is the Lieutenant in
20 charge? Do you think it was proper for them, after 20 past five, to still remain there and do whatever it is that they were doing?

DOCTOR LEBEYA: That is an operational matter. How they verify that these are the members, and that they are not ...[intervenes].

ADV KHUMALO SC: So after 20 past five, once they had verified, was it proper for them to remain for 40, 50 minutes there?

DOCTOR LEBEYA: If they shall have satisfied themselves that they have verified that they should have left, but that is operational level. I am not at that operational level.

ADV KHUMALO SC: I am now asking you as head of the Hawks, I accept that once they were there, you had no control over what they were doing. I am now asking you as
10 the head of the Hawks, was it proper, operationally, for them to continue being there after 20 past five, once it was established that this is a legitimate police operation?

DOCTOR LEBEYA: From where I am sitting, if they are not satisfied that they have verified that these are the members and not imposters, they should leave. So, it is a senior member, a captain, an officer, who is sent there. From where I was sitting, I directed senior managers. How they operationalise this, they have to be satisfied there at an operational level.

20 **ADV KHUMALO SC:** And once they were satisfied?

DOCTOR LEBEYA: They should leave, which they ultimately left.

ADV SEGEELS-NCUBE: General, I want to take you back to the identification because we have now established, according to you, that you did not know who Katiso Molefe

was, you did not know who Mr Msibi was, and you did not know Mr Mthethwa. I want to ask you about the two other individuals. There is a clearer picture of them, which I want to display, and I will identify the additional person in the photograph. So, in the photograph from the left, you can see the tall gentleman there is Mr Zain Nxumalo. Do you know him?

DOCTOR LEBEYA: I do not know him.

ADV SEGEELS-NCUBE: The person to the right of him is
10 Mr Ignatius Mthakathi. Did you know him, do you know of him, prior to the Commission?

DOCTOR LEBEYA: I do not know him.

ADV SEGEELS-NCUBE: At all?

DOCTOR LEBEYA: At all.

ADV SEGEELS-NCUBE: You do not know of him? So you have never heard his name before, prior to the Commission?

DOCTOR LEBEYA: I cannot recall that. But as of now, I feel that I did not hear about him.

20 **ADV SEGEELS-NCUBE:** And then the person in the middle, Mr Motsumi, do you know him?

DOCTOR LEBEYA: I do not know him.

ADV SEGEELS-NCUBE: You do not know of him either?

DOCTOR LEBEYA: That is correct, Commissioner.

ADV SEGEELS-NCUBE: Okay. You see, General, you are

the head of the DPCI. There have been Generals that have come here before the Commission who have been afraid to mention some of these individuals. General Shibiri was afraid to mention an individual, and General Senona. I just find it bizarre that you do not know any of these individuals in any capacity.

Not that you do not know them, that you do not know of them. How is that possible that, for example, General Senona would be afraid to mention this person's
10 name, one of their names, and you as the head of the DPCI are not aware of any of these individuals?

DOCTOR LEBEYA: They may know them elsewhere, and I do not know them, and I do not think that it is strange that we do not know all people in South Africa. I do not know them.

ADV BALOYI SC: Well, General, it is not a case of I do not know everyone in South Africa. It is you are the head of the Hawks. You have a component of your functions being Organised Crime, Serious Organised Crime. You have the
20 head of DPCI in KZN who knows a person that he is afraid to name in a public hearing because according to him that is a very dangerous man. So we can limit it to the head of the DPCI.

And here is you who is responsible for Serious Organised Crime. You say I do not know anything about

this person until we are in the Commission when your own Provincial Commissioner knows that name. He knows that name, and in fact he knows according to him what that person is capable of to a point that he would not mention his name in public.

So you are not giving us a serious answer. In fact, it is a very dismissive answer to say, well, not everybody in South Africa knows everybody. You are asked the question as head of the Hawks, which is a mandate for Serious
10 Organised Crime, about someone who is alleged to be involved in serious organised crime, including your Provincial Head knows something. And that meant that Provincial Head used to be in Gauteng before he went to KZN. So answer the question as head of Hawks, not as every South African.

DOCTOR LEBEYA: The Provincial Head of KZN has never shared this information with me. So these individuals, I did not know about their activities.

ADV BALOYI SC: Do you accept that if there is a
20 suspicion that they are involved, or any one of them or as a group are involved with organised crime, do you accept that is something that falls within the mandate of the Hawks? You accept that? You cannot deny that?

DOCTOR LEBEYA: I accept that if it is serious organised crime, it will be in the mandate of the Hawks.

ADV BALOYI SC: And do you accept that if you have got one of your most senior officials, General Senona in this case, and we can limit it to him, that if you have got someone in that position who knows something, even if it is a suspicion or something that is picked up, it is a huge failing by the organisation that that group of people was never looked at. If your organisation never even discussed them or looked at them, but you have got one of your Generals who knows something, and it never came onto the
10 table or onto the agenda of your meetings or your projects, it is a huge failing by the Hawks. You accept that?

DOCTOR LEBEYA: I accept that, and I can also indicate that the one where the information as an individual failed the organisation.

ADV BALOYI SC: Thank you.

CHAIRPERSON: Yes, Ms Segeels-Ncube?

ADV SEGEELS-NCUBE: Thank you, Chair. I have no further questions for the General. I know that he wanted to do closing remarks.

20 **CHAIRPERSON:** Thank you, thank you.

ADV BALOYI SC: General, I have some questions arising from your statement, and these are really just to try and understand what you say, some of the things that you say about the structural issues. And maybe a good place to start is if you look at the main statement, and then just as a

good place to start, the main statement, do you have it?

DOCTOR LEBEYA: That is correct.

ADV BALOYI SC: And then you go to page 77.

DOCTOR LEBEYA: Yes, Commissioner.

ADV BALOYI SC: And I am looking at paragraph 104.

This is where you discuss your communication with Lieutenant General Khumalo over a period, and then you say the majority of that communication, I think you say 12 times, was about vetting, and you raise a concern about
10 vetting.

Can we just understand from you as a client, I am going to use the word loosely, as a client of Crime Intelligence, and you seek vetting for your members, and here you have been failed dismally. What did you understand to be the problem with getting the – and I am asking a general question because you are not the only component or section or unit that had a problem with getting vetting.

I mean, even in the SAPS itself, it seems to be a
20 big problem that the vettings were not happening as they should. So maybe tell us what is your experience of it, what you understood to be the problems and reasons that there are these kinds of delays where your people are concerned, and if you have any suggestion about what should, in fact, be happening to unlock those problems.

DOCTOR LEBEYA: The problem really, Commissioners, is the capacity. They do not have sufficient capacity to do the vetting. And when one looks at their planning, annual planning, at times you find that per year they plan to vet something like 100 and something to 200. And in terms of the Act, it requires that everybody in the DPCI must be vetted, and we are at 2 700, which means that that plan of vetting they will never complete.

So they do not have sufficient capacity, and we
10 have advised them, even those personnel that we had who were trained in our environment, we offered that can you also utilise these ones. So they want to do the work, but they do not have the capacity. And it is unfortunate that the legislation requires that everyone in the Hawks must be vetted.

ADV BALOYI SC: Yes, and so it is a function of resources. They do not have the resources either because monies are not allocated or they are not hiring properly qualified people or people at all. I am trying to understand where does the
20 problem lie in fact.

DOCTOR LEBEYA: They do not have human beings, personnel. It is also the responsibility of intelligence services in other environment, but they also are unable to do that. So it is the capacity. If they can have more personnel to be able to vet everybody in the Hawks and

also go and vet those in the other environment like senior managers and other personnel in critical environment supply chain and the like.

So it is the issue of capacity, but also we suggested to them, I called them in the meeting together with the legal services in the organisation and say part of what the Act is allowing is to also give temporary clearance certificate. At least we shall comply with the law, but their view is different. So we are stuck. We have got personnel who do
10 not have security clearance in an environment that require security clearance certificate, Commissioners.

ADV BALOYI SC: And in those cases of people who do not have security clearance, is there any restrictions on their work that they get to do or to be assigned or it is what it is, people just get involved with all sorts of work because you need people to do the work?

DOCTOR LEBEYA: What we do is to have them sign a document that they will not divulge. We normally do it even when you have got a meeting with other people that you
20 know are not having security clearance. They take an oath for that period, which oath has to be filed. That is what you do when they have to access this document.

ADV BALOYI SC: And the vetting issue, is it, and I am still talking about your organisation, the Hawks, is it just for new intakes when you say you have so many people that have

not been vetted? Is it a case of as they come in they are required to be vetted and it does not happen? And yes, of course, they end up in the organisation, or are you talking about regular random vetting as well of employees over periods?

DOCTOR LEBEYA: It is everybody. And I think that the one that obviously one was interacting regularly with the Divisional Commissioner was people that we are considering appointing as senior managers from Brigadier
10 up, because there we said that we are not going to appoint anybody as a senior manager without top-secret security clearance certificate.

After the recommendation, we wait for Crime Intelligence and say that can you prioritise these ones because we cannot appoint them in senior management structure without top-secret security clearance. So even there it delays, and in some situation we had candidates that we have recommended even appointed in the greater service because they apply in different positions. They get
20 appointed elsewhere, whereas we are waiting for security clearance because in other environment it is not necessary.

ADV BALOYI SC: So you have lost candidates as a result of that.

DOCTOR LEBEYA: We lost candidates.

ADV BALOYI SC: All right. And then if you go to page 57,

maybe let us start with paragraph 78. You speak about attempts to infiltrate the ranks of the Hawks were detected. What form would that take? I guess I am asking a question of did you identify people who are coming in to infiltrate and then you stopped it or you found your members inside already who are infiltrating and you can explain to us in what way, what were they linked to?

DOCTOR LEBEYA: In this regard, Commissioner, I am referring to members who are already in the Hawks that we
10 detect that they are working with criminals, and that is where we effect arrest. We have done that on various levels up to Brigadier level, Commissioner.

ADV BALOYI SC: And in responding to that, is all you do to effect arrest and get them prosecuted? Hopefully they leave the institution, or do you problematise this and look at it as how do we insulate ourselves? Do you do an audit to see who is who in our organisation at certain levels? And have you considered, discussed, and taken any steps to insulate the organisation against those kind of activities or
20 infiltrations, if you like?

DOCTOR LEBEYA: Those that have been arrested are dealt with criminally as well as departmentally. And then we have dismissed a number of those. I think during my term we shall have dismissed about 30. We are small, but we shall have dismissed about 30. And others shall have

resigned when a disciplinary process is pending, which we discharge them dishonourably. So when we give them the certificate, it will come as a dishonourable discharge. We problematise this and that is why on an annual basis there will be declaration of various aspects they complete.

Those requirements that are done on senior government officials in other departments, we do it in the Hawks on ordinary personnel, which I think the Commissioners shall have picked up when we were dealing
10 with Sander that he did not declare some of the things. So that is the process that we do, Commissioner.

ADV BALOYI SC: Okay, and you say you have arrested up to Brigadier level. Does it mean in the other levels you have not picked up problems?

DOCTOR LEBEYA: On a Major General level, not as criminal involvement. We have not arrested anyone on Major General level. So even their number is limited as compared to Brigadiers, Commissioner.

ADV BALOYI SC: Okay, and then you speak of a
20 Ministerial committee. You discussed that at page 114 and you say that is a committee in terms of section 17(i), page 114?

DOCTOR LEBEYA: That is correct, Commissioner.

ADV BALOYI SC: Can you just elaborate on that? So it is prescribed in the Act that there will be such a committee

...[indistinct] failed over 16 years to do anything. Does it mean no such committee has ever come together? I am confused a bit because you speak about designation by the President and I was not sure whether that means the President has specifically said there shall be a Ministerial committee comprising these people and they have just failed to come together and the President has not followed up on it. Can you just explain a bit about it?

DOCTOR LEBEYA: The Act itself says that a Ministerial
10 committee is hereby established, so it is there in the Act. And then the President is expected to designate Ministers. So what the President does is to sign letters designating those Ministers. And the Ministers have received these letters from the State President. So every time that the new cabinet comes in, the new Ministers have received these letters from the State President ...[intervenes].

ADV BALOYI SC: And you know that for a fact?

DOCTOR LEBEYA: I know that for a fact because that is
20 what I made a follow-up and they have seen those letters, Commissioner.

ADV BALOYI SC: Not done anything?

DOCTOR LEBEYA: They have not sat, Commissioner.

ADV BALOYI SC: They have never sat?

DOCTOR LEBEYA: That is correct, Commissioner.

ADV BALOYI SC: Have you had occasion to understand

why that is not happening?

DOCTOR LEBEYA: During my era, I have asked them to sit and obviously at some stage they were asking who should convene. They had even to go back to the Presidency to ask who should convene. And the Presidency, the lawyers indicated that, no, you decide who should convene. And we tried, we nearly sat in Pretoria College, but instead of all the Ministers, I think it was only three. So they did not sit and the term of that cabinet was
10 coming to an end. The new Minister came in. New letters were given to the new Ministers, and again we tried several times. They did not sit. It has not sat.

ADV BALOYI SC: And maybe just to finish this particular topic, what is the purpose? What purpose is it supposed to serve, this Ministerial committee?

DOCTOR LEBEYA: There are provisions in that specific section as to what is the requirement. What is the ...[intervenes].

ADV BALOYI SC: If you would just summarise?

20 **DOCTOR LEBEYA**: Ja. They are supposed to oversee, to ensure that the operations of the Hawks are supported. So if we have got a problem like in section 17(j), where we have got the National Priority Crime Operational Committee, where we have got a problem, this higher level is supposed to assist. And there is an obligation to compile a report on

an annual basis, which report must accompany that of the DPCI into the annual report.

ADV BALOYI SC: This is a report to Parliament?

DOCTOR LEBEYA: Report to Parliament. It is an annual report. In an annual report, there is an obligation on the police to provide an annual report. So in that report, their information is supposed to be attached, and it has not happened since the establishment of this section. So again, it speaks to the oversight bodies in Parliament that
10 have not queried why is this thing not happening.

ADV BALOYI SC: You have touched on another committee that I was going to ask you, the National Priority Crime Committee. That is section 17(j) committee, according to your statement.

DOCTOR LEBEYA: Correct, Commissioner.

ADV BALOYI SC: Okay. Who is there? Who is supposed to sit? And have they sat? And what is the purpose of that committee?

DOCTOR LEBEYA: There is an operational department. It
20 prescribes who should sit there. It is like the National Head shall be the Chairperson, the Deputy National Head shall be the Deputy Chairperson, and the National Director of Public Prosecution, the Head of SARS, a number of government departments, Treasury, National Treasury, and the like. So it is most of the government departments, as well as other

departments that can be co-opted. So those DGs sit in that and then the Act allows that if the DG is not the one who participates, can appoint at least an officer on the level of at least Chief Director to represent the DG in that forum.

ADV BALOYI SC: And the purpose of that committee is what?

DOCTOR LEBEYA: Is to deal with the operations of dealing with national priority offences.

ADV BALOYI SC: So it is about sharing information, it is
10 about co-operating?

DOCTOR LEBEYA: That is correct. Even that organised crime activities, there is a sub-committee in the National Priority Crime Operational Committee. So there will be sub-committee of Organised Crime sub-committee, Commercial Crime sub-committee, and a Corruption sub-committee. So those sub-committees and other committees that can be established serve to present the status of matters in that body, Commissioner.

ADV BALOYI SC: And there is such a committee as we
20 speak, or does it exist only on paper in legislation?

DOCTOR LEBEYA: That committee is there, it is working very well. It is a committee that I think that there were serious debates that were engaged there, such as who should chair that committee, as the NPA believed that the National Director of Public Prosecution should co-chair,

whereas the Act is clear that it is the National Head who should chair. And at some stage the National Director of Public Prosecution felt that the National Director of Public Prosecution will now excuse herself and assign others. So that forum is operating, but it needs support from higher level.

ADV BALOYI SC: From the Ministerial committee?

DOCTOR LEBEYA: That is correct.

ADV BALOYI SC: Okay. Lastly from me, at 118,
10 paragraph 175.53, this is where you discuss the reporting to Parliament, the reporting structure. This is where you discuss the reporting structure.

DOCTOR LEBEYA: Correct, Commissioner.

ADV BALOYI SC: Yes, and for lack of a better word, you lament the fact that the National Commissioner is the one that eventually accounts to Parliament, even in respect of DPCI matters. And so it suggests here the way that you have expressed it, that you would recommend that the head of the DPCI, of the Hawks, should have a direct reporting
20 line to Parliament. Is that a fair reading of what you are expressing here?

DOCTOR LEBEYA: That is correct, Commissioner.

ADV BALOYI SC: Okay, and what are the considerations that you make? You have now had the experience of the DPCI reporting through the National Commissioner. You

have had that experience. Is there any difference that you say it would make if the DPCI reported directly? And it must be based from experience. I am assuming you are not expressing it because it is nice-to-have or it is more prestigious for the head of Hawks. There must be some practical considerations that you have made arising from experience?

DOCTOR LEBEYA: That is correct, Commissioner. Operational independence, there are matters that can only
 10 be known by the operators in the DPCI. And the Act also requires that, putting obligation on Parliament, that it must require of certain bodies, like the National Priority Crime Operational Committee, that they can invite them to report to Parliament. So those are the things that must happen.

ADV BALOYI SC: I am speaking specifically to the Hawks. And I am asking you this because, as you would be aware, among the things that the Commission must do is to make recommendations, including on structural reforms, if any. So I am asking these questions because of that. It does not
 20 seem like Parliament has the power, or prescribed in legislation and its powers, to invite the IDAC separate, not IDAC, sorry, the Hawks separate from the National Commissioner to come and present its report. Am I correct in that understanding?

DOCTOR LEBEYA: No, they invite us directly. When they

need the Hawks, they do invite directly.

ADV BALOYI SC: But your annual report, do you submit independent of the SAPS? Are you allowed to do that by legislation or whatever prescripts there are in place?

DOCTOR LEBEYA: No, the annual report is part of the greater SAPS annual report. What we ...[intervenes].

ADV BALOYI SC: And you say what?

DOCTOR LEBEYA: What we are saying is that the Act says that it must be a distinct, separate programme.
10 Currently we do not have a distinct, separate programme. We are called SAP programme of the Detective Service. And this has been going on for years. So from 2012, 14th of September, we are supposed to be a separate, distinct programme, not SAP programme. And every time we report to Parliament, we say that this aspect is receiving attention every year. Parliament is satisfied that it is receiving attention.

ADV BALOYI SC: Thank you, General.

CHAIRPERSON: And now, Doctor, your five minutes. Just
20 a minute, just a minute. Before you start, Doctor, may I address both counsel? At some point, quite early on in the Doctor's testimony, there was mention of top secret documents that would have to be addressed in camera, if it would ever get to that. What has since become of that?

ADV SEGEELS-NCUBE: Chair, we have not yet addressed

it with my learned friend. We do not know the context of the information. We will address it with them afterwards. And if necessary, then we will engage with getting it declassified first, because it has not yet been. And then to perhaps do a supplementary affidavit for the Doctor, if necessary.

CHAIRPERSON: Thank you. You agree with that, Mr Nwedo?

ADV NWEDO: Indeed so, Chairperson. We will have a chat as soon as we stand down.

10 **CHAIRPERSON**: Ja.

ADV NWEDO: And, you know, chat a way forward regarding that.

CHAIRPERSON: All right, all right.

ADV NWEDO: Thank you, Chair.

CHAIRPERSON: But for purposes of today, until whatever happens, if anything will happen in this regard, I will be excusing the Doctor, or not?

ADV SEGEELS-NCUBE: Yes, Chair.

CHAIRPERSON: All right, all right.

20 **ADV NWEDO**: Indeed so.

CHAIRPERSON: Thank you.

ADV NWEDO: That is our understanding, Chair.

CHAIRPERSON: Thank you, thank you. Now your five minutes, Doctor. The Chairperson, Commissioner Baloyi, Commissioner Khumalo, together with the Evidence Leader

Advocate, Segeels-Ncube, I would like to thank you for giving me an opportunity to present my side of the story before the Commission.

The period from 6 July 2025 has not been easy, with a cloud hanging over my head. It came at the time when a plethora of possible wrongdoers were being exposed. The inclusion of my name suggested that I am one of the crooked former police officials. As indicated by 15 witnesses before the Commission, I assigned two senior
10 managers to respond to Hawks' impersonators.

Impersonation is a serious challenge in the country where the criminals have impersonated the President, Deputy President, Ministers, Chief Justice Zondo, Chief Justice Maya, Justice Madlanga, the Chairperson of this Commission, the Acting Justice Ngcukaitobi, the NDPP, the DGs, Generals including myself, you name it.

As proven by all witnesses who came before the Commission, no one has hinted that I have received a cent in gratification from anybody. I cannot disappoint the
20 people of ...[indistinct] and South Africans by betraying the trust vested in me. I am incorruptible. I have conducted clean policing for over 40 years. I have not even pointed a weapon in the direction of anybody.

I want to assure Witness A and B that you are not the only two that have gone through a difficult time in the

organisation for doing your work because you are not
Generals. I am a living proof of going through occupational
detriment for doing my work as a General in the
organisation. As a Lieutenant General, I was dismissed,
reinstated, dismissed, denied reinstatement, reinstated,
discharged, reappointed, and completed my term as the first
National Head of the Hawks to complete the term without
losing state protection.

And while my salary dispensation is still not
10 finalised, I was and am deprived the privilege for financial
support in acquiring legal representation for the issues that
occurred because of executing my official duties. I am a
tool available to South Africa to contribute to the
development of this, my beloved country. The leaders know
my dream.

May those who are fighting criminality, including
corruption, not be discouraged by the behaviour of a
handful of corrupted individuals. Continue to fight. We
cannot afford to lose. How I still wish the National Director
20 of Public Prosecution can establish an Anti-Corruption Unit
like the Specialised Commercial Crime Unit and Organised
Crime Unit in the NPA to prosecute corruption cases
investigated by the Serious Corruption Investigation Unit of
the DPCI, Independent Police Investigative Directorate and
Anti-Corruption Units of the SAPS.

The government should strengthen the fight against criminality by creating institutions within their constitutional lanes to avoid hostile, componential jealousy that will result in criminals walking free while the enforcers are fighting each other. Let me close by thanking my attorneys from Thekisho Attorneys and Advocate Nwedo, who took over in the last minute after the passing of my previous counsel, Advocate Matipa, whose soul should continue to rest in peace. I thank you, Commissioners.

- 10 **CHAIRPERSON**: Thank you. Thank you very much, General. You are excused. Of course, there is the issue that is still going to be attended to by counsel, with your engagement, of course. Again, many thanks.

NO FURTHER QUESTIONS

CHAIRPERSON: I think if we take the tea break now, I do not think it would serve much purpose for us to come back before lunch. So let us adjourn and resume at 13:30.

ADV SEGEELS-NCUBE: Thank you, Chair.

HEARING ADJOURNS

- 20 **HEARING RESUMES**

CHAIRPERSON: Good afternoon, Mr Chaskalson.

ADV CHASKALSON SC: Good afternoon, Chair.

CHAIRPERSON: Good afternoon, Professor Shaw.

DOCTOR SHAW: Good afternoon.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: Chair, Professor Shaw has informed me that since he is no longer attached to the University of Cape Town, he should be addressed as Dr Shaw.

CHAIRPERSON: Oh.

ADV CHASKALSON SC: Sorry, my mistake, not his.

CHAIRPERSON: All right. So he did not get the emeritus status.

DOCTOR SHAW: I am too young. [Laughter]

10 **CHAIRPERSON:** Thank you.

ADV CHASKALSON SC: It is a cross we all bear, Dr Shaw. Chair, before I ask Dr Shaw to begin his evidence, I should explain the process by which we came to approach him to give expert evidence on the topics he is addressing today, because it is not the ordinary process. And there is some background to it.

The background is that the chief investigator of the Commission, Dr Goss, and I had for some time been discussing how best to address paragraph 6 of the
20 Commission's terms of reference. And that is the provision, Chair, that requires the Commission to enquire into, I am quoting from paragraph 6:

“The adequacy of current legislation, policies, and institutional arrangements in preventing infiltration of the criminal

justice system by organised crime.”

And it seemed fairly obvious to both Dr Goss and me that the problem that we are facing here in South Africa of organised crime infiltrating the criminal justice system, is by no means unique. That there must have been many other countries around the world that have faced the same problem, and that some of which countries must have had some success. Others may have failed.

So we thought that it would be important to gather
10 evidence from around the world to find out what had worked and what had not worked in other jurisdictions when it came to tackling the infiltration of the criminal justice system by organised crime. We just did not know where to go. So we asked around, and we were told about an organisation called GITOC. G-I-T-O-C. It is the Global Initiative Against Transnational Organised Crime, and it is based in Geneva.

And what we were told is that because of its international connections in the field, GITOC was the obvious organisation to approach to convene a workshop
20 where senior criminal justice officials from countries that have encountered serious problems with organised crime infiltrating their criminal justice systems would be willing to present their stories and any lessons from those stories that could be drawn from our experience in trying to combat that problem here.

And by happy coincidence, the executive director of GITOC, we were told, was a South African, Dr Shaw. So that gave us the incentive to contact him and the sense that he would understand who we were and where we were coming from. So we approached GITOC and asked if it would be willing to convene a workshop of the nature that I have described and then present the product of that workshop to the Commission. GITOC agreed. The workshop took place over two days in July, and Dr Goss and
10 I sat in on it.

The other senior chief evidence leaders were invited. Advocate Hassam SC dialled in remotely from time to time when she could. Advocate Sello SC was busy dealing with IDAC witnesses, so she could not. And the workshop was attended, well, the presentations to the workshop were all from people involved with law enforcement in foreign jurisdictions, foreign people, about their experiences of the jurisdictions to which they spoke. There was a group of South African experts who were
20 invited to attend the workshop and when Dr Goss and I sat in, we sat in with a range of other South African experts in the field.

Dr Shaw is here today to tell the Commission about the central themes that he drew out of that workshop on the comparative international experience. And what the

workshop suggests might be useful reforms when it comes to our current legislation policies and institutional arrangements, insofar as they are failing adequately to deal with the infiltration of the criminal justice system by organised crime. So that is the background to today's evidence.

Dr Shaw, of course, speaks for himself. He does not speak for the Commission. He does not speak for any of the experts who came there, but he has synthesised what
10 was presented there and as Executive Director of GITOC, he is using that synthesis to make, well, to present material to the Commission today, and on that basis to make recommendations.

CHAIRPERSON: Thank you for that summary of the background, Mr Chaskalson. Dr Shaw, will you be swearing or affirming?

DOCTOR SHAW: Swearing.

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

DOCTOR SHAW: So help me God.

MARK SHAW duly sworn states

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: So, Dr Shaw, the starting point is

to confirm the correctness of your witness statement. That is the document that runs from pages 1 to 35 of the bundle. And normally we say, is that your signature? Can you confirm it? But there is no signature on it. So can I ask you to confirm that this is the report that you produced?

DOCTOR SHAW: I confirm, Advocate Chaskalson.

ADV CHASKALSON SC: And that it accurately reflects your expert opinions that are expressed therein?

DOCTOR SHAW: It does.

10 **ADV CHASKALSON SC**: Thank you.

CHAIRPERSON: Mr Chaskalson, I noted our copies are not signed. Perhaps we should just assume that these will be replaced with signed copies?

ADV CHASKALSON SC: We will get a signed copy.

CHAIRPERSON: Okay, thank you, thank you.

ADV CHASKALSON SC: Dr Shaw, at the foot of page 1 of your statement, you set out in paragraph 3 your credentials to express expert opinions here. Can I ask you, for the benefit of those who are following and who do not have the statement in front of them, to read into the record what you say in paragraph 3 from that second last line where you start setting out your credentials?

20

DOCTOR SHAW: Thank you, Advocate.

“I have worked on organised crime, public safety, and criminal justice for more than

three decades. I previously served as a National Research Foundation Chair, Professor of Justice and Security at the Centre of Criminology at the University of Cape Town, and I was the Director of the Centre.

10 Prior to my time in academia, I spent more than a decade at the United Nations Office on Drugs and Crime. First as Interregional Advisor, that is a post that responds to country requests to provide advice and support. Also as Chief of the Criminal Justice Reform Unit and in various other capacities and I conducted regular and numerous country visits and assessments.

20 And during this time, indeed, I was recruited for that purpose. I worked with the UN Global Programme against Transnational Organised Crime. Before joining the United Nations, I held various positions in South Africa, including as Director of Monitoring and Analysis in the then Secretariat for Safety and Security, and was actively involved in civil society

during the country's transition from apartheid.

I worked as an independent advisor in various countries, and I hold a doctorate from the University of the Witwatersrand and have published extensively on organised crime, policing, illicit markets, justice reform.”

Thank you.

10 **ADV CHASKALSON SC:** Now, in relation to your publications, there is a footnote at the foot of page 2, which is a link to a list of your publications on the GITOC webpage, as I understand it. Is that correct?

DOCTOR SHAW: That is correct.

ADV CHASKALSON SC: Now, we have spoken about GITOC. Can you tell the Commission what GITOC is, where it is based, how it operates?

DOCTOR SHAW: Commissioner, GITOC is a relatively unique organisation. It is the single biggest independent
20 think tank, if you like, on organised crime and illicit markets. It has around 160 staff and 17 observatories around the world. And it was formed out of a discussion in 2011 to 2013, a discussion which took place amongst a set of quite senior law enforcement officials who were concerned that there was not very good strategic

information and analysis on organised crime.

I attended that, I had just left the United Nations and that group of individuals, which included the incoming head of Interpol at the time, made the argument for the establishment of a platform and I was appointed as the executive director. The organisation grew dramatically since then, partly, I believe, because there is an enormous need, not only in South Africa, but around the world, to analyse organised crime and understand it effectively.

10 The frustration at the time, including my own, I was managing in the UN very big programmes responding to organised crime, was that success was so fleeting. And there was a sense that we needed to better understand, as I have said, the phenomenon. GITOC fundamentally does four things. Firstly, independent analysis and research, and we pride ourselves on granular information, including here in South Africa, and some publications of ours have been attached.

20 We are publishing just short of 200 reports a year, which are available on our website. The vast majority are public. Secondly, we are engaging in multiple ways. In a sense, the Commission testimony is part of that. We have an office which engages in Vienna at the UN, and we provide policy support and partner with multiple countries around the world. Thirdly, we support some 300 projects

which build resilience in local communities against organised crime.

And that helps us, I think, a point I want to emphasise later, to understand the enormous harm of illicit markets and organised crime for ordinary people, who are governed by criminal governance, who suffer greatly the consequences of a failure to address the issue. And finally, mainly but not exclusively in the area of work on environmental crime, and we also cooperate with the South
10 African government on that, we ourselves engage in what we call disruptive activities, so we have practical programmes which disrupt criminal markets in different places around the world.

We have grown rapidly. I hope that we continue to, and our objective is to provide independent, objective information and policy responses to the evolving and very challenging issue of organised crime.

ADV CHASKALSON SC: Thank you, Dr Shaw. We will move to the workshop and what came out of the workshop in
20 due course, but I think before we get there, it is important to contextualise what we are looking at in relation to organised crime in South Africa relative to organised crime in the rest of the world. And to start that process, I would like you to speak to the GITOC Global Organised Crime Index that you addressed from page 3, paragraph 7, which

you have used to compare South Africa's position and experience with that of other countries.

DOCTOR SHAW: Thank you, Advocate Chaskalson. I think, Commissioners, as you are aware, from a research and analysis perspective, determining the extent of organised crime is very challenging. It is a hidden activity, and there was no global measure by market or country before the index. The index is very well resourced. It comes out every two years. There is a permanent team of
10 staff that works on it, so it is not a fleeting product. It is a very well-embedded and widely used product.

I forget the number of downloads off the website, but it is used by governments, private sector, policy institutions, and much more. And the simple objective of the index is to measure three things across all countries. Firstly, criminal markets, and it now measures 15 criminal markets. They are in the attachment and can be named. It measures five types of criminal actor, and it measures 12 resilience measures. The importance of the index is that all
20 countries are different.

They have different resources, different vulnerabilities, different contexts which can be targeted by organised crime. So the challenge is to take quantitative information and turn it into a set of qualitative measures in a defensible methodology in order to determine the

prioritisation of issues in relation to organised crime, and to measure the level of criminality against the measures of resilience, how resilient individual countries are in responding to organised crime. So that is the objective.

To say now that we have conducted, in the context of South Africa and Africa, the index process four times, so four sweeps of the index, our information has got better and better, and we have an enormous data set now across the 193 member states of the UN.

10 **ADV CHASKALSON SC:** Can I take you to page 114, which is Annexure MS2, and can you just describe what that document is for the Commission?

DOCTOR SHAW: Commissioners, it took some years actually to build the index, and we drew on a range of experts to be able to do that. The 114 speaks to the three components of the index, so the scope, scale, impact, harms of specific criminal markets. Two is the structure and influence of criminal actors, including what we term, given the mandate of the Commission, state-embedded
20 actors. And then three, the existence and capacity of countries' resilience measures against organised crime.

And, Advocate Chaskalson, with your permission, on page 117 is the schematic of the criminality indicators, and on 118 is the schematic of the resilience building blocks that we use.

ADV CHASKALSON SC: So just to go to 117, if we can flight 117. What we see in 117 is five different types of criminal actors that you will be assessing countries for, and can you just read those out for us and possibly explain what you are talking about there?

DOCTOR SHAW: Advocate, the definitions are in the collection, so I will just go very briefly through. Mafia-style groups, in our definition, are groups that hold territory, have names and hierarchical structures, so the Western Cape
10 gangs would be a very good example of those. Criminal networks are looser networks, but structured around the accumulation of criminal resources. State-embedded actors are individuals or networks within the state that protect or participated in criminal markets.

Foreign actors are foreigners, essentially, in different countries. There is a very specific definition, who are engaged in criminal activity. And private sector actors, which we added later, after we got input on the first round of the index, is private sector actors, companies and the
20 like, acting criminally like an organised crime group. So an organisation or a company, for example, engaged in illegal forestry would fit into Category 5.

ADV CHASKALSON SC: And then very briefly, just to run through the different criminal markets that you look at across the world.

DOCTOR SHAW: One is human trafficking, self-explanatory. Human smuggling. Extortion and protection racketeering. Arms trafficking. Trade in counterfeit goods. Illicit trade in excisable goods, that is illicit alcohol, cigarettes. Flora, that is forestry and organised crime related to plants or trees. Fauna, animals. Non-renewable, that is oil, gold and the like. Then four drug categories. Heroin, Cocaine, cannabis, synthetic drugs, cyber-dependent crimes and then financial crimes.

10 **ADV BALOYI SC:** Can I just ask, Dr Shaw, is there a significance to the overlapping triangles of the criminal actors?

DOCTOR SHAW: It is a good question, Commissioner. One of the most important methodological issues of the index is that we do not double count. So it is more, you have raised an important point, there is some overlap clearly between the five categories. You can be a criminal network that also operates within the private sector, for example. When our analysts draw together the packages
20 that the experts look at, we recognise there is some overlap, but we allocate it to one category.

ADV CHASKALSON SC: Now we will get to resilience a little later. I think that the alarming point for us is the point that you make in your statement at paragraph 9, which is that South Africa is doing rather badly in relation to

criminality. Can you possibly start with paragraph 9 of your statement on page three and then if I can take you to a series of graphs that you have included in a summary report for South Africa, which illustrate how badly we are doing.

DOCTOR SHAW: In paragraph 9, I think there is two points to make. The first is that on every sweep of the index, so every two years, this comprehensive process, South Africa looks worse on the criminality score. Resilience is stable, but with some declines. On the
10 criminality score, so that is the 15 markets plus the five crime group assessments, South Africa is ranked seventh in the world. So it is in the top 10 of countries most affected by organised crime.

Advocate Chaskalson, with your permission, if I can make one very important point about the rating, is that there is an implicit weighting in the data. That weighting is if you do badly across all categories, you do badly. We are not rating Cocaine differently from cyber-dependent crimes, for example, and we have had a long debate about this. So
20 countries that have a diversity of criminal markets, like ours, Brazil, and others, do badly in the index, and that is the weighting. But that is also the reality of organised crime in the South African context.

ADV CHASKALSON SC: And maybe you can illustrate the company that we are keeping at the bottom of the list of

organised crime-affected countries by going to 151, where there is a bar graph, and which deals with your criminality scores. Can you explain that to the Commission? Maybe at the outset I should just emphasise what is displayed at 151 is the bottom 20 countries of the 193. It is not the 193. It is the bottom of the 193, the bottom 20. Can you show what is being displayed, or can you explain what is being displayed there?

DOCTOR SHAW: I can. The first point to make is that the
 10 dotted line through the graph is the global average. So any bar or country is above the global average. You can see that South Africa is coloured in yellow. The order for the ratings of organised crime and criminal actors together is Myanmar, a country in great conflict with multiple criminal markets, followed by Colombia. There is much to say about Colombia as it compares to us.

Mexico, Paraguay, Ecuador, so four Latin American countries with significant problems of organised crime. The Democratic Republic of Congo, so a country more close to
 20 us than ourselves, than Nigeria, Lebanon, Turkey, Kenya, etc. What this effectively means is that South Africa is in the top 5 percent of all countries in the world in respect of criminal markets and actors as measured by the index.

DOCTOR SHAW: Maybe to see it in the full perspective, if we can go to 237, which is the index for the entire world,

which is a table drawn from a report on the entire world.

DOCTOR SHAW: I guess the only point to make, Advocate, is you can see, Commissioners, the enormous volume of data that the index produces. There is literally thousands and thousands of data points, which allows us now to do some important correlations. One, I think, is important for this Commission. To emphasise that we work very, very hard on building the picture of organised crime through our observatories, experts and others in each
10 country in the world. And you can see the lists of data for the last round.

ADV CHASKALSON SC: Sorry, I think we may be at cross purposes. I was looking at 237, the criminality scores.

DOCTOR SHAW: I am on 237 here. Am I confused?

ADV CHASKALSON SC: Underneath 237, you have a list of all of the scores of the 193.

DOCTOR SHAW: Yes.

ADV CHASKALSON SC: So we see South Africa there.

DOCTOR SHAW: Yes, with an increase.

20 **ADV CHASKALSON SC:** With an increase, no, it is getting worse, I assume.

DOCTOR SHAW: Yes.

ADV CHASKALSON SC: And that it is at position number 7 out of 193, where 1 is the worst of all and 193 is the best.

DOCTOR SHAW: Correct.

ADV CHASKALSON SC: If we go back to page 157, what you describe there is how the South African position has deteriorated.

DOCTOR SHAW: Correct.

ADV CHASKALSON SC: And can you explain that pie chart on 157?

DOCTOR SHAW: The pie chart shows the total criminal market's average increase across all markets. So the bullet points on the left is up to short of two points. That is quite
10 a significant move in the index, I have to say. The index measures things in point, you can see, 0.58, et cetera. So overall, it then shows by market the increase between 2019 and 2025. Perhaps most important for the Commission, given how often Cocaine has appeared as a discussion point, is how Cocaine markets in South Africa have been assessed to have increased through the various sweeps of the index. Other increases are not as big, except flora crimes for a variety of reasons, where we have very good information about the increase in trade in particular species
20 of plants.

ADV CHASKALSON SC: And the other point that you have made when you were dealing with paragraphs 9 and 10, is that South Africa scores poorly across all criminal markets. And maybe if I can ask you to go to page 156 and just explain what that graph is showing.

DOCTOR SHAW: This is back to the question of weighting. So South Africa performs poorly overall because it performs poorly on each market. It is above both the African and global averages on the vast majority of markets, bar 3. In the case of human trafficking, it is below both the global and African average. Cannabis, more or less the same, and human smuggling, more or less the same. For all others, it is well above the global average.

ADV CHASKALSON: Then another point that you make in
10 your paper when you pick up at page 5, paragraph 14, is that the levels of violence in our organised crime are extremely high. Can you maybe address the point that you make in paragraph 14?

DOCTOR SHAW: So in our assessment, we did not cover it, but in 2022 we also did an organised crime threat assessment of South Africa, which received wide publicity. And one of the characteristics of organised crime, apart from its diversity, its ability to penetrate the state, is that it is very, very violent. I think most South Africans consider
20 South Africa to be less violent than badly affected countries in Latin America, Mexico and Colombia.

Indeed, that is not the case on homicide rates. I will come to the issue around the proportion of homicides linked or estimates of homicides linked to organised crime. So South Africa has an extraordinarily high homicide rate,

higher than comparable countries in that top seven, Colombia and Mexico, the two that I have used here. So the Colombian homicide rate is estimated at around 25 per 100,000, the Mexican at around 17 per 100,000, and South Africa at around 36 per 100,000.

It is not exactly clear what portion of murders or homicides can be attributed to illicit markets or organised crime. In my own personal view, you can probably say around a third, depending on where and in relation to which
10 market. So the reality is that South Africa is not only high at the scale, but it has a problem of violence. Yes, of course, social violence generally, but also violence linked to organised crime, to gangs, to illicit mining, to the taxi industry, to the issue of assassinations. And there is a graph in the pack, which you may have seen, which shows that the country that we are most comparable to on this is Ecuador, a country where we work and I have been several times.

Ecuador has an ongoing criminal crisis, organised
20 crime crisis, and that is the country that we are most comparable to on violence, on the figures we have.

ADV CHASKALSON: Now, there is a particular point that you make on page 6. When you deal, well, in footnote 13, which deals with Cape Town and Gqeberha and it is a point I'd like you to emphasise here, because it is a truly breath-

taking fact, which I think South Africans need to be made aware of. So, can I ask you to read the last sentence of paragraph 14 together with footnote 13?

DOCTOR SHAW: The last sentence is that we also see pronounced levels of violence present in localities assessed to have a high street gang presence. I think you could actually say a high presence of organised crime, like Gqeberha and Cape Town. And then in the footnote is data around the homicide rate per year. So, for Gqeberha 119, it
10 is an extraordinarily high homicide rate, I have to say, at war level conditions. And 69 per 100,000 for Cape Town. I think the point is generally, Advocate Chaskalson and then it links to the earlier discussion, is where we have the presence of hard-core, territorially controlling criminal groups, as in these cities, the homicide rate is reflected as very, very high.

ADV CHASKALSON: And can I just ask you to repeat the point that you make at the end of paragraph 13, which is where Gqeberha ranks in the world in terms of homicide
20 rate?

DOCTOR SHAW: Gqeberha is third in the world.

ADV CHASKALSON: So, it is the third highest homicide rate?

DOCTOR SHAW: As measured in a city.

ADV CHASKALSON SC: As measured in a city.

DOCTOR SHAW: Of course, there is not good data for all cities, so we should probably be more accurate to say of data that we have available, Gqeberha is rated as the third in the world.

ADV KHUMALO SC: Of the cities that are in the index?

DOCTOR SHAW: This is outside of the index, Commissioner. This is a separate data set on homicides as measured by the territorial boundaries of cities around the world. And not all countries collect good homicide data.

10 **ADV CHASKALSON:** Now, what would explain that, in your opinion? What is happening in Gqeberha that accounts for this homicide rate?

DOCTOR SHAW: In my opinion, it is very vicious and conflictual. Gang activity is a significant contributor to the homicide rate in the city. The same applies to Cape Town.

ADV BALOYI SC: What is it in the conditions? Does your study look at that? What are the contributing conditions that would make Gqeberha worse than, that phenomenon is not there in Durban, but in fact Gqeberha is worse than
20 Cape Town?

DOCTOR SHAW: Commissioner, my response to that, this is outside of the index discussion, just to clarify. This is a separate discussion on homicide rates in particular parts of South Africa. In our and my experience, what we have is long-term rooted gangs and organised crime groups, which

are engaged in often fragmented but also organised violence with each other and that adds significantly to the homicide rates.

I am not saying that there are, of course, not social causes for the homicide rates at all. That is the last thing I would say. But in both cases, there is very, very specific and vicious, I should add, gang activity. I think an additional point is worth making here, that in both cities and elsewhere in the country, it may well be the middle classes
10 who complain about levels of violence and have high levels of fear.

But this level of violence takes place in concentration, in concentrated forms, often amongst the most excluded and marginalised people. I think they are recruited into gangs. Gang leaders often do not live necessarily in the communities. Violence is a part of a way to ensure recruitment and the cohesiveness of gangs. And while gang bosses may meet with each other, quite literally, to make agreements, there is also an understanding that
20 gang wars are a way in which to protect turf, protect drug trafficking, protect protection and racketeering markets.

In my view, we have long, long failed as a country to address these issues.

ADV CHASKALSON: Now, flowing from Commissioner Baloyi's question, if I can take you out of the sequence

possibly to address a document that we have attached as MS5 at page 273, which is a document produced by GITOC called the Western Cape Gang Monitor. It does not deal with Gqeberha, but it deals with the Western Cape, where there is still a very serious problem, albeit at a slightly lower level. And can you possibly just explain what this document is, and maybe do not go into too much detail about how you prepare it, I do not want to expose individuals to harm. But can you explain the document to
10 us, and then I am going to take you to a couple of tables and maps that are included in the document.

DOCTOR SHAW: Advocate Chaskalson and the Commissioners, the document is a good example of the kind of work we do around the world. Our belief is that by providing analysis and shining a light on the problem on a regular basis, in this case gangs within the Western Cape and the city of Cape Town, we draw policy attention, we put gangs, gang bosses and others under pressure. So we publish the Western Cape Gang Monitor quarterly, and it
20 receives an enormous amount of attention. In this particular issue, we have drawn from it because there is a map, I think, on 276, which I think may be of interest to the Commission.

ADV CHASKALSON: Before we get to 276, maybe the table on 275, which outlines the most prominent gangs in

the Western Cape, where they operate, what their markets are.

DOCTOR SHAW: As part of the work we do, we maintain quite a detailed analysis of gangs in the Western Cape. We tier them, so the top six gangs in Tier 1, we estimate around 100,000 members. We count and organise all gangs in the area, and we think there is around 300,000 people associated to the gang political economy in the city of Cape Town.

10 And what we have got here is just a listing of the histories of individual gangs, so criminal groups in relation to the index, just to bring it back, those are mafia-style criminal formations, and we have outlined them. The Fancy Boys, partly because they have been resurgent, the Americans, a very distributed gang, the 28s, the Sexy Boys, Hard Livings, et cetera.

ADV CHASKALSON: If we then go to the map on 276, can you explain to the Commission what that map depicts?

20 **DOCTOR SHAW:** There are a couple of things shown on the map.

ADV CHASKALSON SC: Sorry, Dr Shaw, if we can just wait until the map gets rotated. Yes.

DOCTOR SHAW: Advocate Chaskalson, it is showing a number of things. Firstly, gang coverage of the main gangs, including some that are named on 275. So our field

researchers ask and conduct interviews to find out where gangs are active geographically, and we map that. We also map incidents, and that is the opening map on 273.

In addition, in speaking to people in regions and gang members, we have a measure of the SAPS local stations that we think are most vulnerable to corruption, and those are the stations starred on the map, and you can see the titles of the stations next to them. We have not listed all stations, those that come up most commonly in our field
10 research.

That does not mean the entire station is corrupt, but that means that there are regular reports of corruption or engagement or penetration of those police stations.

ADV CHASKALSON: I am ready to move off the context and the South African organised crime context into the problem statement that the workshop was designed to address, but is there anything else that you would want to emphasise before we leave the South African organised crime context generally?

20 **DOCTOR SHAW:** Yes, if I may. I think it is worth saying that organised crime in every country is very contextually driven, the political economy of organised crime, and that often makes comparisons difficult. But comparisons are very, very important in showing the level of criminal activity and the harm that it causes, and it gives us something

concrete, if you like, Chair, to hold on to in designing policy responses.

I want to make two points. The first is that one of the most important findings of the index is that democracies are more resilient to organised crime, and that is also the context here in South Africa, that South Africa has a relatively high level of resilience as measured by the organised crime index.

At the same time, if you remove Myanmar and the
10 DRC from the top seven where we are, so those are two countries which I think you would argue are not necessarily well-functioning constitutional democracies, outside of Latin America, South Africa has the highest measure of organised crime. So I want to emphasise the seriousness of what we are dealing with. I will leave it at that. I do not know if I am skipping backward or forward.

ADV CHASKALSON: No, no, I forgot to come back to resilience. I am glad you made the point.

ADV BALOYI SC: Can I just ask, the observation or the
20 conclusion that democracies are more resilient, such as South Africa, what is that a function of? Is it institutions?

DOCTOR SHAW: It is a very good question and a long debate. I will provide a brief outline. I think many people believe that authoritarian responses are more effective in responding to organised crime. The index data does not

show that at all. The index data shows that democracies are more resilient because there is feedback loops. I would like to think that the Commission is a kind of feedback loop of its own.

That there is media coverage, that there is open debate, and that the issue of organised crime can be part of the political process. Democracies are also more vulnerable because they are more open. There is opportunities for the penetration of criminal activity. But
10 overall, the data shows a correlation between resilience and being democratic.

Authoritarian states, on the other hand, what research outside of the index shows and the index material, authoritarian states often take over criminal markets and protect them and draw resources from them. They, in a sense, become the biggest criminal group on the block, excluding others. And so that is an important overall point. An important overall point, I would also say, which is hopeful in the South African context, in responding to very
20 high levels of organised crime.

ADV CHASKALSON: If we then get to the problem statement, you address it from page 7, and you make several points there. If I can highlight the points and you can just elaborate on what you want to say. The first point that you make in paragraph 17 is that criminal infiltration

needs to be distinguished from isolated acts of corruption.

Can you elaborate on that?

DOCTOR SHAW: I think in our definition, organised criminal infiltration, as the document says, is a continuing relationship between an organised crime group or parties and the exercise of public power. I think it needs to be isolated, as I say in the document, from isolated acts of corruption, indeed in your statement, Advocate Chaskalson. So one individual taking gratification, for example, at a
10 police station may not constitute criminal infiltration.

If I could have a slight footnote to all of that to say, we pointed to police stations where there is criminal activity or penetration. It is that over time, however, that ecosystem can develop because rumours spread in the criminal underworld about where the possibilities of penetration exist, and so that becomes a process where there is an established relationship but then also points of vulnerability within the system. I think that is the point I would highlight.

20 **ADV CHASKALSON:** The second point in paragraph 18 is you make the point that South Africa's criminal justice system is essentially a criminal justice system that was designed in the immediate aftermath of democracy and it was not designed to deal with the organised crime penetration processes that it now confronts. Can you

elaborate on that?

DOCTOR SHAW: That is true, and I had my own personal experience. I was part of a team and I was the chief drafter of the 1998 white paper on safety and security, and I think the general view at the time was that the priorities were to build a more acceptable policing institution, to rebuild relations between communities and the police after the scourges of an authoritarian apartheid state, and there was not significant focus on organised crime. There was some
10 focus, and that was the POCA, the Prevention of Organised Crime Act in 1998.

The National Crime Prevention Strategy at the time did include aspects of organised crime, so it was not off the agenda, but I would make the argument that it was not seen as an overarching priority at the time. Equally, I think at the time the institutions were not designed entirely to prevent infiltration of criminal groups as we have seen them now. That was not widely talked about. The general sense was that the institutions needed to respond to organised
20 crime and there was not a sense to strengthen the vulnerabilities against penetration, and the statement at paragraph 19 near the bottom says:

“What Parliament did not adequately recognise as a central policy concern was the more specific risk that the police,

intelligence and prosecutorial agencies
tasked with enforcing the measures would
themselves become vulnerable, not just to
corruption, but to systematic penetration
by organised criminal networks.”

So we did not put in place many of the policy interventions
that I think are now urgently required, and we will get to
discuss them I think, but this is true of other countries
because the early 1990s was a period of enormous change
10 in the global criminal market at the end of the Cold War, so
there was a surge in organised crime, and so we along with
others were, and in my view now, remain unprepared for the
level of illicit global markets and organised crime.

ADV CHASKALSON: From paragraph 20 you point to a
succession of cases which show how vulnerable the South
African criminal justice system has been to penetration by
organised crime. The first one you mention is the case of
the former Commissioner of Police, Mr Selebi. I do not
need you to amplify there, but I think paragraph 21 is a
20 very, very important example that sometimes goes under
the radar, and maybe you can speak to what you address
there.

DOCTOR SHAW: The case covered in paragraph 21, which
I myself have written on and considered to be one of the
greatest crimes of post-apartheid South Africa, is the SAPS

Colonel Christian Prinsloo selling guns to the gangs, and he admitted to his involvement in selling around 2,400 firearms. In my own and others' estimates, the number is much higher, probably around seven to nine. But the simple reality of this is that it was criminal penetration, it was a two-way engagement between an official and gangs, and I myself spent some time interviewing gang members about the flows of firearms, which they bought in bulk from a serving member of the state. And I want to make the
 10 argument that many of those guns are still in circulation and have caused untold damage.

ADV CHASKALSON: It is not immediately apparent, but these I understand to be the guns that were surrendered to the SAPS after the enactment to the firearms control legislation that obliged people either to relicense or surrender their weapons.

DOCTOR SHAW: Correct. Those guns, but also guns that were new guns were being purchased for the SAPS. So SAPS guns themselves, so guns bought with taxpayers' money, were also part of these consignments.
 20

ADV KHUMALO SC: So it was a combination?

DOCTOR SHAW: A combination, yes. That does, Advocate Chaskalson, with your permission, the corruption extended in documented ways into the Central Firearms Registry. So again, state penetration of a crucial function,

and around the licencing of official firearms for people with criminal records, and linked to that is the well-known case of the murder of Colonel Charl Kinnear.

ADV CHASKALSON: And Colonel Kinnear was investigating this at the time that he was...?

DOCTOR SHAW: Correct.

ADV BALOYI SC: I know here you are discussing the SAPS and officials. Has part of the work you do looked at the private security industry regulator and what happens in
10 there because of the suggestion that private security companies or private individuals, they set up security companies as a way of getting access to licenced firearms or being authorised? Does your work involve looking into that?

DOCTOR SHAW: Commissioner Baloyi, the first point, there is much to be said about private security companies around the world. Of course there are many private security companies operating legally and doing important work, I should say that. But private security companies are
20 targeted, owned, established by criminal groups, and private security companies have been the source of licenced firearms and the bulk theft of firearms.

So there is definitely vulnerabilities around private security companies. That ranges from bouncer-style groups, long integrated in the night-time economy, with

strong mafia-like appearances, to other forms of private security. We do not make the recommendation, but I think private security companies in the context of South Africa remain a very, very important point of vulnerability for criminal penetration.

ADV CHASKALSON: Then you deal with another series of examples in paragraphs 23 and 24, but if we can move to paragraph 25 where you deal with contract killings, can you maybe elaborate on the points that you make in paragraph
10 25?

DOCTOR SHAW: I think the importance of paragraph 25 in contract killings and assassinations, Commissioners, is that this is a clear indicator of a well-developed criminal economy with the commercialisation of violence. And if there is any doubt why South Africa should be at number seven, along with a country like Mexico which has similar problems, I think those should be quashed. On our database, recording assassinations from open-source platforms, so it is not a comprehensive count.

20 We have recorded between 2,000 and 2,025, some 2,458. This year alone, we have not yet published this report, there has been close to 30 incidents of politically motivated hits. So the concern for us, and it is a point I think that is worth highlighting, this intersection between politics and organised crime, the contracting of violence for

political purpose, is a very real harm of the organised crime economy. What the data shows is that assassinations used to occur largely within the ANC.

The latest data shows that assassinations are spread to all parties. I may be wrong, but the MKP party is now the most targeted on the figures that we will release. And what is concerning, I think, are multiple things, is that this undercuts the practice of politics at local level, and so it damages the constitutional democracy that South Africa
10 is, and that is linked to criminal markets where people are recruited to carry out hits.

ADV KHUMALO SC: Is that phenomenon concentrated in the KZN, or do you see it in all provinces?

DOCTOR SHAW: Our data shows all provinces backed with a concentration in KZN, Commissioner.

ADV CHASKALSON: When you say a concentration, high incidents, or is...

DOCTOR SHAW: The most number are occurring in KZN.

ADV CHASKALSON: And off the top of your head, are you
20 able to say as a percentage of the whole what we are looking at? I mean, are we looking at more than half of the hits in KZN, or just the largest sort of plurality in KZN?

DOCTOR SHAW: Advocate Chaskalson, I do not have those numbers in front of me, and I can supply them to the Commission, but I do not want to state the wrong numbers.

But KZN, to say, has historically had the highest numbers of assassinations on our data. Our data, I should say, is also divided into four categories. Political killings, taxi-related killings, organised crime, and then personal hits.

ADV CHASKALSON: And then, maybe finally, before we actually get into the workshop and the principles, you are concluding paragraphs 28 and 29 from page 11.

DOCTOR SHAW: I want to state it clearly, I think the overall weight of evidence, as far as I am concerned, has
10 been that, indeed, from our analysts too, is that organised crime is a serious external threat to the constitutional democracy of South Africa and should be seen as that. And the penetration of the state undercuts our ability to respond to that. Of course, that makes the work of this Commission particularly important.

But we should not see organised crime as just another run-of-the-mill threat in the context of our country. It is an absolute and fundamental threat to constitutional democracy. What the huge data set, if I could just finish on
20 the index, Advocate Chaskalson shows, is that there is a direct correlation between the presence of state-embedded actors and the decline of resilience.

So where states have embedded criminal actors, where there is criminal penetration of the state, states have much less ability to respond to organised crime. But the

opposite applies. Where there is low penetration of the state, states have much greater ability to respond to organised crime. And so the overarching conclusion for me is that we need to reduce criminal penetration in the state in order to tackle the enormous problem of organised crime that we have.

ADV CHASKALSON: If we move now to the workshop, there is a fairly detailed report of the workshop from page 36. I suppose I am verging into giving evidence a lot myself
10 today. So can I ask you just to confirm, what is the document on page 36?

DOCTOR SHAW: The document on page 36 is entitled Responding to Organised Crime Infiltration of the Criminal Justice System in South Africa. It is prepared for this Judicial Commission, and it draws on inputs from selected foreign actors and indeed a group of South African experts who also attended.

ADV CHASKALSON: And maybe if I can take you to... If you can explain to the Commissioners, because we have not
20 dealt with it in your statement, who the presenters were and possibly the, if one goes to the acknowledgments on page 37, they are all mentioned individually. But it might be useful to understand who these people are. So can I ask you to just describe who these people are?

DOCTOR SHAW: First point to make, just to touch back

where we began, is that the Global Initiative is a network of experts. So we have some 800 experts globally, and many of the speakers were and are members of our network. They form the AGM of the organisation, and they are prominent people responding in a variety of capacities to the issue of organised crime. I will read through them, and then I can also touch on why these particular countries were selected.

ADV CHASKALSON SC: Can we do that in two stages?

10 **DOCTOR SHAW:** Okay, good.

ADV CHASKALSON: First, identify who the people are and what their history is, what positions they occupy, and then we will get to, and obviously, which countries they come from and then we will get to the selection of those particular countries.

DOCTOR SHAW: Thanks, Advocate. The first is Dr Jürgen Stock, who is a German law enforcement leader who was Secretary General of Interpol from 2014 to 2024. He was also one of the founding members of the Global Initiative
20 itself. The second is Judge Antonio Balsamo from Italy. He is the president of the Tribunal of Palermo and a distinguished Italian magistrate with a longstanding career dedicated to the fight against organised crime. He is an impressive man.

ADV CHASKALSON: And Palermo is in Sicily.

DOCTOR SHAW: Correct, yes. Then there is Antonio Nuccio Iovene. He is a former Italian senator and a former member of the Parliamentary Anti-Mafia Commission, which is a very important body which plays an important role in overseeing and responding to organised crime in Italy. There is Mr Martín Verrier, he is the Secretary from Argentina. He is the Secretary of State for Drugs and Organised Crime, responsible for coordinating national strategies and policies aimed at preventing and combating
10 drug trafficking, transnational organised crime, and related security threats. So he is the most senior member of the Argentinian state responding to organised crime.

There is General Óscar Naranjo Trujillo. He is a retired Colombian National Police General and indeed the former 11th Vice President of Colombia and he is widely recognised as one of Latin America's most influential security and intelligence leaders. There was our own staff member, Dr Cecilia Farfán-Méndez, who is head of our North American Observatory and an acknowledged global
20 expert on Mexican organised crime. She is Mexican herself.

Then there is Marco Antonio Villeda Sandoval, who is the Minister of Interior of Guatemala. I myself have recently visited Guatemala and they are doing many interesting things. He is taking a leadership role in

responding to organised crime and is a lawyer, Judge, academic, and politician. Then, Mr Wong Wai-kit, who is from Hong Kong, China, and he is the Assistant Director, Operations Branch 1 of the Independent Commission Against Corruption of Hong Kong, China.

There is Dr Fabian Zhilla, who is head of International Relations, Transparency, and Legal Research at Albania's Special Court against Corruption and Organised Crime. He was previously the Chief of Staff at the Special
 10 Prosecution Office against Corruption and Organised Crime. Finally, Dr Cristian Vieira de Azevedo, who is from Brazil. He is a Senior Special Agent of the Brazilian Federal Police with more than two decades of experience in intelligence, counter-narcotics, and transnational organised crime. He is currently serving as Undersecretary for Intelligence and Integration at the Secretariat of Justice and Public Security in a Brazilian state.

ADV CHASKALSON: And now, can you explain why you selected experts from those countries? What was the
 20 organising principle in that regard?

DOCTOR SHAW: What we wanted to achieve, I think, was three things. First, to select countries with significant problems of organised crime, and that applies in most of these cases.

ADV CHASKALSON: Sorry, maybe for convenience, I

should ...[intervenes]

ADV CHASKALSON SC: I will read the list.

ADV CHASKALSON SC: No, no, do not read the list. If I can just refer the Commissioners to page 42 of the report itself, which actually addresses this question. I do not need you to be bound by page 42, but if you can talk to the issue, and then the Commissioners can annotate at the point where the report addresses it.

DOCTOR SHAW: I will refer to those directly. First, each
10 jurisdiction had experienced organised criminal infiltration of its criminal justice institutions, so the very mandate of this Commission. Secondly, we wanted global coverage, and so with comparable countries. There is a preponderance of Latin American countries precisely because of the problems of Latin America and its link to organised crime, but we also have countries in Western Europe, Italy with its long struggle against the mafia, East Asia, the Western Balkans. Albania is a very important case study, and so we included those.

20 Then we tried to select countries where not only had there been a problem of infiltration, but that there had been extensive responses from a policy perspective to that infiltration. I have to say, not all of it succeeded, and we were not looking necessarily for success stories. We were looking for people to tell the stories of their policy

challenges.

ADV CHASKALSON SC: Thank you. Now...

ADV BALOYI SC: None of these countries are in Africa. Is it because you have not identified these levels of penetrations in Africa, or that they have not implemented measures? Is there a reason, maybe I should ask neatly, is there a reason that there is not an African country in this group?

DOCTOR SHAW: It is a very good question. Not
10 specifically. The other two African countries where there have both been measures and there is penetration is Kenya and Nigeria, but not to the same extent that we are talking of. I often say that Latin American countries provide the best model for South Africa. We have a comparison with Colombia. Why is that? Similar population size, but also high levels of inequality and particular changes to the nature of the state. So that is why we selected the countries.

ADV CHASKALSON: Now, there is considerable detail in
20 the report, and I do not want us to get into that detail. But I would like us to deal with the seven principles that you drew out of this process that you have recorded from page 13 onwards. And maybe from time to time, if you want to illustrate with reference to specific examples, please feel free to do so. If you want me to point you to particular

pages in the report where the topic that you are addressing is also due site, I broadly know my way around the report.

DOCTOR SHAW: Thank you, Advocate Chaskalson. Principle one, Commissioners, is that criminal organisations are resilient to laws and measures that disregard their collective character and continuity. So that is the heading just above paragraph 32. And to make the point that the United Nations Convention Against Transnational Organised Crime has long since the early 2000s established a
10 benchmark against which domestic legislation for so-called participation offences, so that is offences as a member of a criminal group, are attached to

. The important point about the lessons that was drawn from the countries, and I will mention just two examples, is that countries badly affected by organised crime have gone one step further in a way that South Africa has not. And so, for example, paragraph 34 near the end, Italian Courts have extended liability to an outsider who is not a member of the association. So generally this idea of
20 POCA, racketeering law, being a participant in a criminal group, in the case of Italy, that is extended to somebody who is not a member, but who consciously makes a contribution that materially preserves or strengthens it.

And of course, that is attempted to broaden the ambit of an existing rule to encompass public officials, the

subject of your Commission, or business intermediaries. Brazil, very recently in March 2006, also goes beyond the minimum participation offence. And that was, it is perhaps too much detail, but it is important to note that it was enacted in response to the growth of police-led militias, so direct penetration of the state, who had territorial criminal control and had both serving and former police officers.

And the statute criminalises joining, promoting, or supporting ultra-violent organisations, as described, that
10 use violence or serious threats to control a territory, et cetera, et cetera. But the offences are classified as particularly serious and are ineligible for amnesty, pardon, bail, parole. And the penalty increases by two-thirds to double where a public official participates.

Now, I do not know whether that passes South African constitutional muster, but the general point is that in legislation, more serious crimes are legislated for to up the ante against organised crime. In addition, and I will use another Italian example, which I think is important, Italy, for
20 30 years, has maintained a regime where restrictions can be placed on prisoners, mainly mafia bosses, so that they do not direct organised criminal activity from prison and that is judicially reviewable and as I have said, it has been enforced for more than three decades.

In each of these cases, it is taking the participation

offence one step more. And as we will see in our recommendations, I think there is an argument for a similar approach here.

ADV CHASKALSON: Can I ask you, you have addressed in paragraph 36, Hong Kong's, Hong Kong China's regime of essentially unexplained wealth or...

DOCTOR SHAW: Yes.

ADV CHASKALSON SC: Unexplained wealth offences, which are also, as I understand it, offences that are
10 targeted essentially at people who cannot explain their assets and income from legitimate sources, and so are presumed to have derived those assets and incomes from illegitimate sources.

DOCTOR SHAW: Hong Kong China is a very interesting example. The ordinance stems from the 1970s, where there was very strong triad penetration of the police. So as a result, an ordinance was passed. And indeed, with your permission, Advocate Chaskalson, I will just read the bottom half of paragraph 36.

20 “Section 10 of the ordinance makes it an offence for a prescribed officer to control resources or maintain a standard of living disproportionate to official earnings. Unless the officer provides a satisfactory explanation, the prosecution must first

prove the objective disparity beyond reasonable doubt. The officer then bears the burden of providing the explanation on balance of probabilities. The offence allows the state to prosecute a corrupt officer who accumulated wealth far beyond what his salary could support without tracing a specific bribe to a specific decision.”

10 **ADV KHUMALO SC:** You do not need to prove that he was bribed or received money from an illegitimate source. It is enough that his wealth far exceeds his income.

DOCTOR SHAW: And the onus, Commissioner, is on him to prove the disparity.

ADV CHASKALSON: If I can come in here, my sense of our constitutional regime is what would not pass constitutional muster is a reverse onus of that sort. But an evidentiary burden to discharge a, well, to discharge a burden enough to refute a beyond reasonable doubt
20 conclusion would pass constitutional muster here. So you could have a regime in this country, as I understand it, where it would, the system would operate like section 10 of the ordinance in Hong Kong. But the evidentiary burden that rested on the officer to explain the wealth was not a full reverse onus. It was just a burden to present sufficient

evidence to show that there is a reasonable possibility.

ADV KHUMALO SC: How does it work with lifestyle audits? I am assuming that when they do lifestyle audits of generals within SAPS or another law enforcement agency, you declare, and if you declare 10 Ferraris, it raises suspicion. Then what happens with that? Or do they leave it at a declaration and there is no follow-up?

ADV CHASKALSON: Well, it is in fact a specific device on which we are hoping to lead separate targeted evidence, as
10 it were, specific evidence on how these regimes operate across the world. But one way in which they do, and in fact, we will get to them indirectly when we discuss another one of those principles, which is how do you essentially clean up an institution that has been penetrated by organised crime on a systemic basis? Because there are a whole lot of examples there that Dr Shaw will come to.

But one mechanism that has been used there is the sort of lifestyle audits coupled with obligations to explain, an opportunity to explain, an opportunity to retire, and then
20 an interrogation of the explanation against the object of facts. But it is not, we will get to the non-criminal example, the cleansing of the institution example with Dr Shaw. The criminal regime is one that I would probably ask the Commission to wait for, because there will be other witnesses who have surveyed the entire international world

on this type of legislation and can put forward the various range of possibilities in that regard.

DOCTOR SHAW: Should I go to principle two?

ADV CHASKALSON SC: I think principle two would be good.

DOCTOR SHAW: Thanks, Advocate. Principle two, Commissioners. Infiltration, so that is just above paragraph 38. Infiltration may leave a public institution formally intact but incapable of self-correcting and restoring integrity. I
10 will read the first lines very quickly.

“An institution may be formally independent in terms of legislation but nevertheless unable to detect, prevent, or root out corruption and misconduct within its ranks and the capacity of an institution to self-review...”

I think important in the South African context;

20 “...may fail when the officials managing complaints or investigations are themselves compromised and it may also fail when office bearers in other institutions or branches of government have power over its appointments or funding and exercises them to frustrate or impede corrective action.”

The examples that I will briefly refer to is again Hong Kong, China. That is the establishment itself of the Independent Commission Against Corruption targeted outside of the police. So this is independent of the police but targeting syndicated police corruption and the penetration of organised crime into the police. And then the example of Albania which is important and if I may link the discussion on Albania back to the index.

Under the regime that is outlined here, Albania has
 10 improved in the index, one of the few countries to do so. And Albania is a country I know and have visited many times. Ordinary police prosecutors and Courts had repeatedly failed because they were corrupted or penetrated to deal with political corruption and organised crime and organised crime was particularly serious. And what was established in 2016 was a special structure against corruption and organised crime, SPAC.

And the constitution, a point we will come to later, was amended to provide for a super majority to protect that
 20 institution. And the office separated, well, I will simplify it because the data or the explanation is here, high level of independence, funded and able to operate to challenge both political and the intertwining of criminal interests which was a key issue in the country. Principle three ...[intervenes]

ADV CHASKALSON: Before we get to principle three, I

want to raise one issue that I have both with Albania and the Hong Kong example and to a lesser degree with Guatemala, although it does not feature here. Both ICAC and SPAC, in some respects, were institutions imposed from the outside.

DOCTOR SHAW: Yes.

ADV CHASKALSON SC: So in 1974, Hong Kong was a British colony and SPAC was essentially an institution created and then staffed by people brought in from the imperial power. In Albania, SPAC was essentially, as I understand it, a condition for admission of Albania into the EU. And so in both of these situations, you had an external power that was essentially coming in and performing the independent function or supervising the independent function. That is obviously not something that we can entertain in this country. Do you think it would be possible to reproduce something along those lines on a basis that comes from within the country as opposed to from without?

DOCTOR SHAW: It is a very good point. I cannot answer the question. From my own experience of Albania, it is very, very clear that external pressure was the critical factor. But if I can add to that there was enormous and is enormous public support. The external pressure partly focused on the political elite. In the context of South Africa, I think in the context of our democracy, if there is

enough public pressure, because there is often two points of resistance to an independent anti-organised crime body with powers that are very intrusive and protected in the Constitution.

The first is in current law enforcement institutions who see this as an imposition on what they are doing. And the second is, of course, in, let us say, the wider political class who may feel threatened by an institution they may not be able to control. If there is enough political pressure
 10 and consensus, I think it might be possible to achieve something along these lines in South Africa. And indeed, I view this Commission as a watershed moment in the discussion about the changing law enforcement structures or the law enforcement architecture that we may need to confront the level of the challenge that I outlined earlier.

ADV CHASKALSON SC: Thank you. If you could go on to principle three.

DOCTOR SHAW: Principle three, just above paragraph 41, is criminal infiltration may consolidate separate instances of
 20 institutional misconduct into a pattern organised around the advancement of common criminal interests. We have already made the point, and I will return to something I said earlier, that criminal infiltration produces a pattern which is distinct from opportunistic corruption where a criminal group brings unrelenting pressure to bear on an institution. The

conduct of officials, the experts concluded in different parts of that institution, tend to align.

I want to return to the issue or the example I had about a police station corruption in South Africa. That is not separate, in my view, from an ecosystem of more senior penetration of the police agency. And that ecosystem of corruption is self-reinforcing, even if people who are corrupted in the process of penetration do not know each other. And so there is an ecosystem that consolidates itself
10 around the institution.

ADV BALOYI SC: Know each other as in work together or knowing about the other one that is corrupt?

DOCTOR SHAW: I can use an example. We, in the last week, I have been doing interviews around the Cocaine economy in and around Johannesburg and Pretoria. The same story emerges of police vans collecting money so that clubs can stay open or receiving payoffs from local drug dealers. That may be the local sergeant unconnected from more senior protection systems for Cocaine trafficking. But
20 they both form an ecosystem of penetration which makes the system work.

The sergeant in the van has no idea of the activities of the General, although there are rumours. The criminal network, the local dealers know of the sergeant but do not necessarily know of the protective influence of more

senior level operatives. But in our way of thinking, both sides of that ecosystem reinforce each other. We turn here, Commissioner Khumalo, I think to your earlier question around, again, the example of Albania of, let us call it in inverted commas, the cleaning process.

And the 2006 reform, Advocate Chaskalson's hundred percent right in that, of course, there is external pressure. It is a transitional reassessment of every serving Judge and prosecutor whose assets, professional records,
10 and criminal associations had never been credibly scrutinised. And they underwent a one-off assessment by an independent qualification Commission. So very dramatic intervention. That was later extended to the police. But the reality was that it was challenging to do the whole police. It is a very intrusive and long-term process.

The reality is that it was conducted by an independent body. And what the literature and, of course, the experts agree, say is that the independence of that body and how it is appointed and the degree to which it is trusted
20 by the wider public is crucial to the success of the assessment of police and criminal justice officials. We do use the example of Mexico here because that is a recent case, 2025. So it is new, a bit too early to assess. It is a unified integrity framework specifically designed to disrupt cartel infiltration and strengthen vetting. It is a new general

law and that establishes a common certification framework to police officers, prosecutors, forensic staff, prison officials.

And to obtain the certification, officials must pass a competence assessment and a separate confidence control evaluation. Now, there is a fair amount of detail in paragraph 44, but the simple point is that it is an independent process of reviewing institutions which are seen to have wide levels of criminal penetration. There is a
10 third example here. I will touch only on it and that is Colombia. In the case of a particular infiltration of a particular intelligence and security outfit, the functions of that outfit were distributed to others. So it was a weakening of that institution because of the level of criminal penetration is the principal point.

In each case, these interventions are aimed to break that ecosystem, which I described, I tried to describe earlier, beginning at senior levels, but also in some cases going to more junior levels. Advocate Chaskalson, with
20 your permission, principle four.

ADV CHASKALSON SC: Certainly.

DOCTOR SHAW: Important principle, I think, in the context of South Africa is that the division of intelligence between state agencies fragments the state's knowledge of organised crime, but concentrating that information in one

institution magnifies the damage caused by infiltration. So if you can capture one organisation, one intelligence organisation, dealing with intelligence targeted at organised crime, you capture a particularly important part of the state. If you have different institutions, it is harder to capture.

To some degree, they may watch each other, but then you have a fragmentation and competition. And so there is, I think if you see it as a spectrum, this was the conclusion of the experts. So the measures that have been
10 adopted by countries seek under this principle to overcome fragmentation without recreating vulnerability. That is the policy point to highlight and is outlined in paragraph 46. There is a detailed set of paragraphs around Italy and, Advocate Chaskalson, I will go very, very briefly through them.

The point is in the context of Italy that before 1991, prosecutors investigating the mafia in different places were not linked up. Essentially, what the Italian state established was an ability to maintain the independence of
20 prosecutors investigating the mafia while creating centralised systems of information to avoid fragmentation and also to monitor whether cases were being stopped because of infiltration. So achieving this balance. And a decree in the early 1990s, the early 1990s are a critical period after the murder of two prominent investigating

magistrates by the mafia also established the National Anti-Mafia Directorate headed by the National Anti-Mafia Prosecutor.

And the Anti-Mafia Investigating Directorate is a police body which loans out police officers and investigators to prosecutors who are doing the investigation. It is a very, very complicated system but the method in the system is to prevent capture and enable a dynamic response to organised crime and that is set out in the paragraphs up to
10 249. We also use the example of Colombia. Again, I do not want to go into detail but essentially one organisation was captured or seemed to be captured.

A new civilian body was established, the National Intelligence Directorate, which was authorised to present only strategic intelligence and counterintelligence concerning threats related to organised crime. And that body has no judicial police but created a specific body to provide the strategic frame and targeting mechanism to respond to Colombia's very serious problem of organised
20 crime. Advocate Chaskalson, with your permission principle five.

Principle five, infiltration may make compliance with law and public duty privately irrational. And the point is that a criminal organisation that has infiltrated an institution can inflict serious harm on witnesses, investigators,

prosecutors and the like. Who of course act, we may not be happy about it, but act rationally in the sense of the incentives under which they may face threats or the like to themselves and their families. And if the state cannot adequately protect people then that those actions are not irrational, the principle says.

So the measures under this principle seek to correct that imbalance, so that upholding the law and protecting the administration of justice becomes a rational
10 choice for those at risk, not their legal or moral duty. So it is changing essentially the incentive structure. I will give two quick examples. The first is in paragraph 52 it is the statutory protection programme for collaborators against the mafia.

I will not go into detail but it provides a comprehensive approach not only to manage what are termed collaborators but also state officials who are threatened. A more recent law from Brazil, which is interesting precisely because of the threat against Judges,
20 the law authorises a Judge presiding over a proceeding involving organised crime to convene a panel of three Judges for the purpose of granting specific orders and each Judge's signature appears on the published version of the decision although the identity of any dissenting opinion is not disclosed.

So the measure is of course to mask people's actions so that they feel more protected from the very intrusive and violent intervention of organised crime. I will move to principle six. An anti-organised crime institution that lacks structural independence is liable to future dissolution or disbandment through the exercise of lawful powers by corrupt or compromised officials and the two examples I will touch on only briefly, I have already identified Albania SPAC but just to say that SPAC has a
10 high level of independence and any process to dissolve SPAC requires a two-thirds majority of all members of the assembly of the legislature as well as a public hearing before the Albanian Constitutional Court.

The point is because of the very high level of organised crime in this particular jurisdiction the body created to respond to it is separated and protected from both political and criminal influence including whether there is criminal influence within the legislature. The case of Guatemala is more mixed. Guatemala with its long
20 challenges of organised crime opted for a joint Commission it is the International Commission Against Impunity, a little bit as Advocate Chaskalson was mentioning earlier, this was a UN Commission which was both a national and a UN body defined to or created to respond to the issue of organised crime.

The UN Secretary General appointed the Commissioner and indeed this ran, its mandate was renewed five times until in August 2018 the government announced that it would not seek a further renewal. Political pressure locally became too much and a couple of years ago in September 2019 SESIC was dissolved. Last principle, infiltration may remain concealed when no independent oversight body examines the state's response as a whole.

10 And the point here is that if there is no institution which has a mandate to review the formulation and implementation of organised crime and anti-corruption policy across all criminal justice bodies, then gaps, failures and criminal influence in different parts of a fragmented system can be identified too late or not at all. I think that is also pertinent to the South African example. There is two examples again and I apologise for drawing on Italy but just because of Italy's long fights against the mafia the examples are particularly relevant.

20 Italy has a parliamentary anti-mafia Commission, it was established not so long ago in 2023, it is a bicameral so drawing from deputies from two houses, it has 50 members, it has a lot of power to compel witnesses, order the production of confidential documents, it does not direct criminal investigations or prosecutions, but it provides a

global oversight of the state's ability and capacity and indeed progress to respond to the issue of organised crime and there is something similar, not a legislative body, but in Brazil a national Council for Public Security And Social Defence.

It has both advisory and oversight functions but it has this umbrella function which experts and others have pointed to as important to guide the policy response to organised crime and by implication the penetration of the
10 state.

ADV CHASKALSON: So those are the seven principles and we move now to your sense of what the implications of all of this is for South Africa, and it is what you address from page 22 onwards. And maybe you can take us literally paragraph by paragraph through your conclusions in this regard before we get to the section from section 25 where you have very specific recommendations to make. So paragraph 60, you are talking about the absence in South Africa of any independent specialist anti-corruption and
20 organised crime body.

DOCTOR SHAW: Correct. On my assessment, given the seriousness of the problem, which I outlined earlier, and the impact and harms on the constitutional democracy, it is a serious lacuna that there is not a completely independent constitutionally protected body responding to organised

crime and indeed criminal protection. I do not need to repeat for the Commissioners, but the paragraph outlines the Hawks are located within the SAPS, IDAC is located within the NPA, IPID is mentioned in the constitution, so it is a slightly higher level of protection, but it is not a so-called chapter 9 organisation.

So that is the, that I think is the first point to make. In that paragraph 2, is at the bottom, the issue that all countries that were considered in the expert discussion is
 10 the reality that there needs to be ways in which inter-agency cooperation can be legislated for. It is clear which cases are investigated where, and there is also work to do, I think, in the context of South Africa in this area.

ADV KHUMALO SC: Dr Shaw, even if we had an independent specialist anti-corruption unit, that would not necessarily mean that it could not be vulnerable to infiltration by organised crime, because you could have an independent crime-fighting unit, but it could still itself be infiltrated.

20 **DOCTOR SHAW:** Commissioner Khumalo, you are hundred percent correct. I think the policy prescript or response is to reduce the vulnerability by allowing greater independence to prevent political or criminal coalitions undermining or entering the organisation. I am afraid in my experience in working in this area for a long time, and

without sounding cynical, it is impossible always to prevent infiltration.

But a body with an adequate governance mechanism, so a board, for example, a leader or leadership appointed in a public process with high levels of scrutiny, high levels of integrity, high levels of skill, a mechanism also to check on the integrity of the organisation in an ongoing way ...[intervenes]

ADV KHUMALO SC: In an independent way.

- 10 **DOCTOR SHAW:** Independently, yes, holds much better prospects for effectively targeting organised crime. Importantly, too, there is no pressure in this arrangement, and I think this is the crucial point, to investigate one case but not another. And so the organisation in question is held to account by either an oversight board or by Parliament or both for achieving the objectives that it sets out, and the security of tenure for its staffing.

20 That does not mean that it is perfect, but it is the best model in the context where infiltration is a very real threat. And I think the Albania model, it has its own problems, suggests that some success can be achieved in this direction. If I can also add that as I understand Chapter 9 of the Constitution, it is designed for institutions which protect democratic processes and the democratic polity. My argument here is that in the context of organised

crime, which I hope I have made the argument is a very serious threat to our constitutional order, that is where this response belongs.

ADV BALOYI SC: Would you not add elements also of remuneration, benefits and resources, tools of trade?

DOCTOR SHAW: Yes.

ADV BALOYI SC: Because certainly from what we have seen before, you find maybe questions about remunerations that make people vulnerable to those kind of external
10 influences. How high would you rate that?

DOCTOR SHAW: Commissioner Baloyi, if I understand the question, I think a body which is established separately, and this is common in different jurisdictions around the world, has the capacity to pay more, to attract higher levels of skills, to bring in people from the private sector who want to go there because it looks good on their CV, for example, and so that is just one component which is a preventative entity or a preventative response for criminal penetration.

It does not mean that well-paid people, I do not
20 want to make specific reference, but Generals within the SAPS are not vulnerable to infiltration, so there is not necessarily a direct correlation between what you are paid and what you may want to get externally. But at least in a body with ongoing systems of integrity, maintenance with well-paid skills and high morale, the chances are much,

much lower.

ADV CHASKALSON SC: The second point that you make relates to essentially the re-vetting or the reassessment of incumbents, it is paragraph 61.

DOCTOR SHAW: I think the point here is that the current programmes in South Africa are nowhere near as strong as the comparative models, so it is listed here in 61, the SAPS and NPA programmes apply to selected senior or high-risk officials, neither requires that all incumbents or
10 compromised unit or task team should be assessed. The new bill is debating this, as I understand it, but I think the crux of the debate is how strong the intervention should be.

Given where we are, and indeed we will come to that in the policy recommendations, I think there is a very strong argument for an independent system of vetting if trust within the SAPS is to be restored. That is 61.

ADV CHASKALSON SC: 62, you are talking about fragmentation of intelligence functions.

DOCTOR SHAW: Correct, and essentially the South
20 African model operates on voluntary inter-agency cooperation. Of course, the Hawks have a statutory obligation to investigate certain things, but they are still overlaps between organisations and there is no independent statutory powers to override individual agency mandates, force participation or legally to relocate a case. So that is

the context of 62, which emerged from the discussion.

ADV CHASKALSON SC: As I understand it, 63 is related.

DOCTOR SHAW: Correct, 63 is an equivalent to the Italian Anti-Mafia Commission. There is no single unified standing body tasked with monitoring the macro implementation of organised crime policy end-to-end, from gathering intelligence, policing and the like. The structures of civilian oversight for the police, indeed where I used to work at national level, were created for the purpose of oversight of
10 the police.

I would humbly submit that they have not lived up to what the intention was, I am afraid, and they have not, in the cases that have been brought to the Commission, although they have certain powers, they have the power to access police records, monitor the SAPS, et cetera, have not been able to perform this function. So this idea of an umbrella body performing oversight is crucial.

And the idea of oversight from a civilian perspective in responding to the issue of organised crime in
20 a holistic perspective I think is crucial, emerging from the examples.

ADV CHASKALSON SC: Then 64 you are dealing with the substantive legal framework and in some ways the lack of sophistication in the rather blunt way in which POCA tries to address criminal problems of organised crime or

criminalisation of organised crime.

DOCTOR SHAW: So as you say, Advocate Chaskalson, POCA criminalises participation and the management of the racketeering enterprise associated with a criminal gang that promotes or contributes to a pattern of gang activity, but I think as you are well aware, Commissioners, these provisions have proved very difficult to establish as freestanding umbrella offences and our prosecutorial capacity to do that has been limited.

10 We do not, like the Latin American countries that have been outlined, have organised crime laws that have been shaped, I think, by the brutal and protracted struggle against organised crime there, so POCA does not contain, for example, an aggravated offence targeting the infiltration of the public sector and such an offence is necessary if you take the conclusion, in my view, of the index that you need to prevent infiltration if you are going to deal with the very large body of organised crime problems.

ADV CHASKALSON SC: Then we are back to my familiar
20 refrain about unexplained wealth orders, paragraph 65.

DOCTOR SHAW: I think the simple point, and I will not harp on it, Advocate, is that South Africa lacks a legal mechanism in respect of unexplained wealth. There is no law that provides for the civil forfeiture or confiscation of property owned or controlled by a public official where its

value is disproportionate to the lawful income disclosed by that official under a kind of mandatory vetting or integrity programme, what we discussed earlier.

And there is also no statutory provision that establishes a substantive criminal offence for unexplained wealth more generally, enforceable against public officials or leaders of criminal syndicates. In reality, South Africa, in my view, lags behind several other democratic countries that have already legislated for unexplained wealth orders
10 of this kind.

ADV KHUMALO SC: Why do you limit it to public officials only, why not their family members?

DOCTOR SHAW: It is included, Commissioner, I think in writing the document, I think it should include their family members too, or the wider aspect around it.

ADV KHUMALO SC: You could have a situation where I benefit from what my family member has, but it is not registered in my name.

DOCTOR SHAW: Agreed.

20 **ADV KHUMALO SC:** Or they are just holding it on my behalf and it is registered in their name, but for all intents and purposes, I have the right of use.

DOCTOR SHAW: Agreed. Point well taken.

ADV CHASKALSON SC: Then paragraph 66.

DOCTOR SHAW: 66 refers back, under our correctional

laws, enhanced security classification and restrictions on communication are permitted. But there is not a dedicated procedure to do this for, let us call them criminal or mafia bosses, so for identifying and severing the continuing command relationship from prison, which I would venture to suggest also exists in South Africa, between an imprisoned leader and the criminal organisation outside. So this is the Italian example, but which is also present elsewhere.

ADV CHASKALSON SC: And I understand also in Brazil.

10 **DOCTOR SHAW:** Correct.

ADV CHASKALSON SC: 67, witness protection.

DOCTOR SHAW: I think 67 is more to the point that the Office for Witness Protection in South Africa has reported a strong record in respect of people admitted to the programme, but it is undeniable that witnesses continue to be killed with regularity in South Africa in organised crime cases. So the suggestion here is for a wider, and the legal framework remains divided between two pieces of legislation that is outlined in 67, and each provision serves
20 a different purpose, and there is no single statutory procedure linking cooperation by a member of a criminal organisation with an ascertainable legal benefit and protection.

So, again, it is the Italian model, which is a bit more cohesive, which was introduced in the 1990s, whereas

elements of this exist in the South African Criminal Procedure Act, as you know, but it is not as clearly or well brought together as in other jurisdictions.

ADV CHASKALSON SC: 68 is just a general conclusion, but I would like us to move to the interventions. And you have structured your interventions essentially into three categories. There are what you call short-term interventions, and then there are more longer-term interventions, and then you have added a slide at the back
10 of the bundle, I think it is page 293, where you have offered a range of instant solutions, almost, or very short-term measures. Let us start, we will get to slide 293 later, but let us start with your short-term interventions.

DOCTOR SHAW: Advocate Chaskalson, with your permission, just to make one point, which is to say, given the scale of the challenge that we face, I think my opinion is that piecemeal reform is not an option, and that what we are suggesting needs to be a package of measures designed to respond over a specified period of time to the issue of
20 organised crime and criminal penetration. That points at the bottom of 68.

I will turn to the short-term interventions then, and there are nine of them, of different weight. The first is to establish, the name is more of a placeholder, but what I would call an organised crime council, and an organised

crime council is basically a mechanism to build political will across multiple governments ...[intervenes]

ADV CHASKALSON SC: Sorry, Dr Shaw, I am sorry to interrupt, but I think you make a very important point in paragraph 69 before you get to the specific nine, which is that even our existing structure is currently almost on autopilot, and I think that that is something that demands immediate attention.

ADV BALOYI SC: When you say current structure, what
10 are we talking about, the SAPS, the Hawks or all of it?

ADV CHASKALSON SC: Well, the SAPS, the Hawks, the NPA, IDAC. Maybe, I am speaking for you, Dr Shaw, but you make the point just after footnote 48. Maybe you can just address the point that you make after footnote 48.

DOCTOR SHAW: 68.

ADV CHASKALSON SC: Footnote, after footnote 48.

DOCTOR SHAW: Yes, I think the opening point we make on short-term interventions is that the Commission should recommend the prompt and lawful appointment of suitably
20 qualified persons to fill every vacant post in current institutions in a transparent and properly vetted appointment process. So, I think, and this speaks to another point about the pace of reform, actually, that when you look at the cases that we considered earlier, particularly the shock to the system that comes from a

vetting process where people may resign before, et cetera, et cetera, it is very, very important to strengthen and establish the current institutions that you have while beginning the process of change.

I would argue that is the articulation around 69 and some of the short-term interventions that Advocate Chaskalson referred to in what you call the slide.

ADV KHUMALO SC: Was the autopilot not referring to the fact that at a senior level, most of these institutions either
10 have their leaders suspended or...

DOCTOR SHAW: Correct.

ADV BALOYI SC: You know, they are facing allegations.

DOCTOR SHAW: Correct.

ADV KHUMALO SC: So it is crippled in a sense that you do not have people at the top performing their functions they are supposed to perform, so they are on autopilot in that sense.

DOCTOR SHAW: Correct and this, in a sense it is a little bit like what happened in, Commissioner Khumalo, in other
20 jurisdictions, where sort of stasis hits the system. The institutions are broken, their morale is low, they feel attacked, and they cannot respond. So our recommendation to you is to recommend the filling of the posts.

ADV KHUMALO SC: And also, without sounding like we are criticising those at the top, how quickly you deal with a

problem. So people should not remain on suspension for a year, for example, because you have an acting person who is not sure whether they are staying or remaining, and you cannot plan long term if you do not know that you are in a position for six months or even less. So you want strong leadership that is always there, and they are able to implement whatever plans they have.

DOCTOR SHAW: Correct. In agreement.

ADV CHASKALSON SC: Sorry, I took you out of your
 10 sequence when you were dealing with an organised crime council.

DOCTOR SHAW: I will be very brief. The purpose of establishing an organised crime council would be to create at a high level the oversight and strategic body which can both oversee and provide strategic direction on organised crime policy and response. So it is not the same as the Anti-Mafia Commission, or it is closer to the Brazilian model, but it is very specifically South African. There have been models like this before around the National Crime
 20 Prevention Strategy, a combination of both state and non-state officials with five functions.

Mobilise political will, provide a forum in which diverse stakeholders can respond, remembering the diversity of the organised crime problem in South Africa, as presented earlier, the implementation of a National

Organised Crime Strategy, as discussed below, it would monitor, or it would be given the mandate to monitor, police and prosecutorial response to organised crime, and it would support the implementation of recommendations that come from this Commission.

And my overall sense, from working in the sector for a long time, is that this kind of strategic and oversight body, the idea of oversight of what institutions do to respond to organised crime, is actually a key part of the
10 story. That the institutions do not work alone, unsupported, and that you create a framework which both oversees and monitors what they do, and also provides strategy. So that is the first one.

We suggest a National Organised Crime Strategy, and that is a National Organised Crime Strategy for government. I do want to say, Commissioners, that sometimes strategies like this can be too complicated. They try and put everything in and solve the problem. I think, and solve the problem in a way that is very, very
20 difficult to implement. And arguably, at least to create momentum for success, an initial strategy could list target groups or individuals for prosecution, and mobilise state actors to respond.

Target groups, individuals, or markets, or complexes of violence, we have spoken about some, and to

keep the strategy relatively simple, and focus on implementation which can be measured. With permission, Advocate Chaskalson?

DOCTOR SHAW: I am sorry, I am going to come in here, because I think the point that you just made about getting momentum, identifying key players in organised crime, and preparing a relatively implementable strategy for prosecuting them, is just such a crucial strategic step. And one does not need to prosecute people for all of their
10 organised crime activities.

I mean, the classic example is Al Capone. The Americans identified Al Capone as the biggest gang boss in Chicago, and then they looked at the easiest way of prosecuting him. It turned out to be tax fraud. Tax fraud was by no means the most serious of Al Capone's offences, but it was a way of implementing a state response to put someone who had committed multiple crimes into jail, in respect of the crime that was easiest to prosecute.

And I think your point about having something that
20 will gain momentum, that will gather momentum, that will improve morale, should really be achievable with that sort of approach. It is not a grand 500-page strategy document. It is very simple. These are the gangs. These are the leaders. These are their perceived vulnerabilities to prosecution. Let us go and gather the information and

prosecute.

DOCTOR SHAW: Agreed.

CHAIRPERSON: Sorry, sorry, Doctor, I will take you back to the organised crime council. My sense of discomfort with it stems from the fact that you say this should be established by the Minister. Do we leave with it purely because this falls under the umbrella of short-term interventions? Because outside of that, that is outside of it being short-term, I would, in fact, I still do have a
10 discomfort because it raises issues of independence.

Right now in this Commission, there are allegations of improper influence at political level, and I underline allegations, so we are yet to reach conclusions or decide that aspect. But the very idea of ministerial appointments of a council of this nature gives me serious discomfort.

DOCTOR SHAW: Chair, I understand the point well, particularly given the mandate of the Commission. I think I am trying to respond to what I think is a requirement to respond to organised crime, and that is presenting a unified
20 model which draws on the skills of different components of society and government to respond. So perhaps it gives you a discomfort in the short term, but I would argue in the longer term, building such a structure will be necessary to counter organised crime.

If you recall the National Crime Prevention

Strategy, in fact, there is an argument to say here that an organised crime council should not be appointed by one Minister, in this case of police, but be a body that, which was the critique of the National Crime Prevention Strategy at the time, but is an umbrella over multiple departments. But I do want to get the point across that there is an argument for such a structure to drive a national strategy against organised crime.

CHAIRPERSON: No, no, yes, yes, thank you. Well, the
10 idea perhaps is something we as the Commission could build upon, and issues of, we could apply our minds to the question of the appointment in a manner that might better guarantee independence.

DOCTOR SHAW: Independence?

CHAIRPERSON: Yes, yes.

DOCTOR SHAW: Absolutely fair point.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: The criminal justice personnel reset.

20 **DOCTOR SHAW:** The first thing to say, Advocate Chaskalson, is that we have already touched on this, but my recommendation would be an independent panel or temporary statutory body which would conduct the reassessment. There is quite a lot of literature around these processes, and I think it is worth the Commission

exploring this in greater detail, but the simple point, as I read the literature and have seen it practiced elsewhere, is that public trust is built when the people doing the vetting are independent and are transparently appointed, and that they are outside of the institutions which are being vetted.

There is a lot of detail here, including the point which often comes up, is that people can resign with no prejudice, and that has been used in multiple jurisdictions if people are nervous to be vetted, for example, processes of
10 appeal and the like. But in every case where there is serious criminal penetration, states have adopted this particular process of vetting or certification. The different models relate to the independence, the process whether the independent body may recommend to another body, for example, but the core principle is to do it outside and to do it in a comprehensive way, and the recommendation that we make is to begin at senior levels, because it is a very onerous task.

ADV CHASKALSON SC: That, as I understand it, is a
20 once-off reset process almost, but you are talking about ongoing integrity management in paragraph 76. Can you elaborate?

DOCTOR SHAW: Correct. The recommendation is for an integrity management framework for different departments, and I think the key line further down is senior leadership

and management posts would be subject to periodic assessment, as elsewhere in the comparative examples, regardless of whether any complaint has been received. So what you are establishing is an ongoing process of integrity in addition to the once-off.

ADV BALOYI SC: Dr Shaw, to take you back to paragraph 75, sorry about that.

DOCTOR SHAW: 75?

ADV BALOYI SC: Yes, sorry about that. At 74 read with
10 75, is there any one jurisdiction where this has been done?

DOCTOR SHAW: There are multiple jurisdictions where this has been done, and indeed there is literature around the processes and sets of principles that have been drawn on. It is not easy, I think is the first, what I have drawn from my own experience. It is not easy. It takes time, and its independence is crucial to public trust, and that there is significant or there would be significant fight back from the institutions and the individuals that may need to be assessed.

20 But given the potential level of penetration in the South African context, there is an argument for an independent system because clearly current systems are not working. So that would be my policy argument in reply. If current systems were working, this Commission would not be sitting. So it is perhaps one of the most crucial

recommendations that come out of it. In reading the literature, there is a lot of detail around this, whether, for example, intelligence information can be considered in a particular way, Commissioner Khumalo's points, family members and the like.

Some systems look at competence for the post too. Was the person appointed and did they have the competence for the post rather than just evidence of illicit financial gain? So it is quite a mixed bag. But I think the
 10 key principle is that it has to be independent and seen to be independent and be resourced to be able to do it. The Albanian example is interesting because it is also true that there is probably a time-bound reality for doing this. The Albanian example moved from judges and prosecutors to the police, but then, as I understand it, ran into sand simply because there were so many people to do and not necessarily the capacity to do it. So I think it has to be designed very, very carefully.

ADV BALOYI SC: It is not so much the policy justification
 20 for it. I do not think there could be much quarrel about it. My question is, it comes from knowing our regulatory, our legislation, but maybe even more importantly, the collective agreements, the kind of collective agreements that you have, whether you have the experience that you have with other jurisdictions, they have had similar contexts in which

this kind of exercise gets done.

DOCTOR SHAW: Yes. These generate a lot of legal cases in response, not all of which are won by the state or the integrity body. But the process, again, I emphasise the process is key if we are to seriously reverse criminal penetration. There is a very useful document, I have it here, which provides some lessons about how you can reduce that, perhaps by simplifying the process, and one of the key conclusions, which I have not mentioned, is that
10 this should not occur on its own, but occurs in the context of a wider process of security architecture reform.

And it depends how ambitious the Commission wants to be. My point and feeling is that the wider architecture of policing needs reform to face the organised crime threat, and this becomes one element of that. And it is an important element, but it is not the only one. I know I am going beyond your question, but I think that is what is contained in the literature around the review processes.

ADV CHASKALSON SC: Commissioner Baloyi, this is a
20 topic that we are looking at separately, and what we may be able to do is to bring another witness who deals with the whole complex without a witness appearing in person but presenting a report. But it is something that we are looking at. Institutional Implementation Plans, paragraph 77.

DOCTOR SHAW: I mean, this is just a very simple point to

ensure different departments and institutions are aligned to the overall strategy. Advocate Chaskalson, that is 77.

ADV CHASKALSON SC: And then 78 is a coordination principle.

DOCTOR SHAW: Yes, same coordination point that to legislate for coordination between agencies or for written agreements between agencies, which is a common problem across institutional responses to organised crime globally.

ADV CHASKALSON SC: Then 79, I think, is a very
10 important point. Can you elaborate what you are saying here?

DOCTOR SHAW: I think my feeling is that the specialist bodies that we are tasking to respond to organised crime in South Africa in fact lack the capacity to do that. They are under-resourced, they do not have enough personnel, and they do not necessarily have the right skill sets. Of course, there are hard-working individuals within them. And so the idea that at least in the short term to prioritise certain areas, ballistics is one of those, the very long waiting times
20 for ballistics in a country with such huge levels of gun violence is unacceptable.

In a sense, as I understand it, there are eight terminals and three people working as presented to this Commission with waiting times of well over a year. I mean, that is something that can be fixed with resourcing in the

short term and that the Commission should make recommendations around. That may mean contracting in from outside investigators and expertise in particular areas of the system. And that is what paragraph 79 is focused on.

And that is in principle possible to do in the short to at least the medium term.

ADV CHASKALSON SC: Paragraph 80?

DOCTOR SHAW: This is simply mandating the public reporting of infiltration. So I did not deal with it in detail
10 from the comparative accounts. This is a little bit promoting the idea constantly of oversight and obligating departments to report as a matter of course on infiltration.

ADV CHASKALSON SC: And finally, the whistle-blower point in paragraph 81?

DOCTOR SHAW: We say a common referral procedure should be introduced by the Minister of Justice to connect the existing mechanisms for protecting witnesses, whistle-blowers, investigators, prosecutors, and judicial officers. And in the outline of the paragraph, it is basically building
20 towards a system from the short term to the longer term, which is much better positioned to protect witnesses in the context of very high levels of organised crime.

ADV CHASKALSON SC: So those are all of the relatively short term interventions that you are proposing. You are talking about longer term policy and structural reform and

legislative reform from paragraph 82. Can we take your proposals one by one by heading? So the first one is Organisation-Based Defence and Public Sector Infiltration.

DOCTOR SHAW: So that is at paragraph 83. I will read it.

“Parliament should amend POCA to define
an organised group consistently with
article 2 of UNTOC and create an offence
concerning organised criminal infiltration.”

So an offence of organised criminal infiltration as of other
10 jurisdictions we have outlined and that offence would apply
where a person knowingly forms, directs, participates in or
materially supports such a group and uses public office or
access to a criminal justice institution for the group's
benefit. A related provision could apply to a public official
who knowingly supplies protected information, suppresses
enforcement, diverts state resources, et cetera. 84:

“Parliament should enact an aggravated
form of the offence where the organisation
uses violence or serious threats.”

20 So this is a bit the Brazilian model, Commissioners, and the
Brazilian statute provides a model for that. Although some
of its penalty and bail consequences I do not think will pass
constitutional muster here. But the simple point is an
aggravated offence for criminal groups that act in highly
violent and damaging and harmful ways. Then:

“An offence concerning outside assistance, but that would require material contribution and knowledge of the group's criminal character or purpose.”

The simple point here is to follow the example of others in going beyond the participation offence to aggravated offences, including targeting people within the public sector.

ADV CHASKALSON SC: Unexplained wealth?

10 **DOCTOR SHAW:** Advocate Chaskalson, and as you I think know too, I think the unexplained wealth orders and offences, in my view, should be a critical set of responses. We have already spoken about the Hong Kong China model. And I read from paragraph 36. I will not repeat that, but that is the inspiration on which this draws. I read from 85:

20 “Chapter 6 of POCA should separately be amended to establish a civil non-conviction based asset recovery mechanism for unexplained wealth where the material disparity triggering the mechanism would already be established through mandatory disclosures made pursuant to the enhanced vetting and integrity regime detailed above.”

So this is linking the review process with an amendment to

POCA. And then further, and this refers back to paragraph 36:

“Parliament should create a substantive criminal offence targeting the unexplained wealth of public officials akin to that established under section 10 of the Hong Kong SAR prevention of bribery ordinance.”

ADV CHASKALSON SC: And as I understand, the
10 distinction between the longer-term recommendations here and the shorter-term recommendation in the context of the reset process is that your longer-term recommendations here will require amendments to POCA and the legislative process.

DOCTOR SHAW: Yes.

ADV CHASKALSON SC: The reset process, if it can be fast-tracked legislatively or otherwise, would be confined to that reset process. It would not be a long-standing legislative regime that would apply forever by virtue of
20 amendment to POCA. Paragraph 86.

DOCTOR SHAW: 86 argues that, again, it is a legislative change. Partly, Commissioners, what is being suggested here is a wide change to a fair amount of legislation to take into account the organised crime threat, and this forms part of that and intelligence legislation should designate

organised crime and infiltration of the criminal justice system as national intelligence priorities and assign respective functions within the intelligence community. The issue of the Inspector General of Intelligence, which has, of course, been in the news, I make the suggestion that also, given the sensitivity of this area, that consideration should be given to including that office in Chapter 9.

ADV CHASKALSON SC: Paragraph 87.

DOCTOR SHAW: 87, the key line is the last one. So this
 10 is the Correctional Services or the prison regime for senior criminal figures.

“The Correctional Services Act could
 create a judicially reviewable regime for a
 prisoner approved on current information
 to retain the capacity to direct an
 organised criminal group and a Court or
 other independent authority would
 determine the restrictions on association
 and communication, their duration, and
 20 any renewal.”

So building on the long-standing Italian model, which has shown success, although it has not been uncontroversial, I have to say, to the Commissioners because of its restrictions, but the idea of cutting off key criminal figures from their ability, again, to emphasise, to direct criminal

activity externally is the objective.

ADV CHASKALSON SC: Now, Paragraph 88, you touch on something which almost all senior members of law enforcement agencies that we have spoken to have raised with us. So can you elaborate on paragraph 88 and the rationale behind it?

DOCTOR SHAW: 88 deals with this very contested issue, the Commissioners know very well, given your mandates, around operational interference, the difference between
10 operations, oversight, setting policy and strategy. And the suggestion is that legislation, so I am reading again:

“Legislation should provide that no political or executive direction concerning organised crime policy...”

So specifically this area;

“...institutional protocol, appointments, or resources, may be given effect to unless it is in writing, and then it is lodged.”

The suggestion is in a register. So the issue is to document
20 the directions that come in this particular sensitive area for later assessment, if necessary, and to do that in legislation.

CHAIRPERSON: My fear, maybe fear is the wrong word, but you will get my drift, is that officers within not just SAPS, government departments broadly, may well be, not all of course, be quite submissive in terms of what Ministers

say. So even if we say you ought not to comply if an instruction is not in writing, the very idea that this will be coming from a Minister will itself be the reason why the official SAPS member in this instance may feel obliged to comply. So if nothing for whatever reason comes to the fore, we will never know.

DOCTOR SHAW: Sure.

CHAIRPERSON: And is there a way of addressing that practically?

10 **DOCTOR SHAW**: Chair, this is an excellent question, but it is also like the question whether a Chapter 9 institution cannot be corrupted. Not every loophole in the sector can be closed, but systems can be established which point to how things can be done. That would be my counter-argument. And it gives greater grounds for officers to resist if they are told to prosecute A and not B, for example. And of course this is absolutely in the global context what can occur to receive that in writing and it gives them greater grounds to be able to resist.

20 Obviously that gives greater status if it is in legislation. What you point to is this very contested issue of operational independence. And it is not only a South African issue and it is often complicated because politicians come under such great political pressure from their constituents to respond to organised crime. And that then

leads to operational interference. I am not talking about South Africa, but generally. So I think this at least provides some protection for officers, but would not, as you point out, stop quiet interference.

CHAIRPERSON: I hear you and I understand your response perfectly. And you give an example of proper motives, even if they may not be well grounded. That is where there is pressure from the constituency. But sometimes the influence may be improper in the sense that
10 there is nothing proper informing it. But you have answered me, you have answered me. Thank you.

DOCTOR SHAW: Chair, I mean, there is a long history, as you know, in fighting organised crime where the state targets some groups over others. And that is because of connections, influence. One group gives information on the other. And proper organised crime policy needs a more balanced and strategic approach. I am just adding to the point because I think it is important that opponents are targeted for a variety of reasons because of penetration,
20 information or political influence. Opponents of some sectors as opposed to others.

ADV CHASKALSON SC: Internal governance?

DOCTOR SHAW: 89. I think the increasing consensus in criminal justice agencies and sensitive law enforcement agencies is to draw on board structures. Now, the example

that I have used here is the UK's National Crime Agency. And what you are trying to do, I think, is to provide two policy inputs to the head of such a sensitive body. First, to provide them advice. And second, to provide oversight.

Now, the way it is done in this particular example, but it could be adapted in the context of South Africa across different institutions, is the appointment of boards internally that also have external players on them. So, for example, in the SAPS, a board which may have a selected number of
 10 Divisional Commissioners or generals, but three or four external players as well. That is the NCA example. The appointment process for that may vary.

But what you are introducing is greater advice and oversight that both protects the incumbent director general or person in charge of the institution, but also gives her or him advice on how they can operate and I think there is some argument that that is a relatively easy model. It is resisted by law enforcement bodies because, of course, external people are seen to be part of the discussion. But
 20 that is precisely the point of introducing such structures.

ADV CHASKALSON SC: It seems to me that one of the other advantages of such a structure is it might be a structure that would provide protection against improper political interference.

DOCTOR SHAW: Indeed.

ADV CHASKALSON SC: Then you come to what is possibly the central recommendation, well, not central, but one of the recommendations that you give most attention to, which is an anti-organised crime agency. Can you address that?

DOCTOR SHAW: Thanks, Advocate. Commissioners, we have touched on this already, so I am going over some ground that we have already covered. But to repeat the argument, on my assessment, in comparative terms, I
10 mention again the figure South Africa is in the top 5 percent of all countries in relation to the organised crime threat that we face, based on as an objective measure as I think you can obtain. Our institutions currently do not meet the challenge to respond. That is partly why we are sitting here.

And simply to go back and to reinforce the institutions as we have them now, I think will result in failure. And I think that failure may have an impact for our constitutional democracy. And so we need to do something
20 bigger in this mix. And so I urge the Commission to think about recommending the appointment of a Chapter 9 anti-organised crime agency, which focusses also on the issue of criminal infiltration.

We have already talked around some of the things, its integrity, its ability to attract skills, et cetera, et cetera.

But it would be a hugely practical and symbolic step to respond to the issue of organised crime. To emphasise, and you can hear the arguments to say, well it will not be politically accountable, I think its accountability systems, as other Chapter 9 bodies, can be designed for the specific requirements that we need it to have. For example, a board or other particular features.

But the SPAC example in Albania provides, I think, a model, and again I mentioned that Albania is one of the
10 few countries to be able to improve its position in the index, to make concrete steps against criminal organisations. I think the reality is that, and we should probably say it more bluntly than we have been, is that it may not be possible to completely rescue the SAPS from the level of penetration that it has. There is some danger in starting anew. But if we are to take the step, as I have argued, then now is the opportunity to do it, given the important role that the Madlanga Commission has played.

So, 90 outlines that, with some of the additional
20 arguments I have made, plus then greater detail. It raises questions around, for example, what would become of the Hawks. Well, if you read the Hawks legislation, which I have here, the Hawks have a long list of things that they need to address, including organised crime. So it would mean legislating for functions between different bodies. On

the question of whether corruption should be included in such a body's mandate, I want to argue that organised crime is the umbrella under which organised corruption occurs.

And particularly if organised corruption, as in some of the cases that the Commission itself has examined, has clear organised criminal and violent tenets, then an independent body with the correct powers and resourcing is the agency that should take those issues on. All the rest is
10 detail, and important detail, but this, I think, is the crux of the recommendation I want to make to you.

ADV CHASKALSON SC: You have then got – we then move to the conclusion. You have added a slide dealing with some sort of extremely short-term measures, which you think could be implemented almost immediately. I am not sure where you would like to take that. Before or after your conclusion?

DOCTOR SHAW: I will take it before, if that is okay.

ADV CHASKALSON SC: Sure. So that slide's at page
20 293.

DOCTOR SHAW: Commissioners, there is nothing new bar two or three points which we have not discussed. But in our engagement, the idea was to identify areas that could be done now, or quickly, given some of the discussion we have had about a stasis in the system when we face such a

serious challenge. The first here is, of course, the Organised Crime Council, which you have already suggested your discomfort with, but I think your discomfort is around the appointment process, not the issue.

And the argument for making it a short-term measure is that we can build societal confidence in the state's ability to respond. And related to that is a short-term implementation plan. I would again emphasise the importance of targeting particular individuals and groups.

10 Secondly, the creation of multidisciplinary teams focused on key issues or targets, and they should form the kernel of the new Anti-Organised Crime Agency. So we need a bridge to get to a longer-term objective, which clearly will not be able to be achieved overnight.

But that is the strategy, so to create multidisciplinary teams with carefully selected individuals and who have integrity to begin to focus on specific themes and issues as a kernel for a new agency. Three, we have already discussed, so it is a kind of sum-up, the filling of
20 vacant senior posts within the criminal justice system. Four, we have discussed short- and medium-term importing of skilled resources, the low-hanging fruit, so to speak, ballistics, as we have mentioned.

Five, this is perhaps not as short-term as it seems, but the integrity assessments of senior police officers and

criminal justice officials by an independent body expedited for the purpose. Again, I emphasise that is not a standalone. It is part of a longer-term set of institutional change. The next is boards with internal and external candidates in key institutions.

The second last one is, I think, if I may say, Chair, Commissioners, that the Madlanga Commission has set an important, or set the bar high for what Commissions of Inquiry themselves can do in the context of this particular
10 area. In my own view, you have done three things. You have exposed criminal activity. You are dealing with the strategic response, as we have been discussing. But also you have been engaged in a process of public education around the issue of organised crime.

And all of that adds up to the beginning of the end of impunity for individuals within and outside of the criminal justice system that have been involved in organised crime or in state penetration. And so when I talked about the resilience of South Africa, actually this is the kind of
20 institution that a resilient or a state with some degree of resilience against organised crime produces within a democratic framework to respond.

So the suggestion is to make the argument for selected public enquiries similar to this, with these three functions of exposure, strategy, and public education. And

the slide says many Madlangas as a short-term label, Chair, but I think you understand what I mean. We have talked about Nelson Mandela Bay and the Western Cape. A focus on those areas with their high levels of violence, which are simply unacceptable, in my view, would not be a bad place to begin.

Final measure is I think we have touched on this, but it is an important point, is the Commission and its findings in my own engagement, I have been in South Africa
10 for a couple of weeks, is that the morale within the criminal justice system is very, very low. And public, it is actually shown in the latest victim survey results, which have been released I think very recently, and public confidence in the police is very low.

And so I think it is very important to think about a series of morale-building measures as an interim step. And I want to say that the best way to do that is, from my experience elsewhere, is to create momentum through success. Prosecution of key people, the real sense that the
20 state can respond, keep the strategy simple, do that through the multidisciplinary teams as I have outlined, and begin to move forward from the stasis while beginning to fix the system, and in at least my view, create a new institution which is needed.

And moving perhaps to the conclusion, Advocate

Chaskalson, the organised crime problem that we and others face is not going away. If anything, it is increasing. So the idea that we can simply do nothing or not have a longer plan and think that the problem is becoming less, I think everything we know both from the index and our management or understanding of illicit markets globally suggests that South Africa will continue to face a serious set of problems.

And our obligation needs to be to build the
 10 resilience of the state in order to be able to reduce criminal markets. That is not an overnight achievement. Sorry, Advocate.

ADV CHASKALSON SC: No, you have the floor at this point. I mean, you have made a few statements in your conclusion from paragraph 95. We have traversed some of them. I think are there concluding remarks that you would want to make to the Commission?

DOCTOR SHAW: Maybe three quick ones, Chair, since I have spoken a lot. The first, in my experience, is that
 20 opportunities for law enforcement and security architecture reform come only once in a generation. If you do not take them, you may not have the institutions you need to face the threats of the future and I think the Commission bears a heavy responsibility, in my view, for doing that.

Secondly, I want to reemphasise the point that the

position in South Africa is serious. I think often we forget how serious it is because organised crime is so much part in its various manifestations of our ordinary lives. But our homicide rates and the degree, for example, which it affects poor and excluded people is simply not acceptable. And that requires criminal justice agencies and the wider state to respond.

And third, and last, to come back to the point that I tried to emphasise in the beginning, I see this as an
 10 existential threat. It is an existential threat to our constitutional order because it is so pervasive, because it is embedded in our politics, and because of the level of violence that I have tried to illustrate. That we as a collective policy community, if you like, has the obligation to respond. I will end there.

ADV CHASKALSON SC: Thank you very much.

CHAIRPERSON: Mr Chaskalson, looking at the recommendations, and I am now looking at the short-term measures, and it is difficult to imagine that our criminal
 20 justice sector, the departments and ministries that are involved in that, have not considered some of what look like easy wins, for example, such as a reset of the system. Does GITOG do any work with our South African government, these relevant criminal justice sectors? Any work at all, any interaction, any advice, any whatever it is

that you offer as a service? Do you have that kind of relationship?

DOCTOR SHAW: Commissioner, we have a – actually, in my view, I am stating it from my side, we have quite a close relationship with individuals within the government. We have been briefing and engaging with people in the South African government and other governments for a long time, and as a South African, I value our relationship with the states, particularly because we are often, we looked at the
10 gang monitor. We are often releasing information which does not make the country look good, but we feel that it is our objective and obligation to shine a light on the extent of the problem.

The Organised Crime Threat Assessment of 2022, for example, we briefed everybody in government and business who would listen, and on my own trips here and our own staff, we continue to talk and engage. So it is not a contested relationship at all. I do not think we have ever had such a clear set of recommendations as I am putting in
20 front of you now. We feel often that our obligation is to provide strategic information to relevant policy makers to understand the extent of the threat, because I think the strategic packaging of illicit markets and their impact in South Africa is not often present in the debate, and that has been one of our key objectives.

We are working closely with one or two government departments on actual cases. I will not go into that now, but that is examples of the fourth area of our work, the disruption of criminal markets. So I continue to welcome our partnership with the South African government.

CHAIRPERSON: Thank you very much, Dr Shaw. You are excused, but of course you will walk out when we are adjourn. Mr Chaskalson, is there anything else?

WITNESS EXCUSED

10 **ADV CHASKALSON SC:** No, Chair. There is nothing to announce other than I think you must announce when we come back.

CHAIRPERSON: All right. We will come back on the 15th, 1-5 of September. Some of you must have seen the media statement that was issued saying that two of the Commissioners have engagements that were arranged when the Commission's term was to have ended earlier than it will now end, and those were so fixed that the two Commissioners could not move them. Because previously I
20 quote-unquote ousted Commissioner Baloyi, so she is not the culprit this time around. So it is Commissioner Khumalo and I. Let us adjourn and resumed at 9.30 on the 15th of September.

INQUIRY POSTPONED TO 15 SEPTEMBER 2026

INQUIRY ADJOURNS
